

Board of Selectmen's Meeting Minutes

May 26, 2011

Harpswell Town Office

Approved June 9, 2011

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Selectmen Present: Elinor Multer, James S. Henderson and Alison S. Hawkes

Staff Present: Kristi Eiane, Town Administrator; Terri Sawyer, Deputy Town Administrator; Debora Turner, Assessing Agent; and Bill Wells, Code Enforcement Officer

The meeting was videotaped and broadcast live on Harpswell Community Television.

Call to Order and Pledge of Allegiance: The meeting was called to order at 6:00 p.m.

1. Adoption of the Agenda: Chairman Multer moved, seconded by Selectman Henderson to adopt the agenda as amended by deleting agenda item 5.5; motion passed 3-0.

2. Public Comment: Sam Alexander read a letter from the Carrying Place Assembly (attached) and stated the Town appears to be its own worst enemy. Robert McIntyre stated that during the hearing on May 17, he used the correct statistic regarding what Harpswell pays to MSAD 75 from the information provided by Mr. Dyer. Mr. McIntyre encouraged the public to watch the full meeting with the Education Advisory Committee and Jim Rier from the State Department of Education and for the Town to post pages 16 and 17 from the MSAD 75 budget. Mr. McIntyre provided his phone number as a contact if anyone wants information regarding information on other towns and systems. Don Miskell announced that June 4 is National Trails Day and everyone is encouraged to hike 8 trails in Harpswell, 4 Town-owned and 4 Harpswell Heritage Land Trust owned, between Saturday and Sunday and if you complete them, there will be prizes awarded at the Town Office on those days. Mr. Miskell encouraged all to hike the Town's new trail at Devil's Back on Orr's Island, blazed by the Recreation and Town Lands Committees, which is 1.4 miles and parking is available at the old Orr's Island rest area. Shirley Thompson announced that Memorial Day is Monday and the celebrations begin at 10:15 a.m. at the Ewing Narrows Bridge with a wreath tossing and gun salute; followed by the parade that begins at 11:00 a.m. The parade begins at Lookout Point Road and proceeds to the north end of Allen Point Road, closing the road for non-emergency traffic for about one hour. Ms. Thompson stated she wants to pursue acquiring monuments for all war veterans and asked the public to contact her at 833-2984 to help with the project and/or with the names and ranks of veterans who lived in Harpswell during their service time.

3. Town Administrator's Report: Administrator Eiane reported that the Town attended a work session in Augusta regarding LD 69 (An Act to Restore the Historical Town Boundary Line between Harpswell and Brunswick) and the Committee after 1 ½ hours of discussion voted ought not to pass. The Town asked Representative Olsen to advise the Town when the bill is before the full House. Administrator Eiane indicated she spoke with Gary Brown, Brunswick Town Manager, and he informally stated Brunswick might be able to work with Harpswell to acknowledge the historic line. Administrator Eiane announced there will be a vote on June 14, regarding the MSAD 75 budget and a municipal referendum with three issues: 1) a petition to appropriate \$55,000 and to create a withdrawal committee to consider withdrawing from MSAD 75; 2) creation of a historic district on Eagle Island that will allow a visitor's center to be constructed closer to the shore than in other districts; and 3) a \$2,400 appropriation for a phase I environmental assessment at West Harpswell School before the Town votes on whether to accept the property. Absentee ballots are available at the Town Clerk's Office. Administrator Eiane announced the Town Bulletin will be mailed beginning of next week. Administrator Eiane reminded the Board of the Committee-wide meeting on June 2 at 6:00 p.m.

4. Selectmen's Announcements: Selectman Henderson thanked Terri Sawyer for linking the documents pertaining to each agenda item on the Selectmen's agenda for the public's benefit to have the same information as the Board. The exception is that certain items that are too large in size will not be linked, for example wharf applications. Selectman Henderson announced he attended the Midcoast District Transportation Summit,

sponsored by the Department of Health and Human Services. The Summit was focused on how to address transportation issues, including how to get people to services. There may be a case to be made to expand the Brunswick Explorer service to other areas such as Harpswell. Anyone interested should contact Town Office administration.

