

**Selectmen's Meeting Minutes**  
**June 28, 2018**  
**Harpswell Town Office**  
**Approved July 26, 2018**

At 4:00pm, the Board unanimously agreed to meet in executive session pursuant to 1 MRS § 405(6)(E) to consult with its attorney re: legal rights and duties of the body including contemplated litigation in a land use enforcement matter. The Board recessed at 4:50pm.

At 5:00pm, the Board met in open session and Selectmen Johnson expressed concern about Selectman Chipman participating in the next executive session regarding the water tower matter. Chairman Daniel also expressed concern but stated he preferred to allow each Selectman's voice at this time. Chairman Daniel moved, seconded by Selectman Chipman to enter executive session pursuant 1 MRS § 405(6)(E) to consult with its attorney re: legal rights and duties of the body with respect to a matter involving a special town meeting called by a notary public. The Board recessed at 5:38pm.

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

**Selectmen Present:** Richard A. Daniel, Kevin E. Johnson and David I. Chipman

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

**1. Adoption of the Agenda:** Chairman Daniel moved, seconded by Selectman Chipman to approve the agenda as amended by moving item 6 to after item 3; passed 3-0.

**2. Public Comment:** Fred Cantu, Code Enforcement Officer, read a statement regarding the Federal Emergency Management Agency (FEMA): On June 19, 2018 FEMA posted a notice in the Federal Register requesting comments regarding the proposed Flood Maps. Although this notice gives a September 17, 2018 deadline for submitting comments (precisely 90 days from June 19) that date is not the start of the appeal period. FEMA still is required to send letters to chief executive officers of the affected communities and post two newspaper notices before the appeal period starts. Only after that occurs will the 90-day appeal process begin. It is expected that the letters and newspaper ads will be completed in early July. Harpswell has engaged the services Ransom Consultants, Inc. to develop an appeal. This appeal is a joint effort with 7 other communities in York and Cumberland Counties. This appeal will not address all areas of the Harpswell coast, but specific locations (called Transects) that were selected based upon two factors: most drastic flood elevation height and/or significant changes in the flood zone category. Residents that are interested in submitting their own appeal may do so within the same time restraints provided to the Town of Harpswell. Please understand that FEMA does not entertain anecdotal evidence, but scientific evidence based on flood and hydrology data. Anyone interested in viewing the proposed flood maps can find them on the Town's Website under the Code Enforcement Department menu, or at the Code Enforcement Office.

**3. Selectmen's Announcements:** Chairman Daniel stated the Board met in two executive sessions early today. One was regarding a land use violation and he moved to authorize the Town Attorney to work with the Code Enforcement Officer to inform the property owners of map 49, lots 15 and 19 of the infractions and how to resolve the violations. Attorney Tchao added that the Attorney and Code Enforcement Officer undertake addressing the violations to include taking potential legal action. Selectman Chipman seconded the motion. Katherine Chatterjee asked for a definition of 'resolve', what the time frame is and if it includes dealing with the resource protection violations. Selectman Chipman responded there are violations that need to be addressed, including the resource protection matters, and the owner will be allowed time to resolve. The motion passed 3-0.

The second session was regarding the Board's rights and duties regarding the special town meeting called by a notary. Attorney Tchao reviewed that a Special Town Meeting warrant (STMW), signed by a notary, was presented to the Board at its June 14 meeting to repeal article 30 from the March 10, 2018 warrant, which passed

to authorize the demolition of the water tower, and to authorize the Board to enter into an agreement with the Friends of Mitchell Field to undertake repairs of the tower and explore cellphone transmission from the tower. The language of this STMW is very similar to the language of article 29 from the March 10 warrant (which did not pass) with immaterial differences. The intent is to undo the March 10 vote. Attorney Tchao stated that this STMW is invalid and any meeting called and vote taken will be illegal. The first reason is the STMW calls for the meeting to take place on August 11 and the warrant was delivered to the Board on June 14 and assuming it was also submitted to the Town Clerk, the Municipal Election statutes require that the election occur no sooner than 60 days after delivery. Therefore August 11 is not 60 days after June 14. Secondly, the statutes pertaining to a notary public calling a town meeting on the petition of voters when the Selectmen unreasonably refuse to do so, the language of that statute makes clear that the petition needs to be directed to the notary public. But the petition was directed to the municipal officers that was validated by the Town Clerk having met the requisite number of signatures and as the Board recalls the Board decided on May 2 and 9 to not put that petition to the voters on the basis of it calling for a revote on the same questions voted upon on March 10. At that time, it was Attorney Tchao's opinion based on case law that the Board's decision to not put the petition before the voters was not unreasonable. When that happens, if the petitioners want to take the next step, they have to circulate a second petition directed to a notary public that must meet the requirements for the number of signatures. There is no evidence that this happened. Thirdly, Attorney Tchao stated there has been confusion regarding a special town meeting. If this STMW had been valid, the statutes are very clear that the Town is responsible for holding the election and the Town Clerk responsibility to make sure the election occurs pursuant to the municipal election statutes. The statutes are very clear, for example it is the Selectmen that will appoint the necessary election workers; it is the Clerk that will open the ballots if by secret ballot; and the Town Clerk issues absentee ballots. All the statutes still apply in this situation. Any meeting held by this group not done under Town auspices and under the direction of the Town Clerk is invalid and illegal. The statutes are clear on the issue of unreasonable refusal that any Town Meeting called by a notary public absent an unreasonable refusal by the Selectmen would be an illegal meeting. Final decision on "unreasonable refusal" is ultimately up to a court to decide. Attorney Tchao stated that issue is not before the Board today because in her opinion, this particular STMW is invalid and any alleged election to be voted on August 11 would not be a legal vote. Chairman Daniel moved, seconded by Selectman Johnson to deem this warrant invalid and to direct the Clerk to not expend any funds on this effort. Selectman Chipman stated under this legal advice, he needs to go along with it. Selectman Chipman stated he sees in the water tower demolition contract a clause regarding non-appropriation so if this matter is worked out, the Town won't be sued by the contractor. Motion passed 3-0.