5. Consent Agenda: 1) Approval of the Minutes; 2) Authorization of the Warrants; 3) Countersign the MSAD District Budget Validation Referendum Warrant; 4) Renewal Liquor License Request by Harpswell Inn, 108 Lookout Point Road; 5) Request for Haying of Mitchell Field by Two Coves Farm – Removed; 6) Ratio Declaration and Reimbursement Application: Selectman Henderson removed item 6 from the consent agenda. Chairman Multer moved, seconded by Selectman Henderson to approve the consent agenda with items 1 – 4; motion passed 3-0. Deborah Turner, Assessing Agent, explained the State requires municipalities each year to declare what reimbursement percentage it will allow for the homestead exemption for developed parcels. A municipality may use a percentage within a 10 percentage points of its certified ratio. Harpswell's certified ratio for 2011 is 92%; however, the Assessing Office recommends that Selectmen/Assessors select 100% to provide a better benefit to the Town's homestead residents. The Town will receive 50% reimbursement from the State of the total homestead exemption value. For 2011, there are 1,420 homesteads in Harpswell. Selectman Henderson indicated he would be willing to support the \$10,000 to benefit residents as that aids those with a lesser value. Selectman Henderson moved, seconded by Chairman Multer to set the reimbursement at 100% at the recommendation of the Assessing Office; motion passed 2-0 (Selectman Hawkes abstained).

6. Old Business

- 1) Coastal Humane Society Contract: Discussed later in the meeting.
- 2) Jeffrey Bills Wharf Application, 17 Winterberry Lane, Map 45, Lot 117: Bill Wells, Code Enforcement Officer, reviewed the list of documents received since the application was tabled on December 21, 2010. The application was tabled pending evidence that the Bills had authority through a legal Association to proceed with the proposal to build a dock on the common lot of the subdivision. Since then, the association members have signed off on the proposal. Chairman Multer moved, seconded by Selectman Henderson to approve the application as it does not cause an obstruction to navigation or cause injury to the rights of others; motion passed 2-0 (Selectman Hawkes abstained). Administrator Eiane reminded the Board that at the attorney's advice, the Notice of Decision (NOD) for each wharf application must be voted on by the Board. Staff has prepared a NOD consistent with past process and suggested the Board read it or vote on it at the next meeting. Sally Daggett, Town Attorney, stated the NOD has to be voted on within 10 days of the date of decision. Chairman Multer read the NOD. Selectman Henderson stated in the past, the Board has allowed an application to sign a disclaimer taking responsibility for their right, title or interest to the intertidal zone and noted that the Town's legal counsel does not agree with that process and instead an applicant should have to provide evidence as part of the application. Ms. Daggett reiterated an applicant has a threshold obligation to show right, title or interest to the intertidal zone which is separate from a private property rights dispute, which the Town would not get in the middle of. Selectman Henderson asked if the Bills have provided sufficient evidence to right, title or interest; Ms. Daggett responded affirmatively between the Road Association's consent and the deed referring to "along the shore of Quahog Bay". Chairman Multer moved, seconded by Selectman Henderson to approve the NOD without the property line condition; motion passed 2-0 (Selectman Hawkes abstained).
- 3) Michael Hamlyn & Debra Bodwell Wharf Application, 399 Long Point Road, Map 38, Lot 150: Bill Wells, Code Enforcement Officer, reviewed the list of documents received since the application was tabled at the last meeting. Chairman Multer asked Sally Daggett, Town Attorney, to provide a brief overview of the grounds on which the Board of Selectmen judge a wharf application and what aspects of the application are not within the Board's consideration. Ms. Daggett stated there are two separate approvals necessary from the Town: 1) Shoreland Zoning Ordinance (SZO) approval and 2) approval under the Wharves and Weirs Act, Title 38 Section 1022. For non-commercial wharves, the reviewing authority under the SZO is the Code Enforcement Officer and for commercial it is the Planning Board. The SZO standards do not apply

tonight as the Board of Selectmen reviews a wharf application under the Wharves and Weirs Act that contains two standards of approval: 1) Not cause an obstruction to navigation; and 2) not cause injury to the rights of others. There is not a lot of case law regarding navigation but typically a municipality will include testimony from its Harbormaster and neighbors; but there is case law on interpreting injury to others. There is a 1641 colonial ordinance as amended in 1647 that gives the public the right to the intertidal zone (between high and low) to fish, fowl and navigate. The injury to the rights of others pertains to the right to fish, fowl and navigate and doesn't include views. C. Matthew Rich asked if the attorney's opinion as given tonight is the position of the Town; the Board responded yes. Selectman Hawkes asked if this wharf is built, will it prevent others from doing the same; Mr. Wells responded this application does not preclude anyone from applying for a system. Selectman Henderson stated he understands the CEO's finding is separate from the Board's and asked what the remedy was for others to challenge the CEO's decision; Ms. Daggett responded an aggrieved party has a right to appeal a decision of the Code Enforcement Officer or Planning Board to the Board of Appeals. The Board of Selectmen can contradict navigation advice by the Harbormaster but not any CEO decision under the SZO. The hearing was opened at 7:33 p.m. and Chairman Multer asked speakers to keep their concerns limited to what the Board can address. Ben Wallace stated the Department of Environmental Protection (DEP) asked if the wharf could be lowered and he responded it cannot as it would prohibit small boaters from passing underneath. Mr. Wallace noted the DEP determined this beach is not pristine and that the right to build in the intertidal zone is up to the State as it is State land. Susan Rich stated she is the owner of map 38, lot 152 which includes all tidal flats and she objects to the proposal as it crosses her property. Ms. Rich states she was notified as the SZO requires and the DEP and the Dept. of Army Corps did not notify her. Doug Butler presented pictures of the cove with the projected wharf included that show issues with navigation. Chairman Multer asked what the consequence is if a neighbor was not notified; Ms. Daggett responded the point is moot since the person has been and is, attending and participating in the process. Ms. Daggett noted there may be an issue with right, title or interest and the applicant should submit further evidence from a Maine licensed attorney regarding this matter. Ms. Daggett stated the State owns the property seaward of low-tide. Mike Hamlyn stated he believed the riparian rights allows public passage and his proposal does. Chairman Multer stated without appropriate right, title or interest, the application is not prepared for approval. Ms. Daggett suggested the Board hear any other concerns regarding the application and asked for the status of approvals with other entities, such as DEP and the Dept. of Army Corps. Mr. Wallace stated the Army Corp and DEP are close to approval and a Submerged Lands Permit is not necessary as the ramp and float are seasonal and will not remain above low tide year round. Mr. Wallace stated he believes that the State owns the beach and by approving applications for such a use, that should be sufficient. Mr. Mahoney expressed concern about navigation and asked for further information regarding the channel width, depth, wind, tide, wave action and what's under the ocean. David Rich stated he lives on the cove and this proposal interferes with his right to navigate a row boat. C. Matthew Rich stated he disagreed with much of what the attorney has stated and that the case law has changed with recent decisions. Mr. Rich stated he spoke with the Town Administrator and asked that if the Board of Selectmen is only reviewing the Wharves and Weirs standards that the Board not receive information regarding the SZO. Mr. Rich reiterated a wharf is a structure as outlined by the Town Attorney's letter from a few years ago. Mr. Rich recommended the application be denied due to the lack of evidence regarding right, title or interest. Mr. Hamlyn thanked the Board and everyone for this process and listening patiently. Jim Hays stated he stands by his original recommendation that this proposal does not constitute a hazard to navigation. Mr. Hays reviewed the tax map and his findings that the proposal will occupy 40-feet of the channel which is less than 1/3. Selectman Henderson asked Mr. Hays if he could provide more information such as depth findings and channel information and where the float will be at low tide. Selectman Hawkes asked what the distance was between the float and other side at low tide; Mr. Hays responded about 216-feet. Ellen Toomey stated the issue with the lack of notification is that affected parties didn't have the appropriate time to prepare. Mr. Wells stated the notification used to be direct abutters and was changed to incorporate abutters within 250-feet. Emily Macdonald confirmed her mother received a notice as a direct abutter and that while life may change, if the Hamlyns have the right to

build this, they should do so. The hearing was closed at 8:42 p.m. Selectman Henderson moved, seconded by Chairman Multer to table this application pending receipt of evidence of right, title or interest to the intertidal zone and to receive additional information from the Harbormaster regarding width and channel information; motion passed 3-0. David Rich requested to be notified when additional information is received. The Board discussed the difficulties presented by such a request and Selectman Henderson stated he wanted to be notified and then he would notify others.