**6. Contract for Water Tower Removal:** Administrator Eiane reported staff has been working on this issue as a result of the Town meeting vote and has been in contact with Iseler Demolition, who was the low bidder. Just this week we had a conversation regarding the proximity of the food vendors and the contractor recommended that the businesses be closed the day of the work and that the Town hire an industrial hygienist to monitor the air. The contract with Iseler is for \$34,600 which includes the company removing the brush at the bottom of the tower. Upon review by the Town Attorney there were a couple of changes including a non-appropriation clause and she hasn't heard back from Iseler yet on the changes. Administrator Eiane recommended the Board not execute the contract until the details for an industrial hygienist is worked out. Administrator Eiane stated she has spoken with each of the businesses on the abutting lot and they've agreed to be closed on the day of the tower removal. Selectman Johnson moved, seconded by Chairman Daniel to accept the contract with Iseler to dismantle the water tower. Attorney Tchao suggested the Board's motion include accepting Iseler as the contractor substantially in accordance with this agreement as there may be minor changes. Selectman Johnson and Chairman Daniel agreed to the change on the motion and second. Robert McIntyre stated the Town's legal interpretation is subject to dispute and the hearing will still go forward on the 28<sup>th</sup> and the meeting that is currently scheduled for August 11 will likely be changed to August 10. Mr. McIntyre mentioned the past lead tests and stated that if one believes the one test result that showed high, then the planned one day removal project is irresponsible. Mr. McIntyre speculated that the one test result that showed high was a laboratory data error. He adds that the high lead test result impacted the high bids of the other two companies that responded.

Katherine Chatterjee asked if the high bid responses were affected by the lead levels. Administrator Eiane responded during the interviews the higher costs were relative to person power and to approach. This one company could come in with 8-9 people and complete the project in one day and the other companies' plans included a different approach and longer time periods such as two weeks. Ms. Chatterjee stated she was a Selectman from 1998 to 2001 and the Board fought hard to make sure the transfer of the property to the Town was thorough and proper. She stated this has gone on long enough and it's time to take down the tower. The motion passed 3-0.

**4. Town Administrator's Report:** Administrator Eiane recommended the Town hire Wendy McClanahan [Gockel] as a Cedar Beach monitor at \$11.54 per hour. Selectman Chipman so moved, seconded by Selectman Johnson; motion passed 3-0.

**5. Consent Agenda:** Selectman Chipman moved, seconded by Selectman Johnson to approve the consent agenda [Mitchell Field invasive plant signs; signed two Orr's Island Lease Agreements; Local Road Assistance program Certification; approved warrant #26 in the amount of \$284,990.2 and payroll warrant #25 in the amount of \$21,801.56]; motion passed 3-0.

**7. Mitchell Field Pier Demolition Project Surface Restoration Proposal:** Mark Eyerman, Planner, reported the pier project is moving along and getting close to the end. Barney Baker, Town project engineer, Don Miskell, Mitchell Field Steward, Ronald Ponziani, Road Commissioner, and Mr. Eyerman reviewed the entire site to determine what needs to be addressed for repairs and restoration. There is a list of nine items for the possible use of the \$50,000 provided in the contract and if the Board agrees, a change order would be prepared. Barney Baker reviewed each of the nine items. Marguerite Kelly, Treasurer, asked the Board to wait on the item relating to sealing of the cracks in the main road as she wants to assure they were caused by the project since the Town cannot use the bond proceeds for items not related to the pier project. Selectman Johnson stated there are pictures of the road prior to the project. Mr. Baker agreed adding there is also a video and he believes the road was stressed during the project. The Board concurred with the other items and a change order will be prepared for the next meeting.

**8. Policy Establishing Municipal Fees and Charges:** Deputy Administrator Sawyer stated this proposed policy basically puts the Town's practice into policy form. She reviewed the proposed policy. Chairman Daniel moved, seconded by Selectman Chipman to adopt the policy; motion passed 3-0.