7. Carla Lejade Wharf Application, 77 Spruce Cove Road, Map 58, Lot 52: Bill Wells, Code Enforcement Officer, reviewed the application for a 3x27 seasonal ramp and 10x20 seasonal float. Selectman Henderson noted there is no relation to one of the applicants, Henderson. Selectman Henderson asked what evidence was provided regarding right, title or interest as the Board should be consistent per application. Mr. Wells responded that the exception was made with a contested application and asked if this was the norm for all applications now. The Board stated this is the legal advice being provided. Ms. Daggett stated she could review the Lejade deed and advise Administrator Eiane if it is acceptable or if more information is required. There was a discussion about changing the procedure including streamlining what documents are provided to the Board and also about informing applicants of the need to address right, title or interest. Chairman Multer moved, seconded by Selectman Henderson, to table this application to determine if more information is needed. Ben Wallace asked to speak. The motion was withdrawn. Mr. Wallace stated he believes with State agencies reviewing these uses, that should be evidence enough of the right to do so and that the structures he builds are designed to be the least obtrusive. Selectman Henderson moved, seconded by Chairman Multer to table this application until the Town receives information regarding the status of right, title or interest; motion passed 3-0.

8. Hearing to Consider Placing Seasonal Closures on Three Shellfish Areas: Deputy Bradbury, Harpswell Shellfish Warden, stated the Marine Resources Committee and he recommend placing a local seasonal closure on three coves, Upper Basin, Lower Basin and Ash Cove from June 1 to December 1. This would allow the clams to grow during the summer and be available for winter digging as these coves do not typically ice over the way other coves do. Additionally, right now the coves close and open at different times and changing to the same dates will make it less confusing to the public. The hearing was opened and closed at 7:10 p.m. Chairman Multer moved, seconded by Selectman Henderson that the Board agrees with the Marine Resources Committee recommendation to place seasonal closures on three cove locations in order to conserve the coves for winter harvesting, and finds that the State Department of Marine Resources has approved the Town action, therefore, the Board approves closing all the Flats in Upper and Lower Basin Cove (DMR Area 17-B(B&C)) and Ash Cove from Basin Point to C 13 Buoy then running northeast to the south end of the causeway on Harpswell Neck Road commencing June 1, 2011 at 12:00 a.m. and terminating on December 1, 2011 at 12:00 a.m.; motion passed 3-0. Deputy Bradbury asked if the Board would consider changing the process regarding the listing of closures, located out front at the Town Office, and the Board asked him to work with the Town Administrator with support from the Selectmen.

9. Consider Action Regarding Abandoned Vessels at Mackerel Cove: Jim Hays, Harbormaster, stated he's been working with staff to clean up Mackerel Cove and there are some floats on the beach and side of cove that appear to be abandoned and not located on Town-owned property. There was a discussion regarding the definition of "abandoned" in the Harbor and Waterfront Ordinance and of how to better address people abandoning property which ultimately costs the taxpayer for the clean up. Deputy Administrator Sawyer indicated three of the floats on the east-side of the cove were moved to that location last year when the Board sent 30-day notices asking for the floats to be removed from the beach area. The floats have been in the area for about a year and are in poor condition and are affected by the high tide. The other float is on the beach at the Harpswell Heritage Land Trust property without permission and appears to be abandoned based on its condition. Section 5.4 of the Ordinance allows the Board to send notices to the owners of the abandoned items requesting the removal of the items within 30 days. Deputy Administrator Sawyer read one of the proposed letters and recommended sending the letters. Chairman Multer moved, seconded by Selectman Hawkes to send

the letters as proposed; motion passed 3-0. Mary Ann Nahf stated she also has had conversations with concerned residents in the area about the items.

10. Request for Use of Mitchell Field for a Wedding Ceremony: Administrator Eiane explained the Town has received its first request for a wedding ceremony at Mitchell Field. The Town's Group Use Policy allows for fees: an advanced deposit fee and a per attendee fee. Administrator Eiane indicated the Board has always waived these fees and recommended a more streamlined process for wedding uses at Mitchell Field, similar to the existing process for Mackerel Cove. For Mackerel Cove, an applicant completes an application, pays a \$50 refundable deposit and provides proof of insurance. Bill Millar indicated he has requested use of Mitchell Field for his daughter's wedding. Chairman Multer moved, seconded by Selectman Henderson to approve this request for wedding use at Mitchell Field as presented in the application and to waive any per attendee fees provided that a \$50 refundable deposit is collected, and, to authorize the Town Administrator to approve future wedding requests at Mitchell Field consistent with this decision; motion passed 3-0. Chairman Multer urged staff to look at the fee structure in the Group Use Policy and make a recommendation regarding possible modifications.

11. Mitchell Field Implementation Committee Recommendation Re: Generator Building: Deputy Administrator Sawyer reported that the Board received an offer in March from Eric Fields to clean out the generator building and the Board referred the matter to the Mitchell Field Implementation Committee for recommendation. The Committee has since then agreed that the contents of the building should be removed. Staff recommends the Board send the project out to bid and that there is a warrant article that authorizes the Board to dispose of excess property through a competitive process. Selectman Henderson asked if the equipment had any resale value for the Town; Administrator Eiane responded they were obsolete and probably had little or no resale value but possibly scrap value. Chairman Multer moved, seconded by Selectman Hawkes to authorize staff to send out requests for proposals; motion passed 3-0.

12. Committee Appointments and Resignation: Chairman Multer moved, seconded by Selectman Henderson to appoint Paul Standridge to the Harbor & Waterfront Committee to 2014; Jonathan Burbank to the Emergency Vehicles Committee to 2012; and Connie Bernier to the Marine Resources Committee to 2014; motion passed 3-0. Chairman Multer moved, seconded by Selectman Henderson to accept Helen "Cricket" Tupper's resignation from the Emergency Vehicles Committee; motion passed 3-0.

13. Appointments for Election Workers for the June 14, 2011 Election: Chairman Multer moved, seconded by Selectman Henderson to appoint Susan Lowery, Megan Hubbard and Janet Coombs as wardens for the June 14 election; Hope Hilton, Patricia Leary, Thomas Rothwell and Melissa Moretti as Deputy Wardens; Lydia Mears and Ruth Allen as election/ballot clerks; motion passed 3-0.

14. Consider Contract Amendments with Wirenuts and Thayer, Inc. for Energy Efficiency Improvements: Deputy Administrator Sawyer explained that the Town was awarded a grant from the Midcoast Council of Governments to perform energy efficiency improvements to three Town-owned building. Requests for proposals were sent out for the work and three contractors hired. The contracts called for the work to be completed by May 15 and the extension for Wirenuts is to May 27 for additional work of \$1,780. The extension for Thayer, Inc. is to June 2 due to unforeseen circumstances related to the rotophasers work at the Recycling Center. Selectman Henderson suggested including a penalty for late work in the future. Chairman Multer moved, seconded by Selectman Hawkes to approve both amendments; motion passed 3-0.

15. Consider Requests for Proposals for Residential Energy Improvements Pursuant to the Cumberland County Development Block Grant (CDBG) Program: Deputy Administrator Sawyer explained the Town received a \$10,000 grant from Cumberland County two years ago for a energy efficiency program for its residents. The program was intended to be similar to the Habitat for Humanity's program where a home would

have basic weatherization completed. Due to the lack of interest from the public, the program has changed to instead conduct home energy audits on the homes of qualifying residents and then based on the auditor's recommendations, provide certain improvements to one selected home. The home energy auditor's first choice declined to participate in the program due to concerns about the specific improvements called for. The auditor's second choice is pleased to participate and the request for proposals (RFP) calls for performing certain improvements as detailed by the auditor. The RFP is structured to have each step priced separately to allow for selection of certain items within the remaining grant funding. Chairman Multer suggested adding language to allow for a bidder to offer discounted prices for grouped items. Chairman Multer moved, seconded by Selectman Henderson to approve the RFP; motion passed 3-0.

16. Policy Matters

- 1) Use of Town Office: Administrator Eiane reviewed a draft policy regarding the use of the meeting facilities at the Town Office which essentially puts in writing what has been past practice with the addition of non-profit and civic organizations. Chairman Multer moved, seconded by Selectman Henderson to approve the policy. The Board discussed the definition of civic organizations and not-for-profit entities. The Board agreed to insert a known definition of civic organizations or delete it and agreed that not-for-profit entities did not have to be a formal 501C3. Motion passed 3-0.
- 2) Committee Guidelines Amendment: Administrator Eiane read the proposed amendment that allows the Board of Selectmen Chair to review any proposed material from committees for the media instead of requiring the full Board. This allows a more flexible schedule to meet printing deadlines instead of having to wait for a Selectmen's meeting. Chairman Multer added "or the chair's designee" and moved to approve the amendment, seconded by Selectman Henderson; motion passed 3-0.
- 3) Reduced Permit Fee for Smaller Structures: Administrator Eiane explained the Board has expressed concern about a land use permit fee being high for small structures. Based on the Board's discussion, Administrator Eiane read a proposal to waive the minimum permit fee and only charge a square footage fee. Chairman Multer moved, seconded by Selectman Hawkes to amend the Harpswell Development Fee Schedule so that the minimum application fee for accessory structures with a footprint of less than 100 square feet and having no utilities (such as electrical, plumbing etc.) shall be waived, and only a square foot fee shall apply. All land use standards shall apply. Motion passed 3-0.
- 4) Board of Appeals Application Fee: C. Matthew Rich suggested charging the \$100 application fee for an administrative appeal only if the Code Enforcement Officer (CEO) or Planning Board contests the appeal. Otherwise, the application is processed through the Board of Appeals without an application fee. Deputy Administrator Sawyer informed the Board that its current fee schedule assesses a \$100 application fee for an administrative appeal and it is refundable if the application is successful. Selectman Henderson asked what the process is now if the CEO realizes he/she made a grave error is issuing a permit. Deputy Administrator Sawyer responded if the permit was issued on misrepresented information, the CEO could revoke the permit. Selectman Henderson stated he was not enthusiastic about changing the process as one could review issues directly with the CEO without appealing. No action was taken.

17. Other Business: There was none.

18. Public Comment: Sue Rich encouraged everyone to vote on the withdrawal question on the June 14 ballot. C. Matthew Rich complimented the staff on posting the Selectmen's documents with the agenda and for the quick turnaround on supplying some documents on a prior freedom of access request. Mr. Rich stated he is looking to hear updates on the Curtis Memorial Library Memorandum of Understanding, Mitchell Field business status and on the emergency services status. Mr. Rich stated he was surprised to hear from the Marine Resources Committee that the water quality in Gun Point is testing high for pollution. Mr. Rich stated the Board needs to make the application process more clear to the applicant and separate the different permit processes such as the wharves and weirs from the shoreland zoning. Mr. Rich stated he also wants to see how

the local Property Tax Assistance Program proceeds this year. Administrator Eiane stated that applications will be sent out with each tax bill this year. Additionally, a resident has again asked the Board to look at the tax deferral program that the State made available. The last time the Board reviewed it, it was decided to wait to see what the impact with the Property Tax Assistance program would be. The Board requested the information on that specific program again.

19. Administrative Matters: 1) Banking and Insurance Services; 2) Catering Permits; 3) Orr's Island Bridge Lease; 4) Purchase Orders: The Board agreed to send out requests for proposals for banking services; to renew the Town's insurance with Kyes and to send insurance services out to bid next March or before; catering permits were signed; a lease for a wharf at the Orr's Island Bridge was signed; and purchase orders exceeding \$1,000 in value were signed. Selectman Henderson noted there may be an issue with making liquor license applications public and he asked staff to further investigate. The Board further discussed that the wharf application process should be better clarified. Selectman Henderson asked when the street light recommendations will be before the Board; staff responded it is scheduled next meeting.

6.1. Coastal Humane Society: Deputy Administrator Sawyer stated in follow up of Selectman Hawkes' questions, the Society has not billed the Town for veterinary services as they typically take care of those needs as part of the contract. Chairman Multer moved, seconded by Selectman Hawkes to approve the contract with the Coastal Humane Society; motion passed 3-0.

20. Adjournment: The meeting adjourned by unanimous vote at 10:50 p.m.

Respectfully Submitted,

Terri-Lynn Sawyer

Attachments: Carrying Place Assembly May 23 Letter
Notice of Decision Shellfish Conservation
Use of Town Office Meeting Facilities Policy

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