#### **9. Wharf Applications**

- **Teresa Hadlock & Bruce Campbell, 48 Little Island Road, Map 28, Lot 108:** Bill Wells, Code Enforcement Officer, reviewed the proposal to add a 4'x36' aluminum ramp and 10'x16' float to an existing 25'x25' wharf. Chairman Daniel moved, seconded by Selectman Chipman to approve the application as the Harbormaster indicates there is no hazard to navigation and there is no injury to the rights of others; motion passed 3-0.
- **Lawrence Weathers & Mary Coleman, 291 High Head Road, Map 7, Lot 153:** Bill Wells stated there is currently a set of 4'x32' stairs on the site and he reviewed the proposal to construct a 6'x25' dock, 3'x32' seasonal ramp and a 12'x16 seasonal tank float with keels. Chairman Daniel stated the Harbormaster recommends a condition that the ramp and float are removed annual from November 1 through April 30. Chairman Daniel moved, seconded by Selectman Chipman to approve the application with the recommended condition as the Harbormaster indicates there is no hazard to navigation and there is no injury to the rights of others; motion passed 3-0.

**10. Violation Matter Nye Richardson, 7 Hugh Ave., Bailey Island, Map 21, Lot 103:** Fred Cantu, Code Enforcement Officer, reported since May 2003 the Code Office has sent 10 enforcement letters to Nye Richardson for having a junkyard with no resolution. Mr. Cantu asked the Board to take action against the

owner. Nye Richardson, property owner, acknowledged he has some mess to clean up on his property but only one vehicle is unregistered. Mr. Richardson stated he works a lot and has not had time to clean up the property plus he uses some of his non-working vehicles for parts. Selectman Chipman stated he understands a pile of junk to one is a resource to others but there could be environmental issues. Selectman Chipman suggested the Board visit the site. Chairman Daniel agreed and noted in the paperwork that Mr. Richardson's items prevented the passage of emergency vehicles on Hugh Avenue. Mr. Richardson responded he has since then moved the vehicle that was creating that issue. Mr. Cantu stated the general perception is 3 or more unregistered vehicles constitute a junkyard but the rules refer to much more, which Mr. Richardson has on site. Chairman Daniel asked if the Board has to authorize the Code Officer to enforcement the junkyard rules. Mr. Cantu responded the Code Officers do the leg work but ultimate enforcement is up to the Board for legal action. Ronald Ponziani, Road Commissioner, stated he understands Nye's situation but he needs to assure the vehicles do not block the road so vehicles and plows can get through. A site visit will be scheduled.

**11. Recommendation for Certain Recycling Center Fees:** Charles Perow, Recycling Center/Transfer Station Manager, reviewed the new service of offering compost to the public and recommended the per bucket fee be raised from \$2 to \$3. Selectman Chipman moved, seconded by Selectman Johnson to charge \$3 per bucket of compost; motion passed 3-0. Mr. Perow reviewed the electronic waste process of collection and disposal and recommended the Board implement a \$1 fee for small printers, computer towers, small copiers and fax machines. Selectman Chipman so moved, seconded by Selectman Johnson; motion passed 3-0. Mr. Perow reviewed the Freon process of collection and disposal and recommended the fee for Freon items (such as refrigerators, freezers and air conditioners) be increased to \$15 from \$12 and to \$18 if the doors are not removed from the item. Selectman Chipman so moved, seconded by Selectman Johnson and the motion passed 3-0. Chairman Daniel asked how it was going at the Recycling Center with the congestion of people activities other than trash and recyclables disposal. Mr. Perow responded the Harpswell Invasive Plant Partnership was there last weekend but wore vests and stayed off to the side. Mr. Perow has put a lot of thought into how to handle things such as petitioners and safety for the staff, taxpayers and the different groups comes first. Mr. Perow stated he received 48 complaints when the rank choice people were there collecting signatures and 132 complaints when the petitioners regarding the water tower were there. There was a discussion on what could be done to address the issues while still allowing the extra activities. Selectman Chipman suggested the Recycling Committee could work on a policy. Chairman Daniel suggested maybe designating an area within the flow and he thanked Mr. Perow for his work.

**12. Mackerel Cove Boat Launch Project and Contractor Recommendation:** Deputy Administrator Sawyer stated the Board may recall that when the original replacement boat launch project for Mackerel Cove was sent out for public bidding, there were two bids received – one from Ray Labbe & Sons and one from Crooker Construction. The Town did not have enough funding available to proceed with the project at that time and the additional funds were approved at the March 2018 Town Meeting. Just before Town Meeting, the Town was informed that the boat ramp design had to be modified to comply with the Department of Environmental Protection's requirements. The new design replaces the existing 140-foot long paved ramp with concrete boat planks, which increased the project's estimated costs. The additional funds were approved at the June 12, 2018 municipal referendum. Since the project was previously competitively bid pursuant to the Town's Competitive Bid Policy and Ray Labbe & Sons was the lowest bidder, she asked if the Board would consider proceeding with Ray Labbe & Sons for the project without rebidding the revised design. If the Board approves, staff will work with the contractor to finalize the project costs and a contract. Selectman Chipman moved, seconded by Selectman Johnson to sole source with Ray Labbe & Sons and that he final costs come back before the Board; motion passed 3-0.

**13. Maine Municipal Association's Legislative Policy Committee (LPC) Ballot:** Administrator Eiane reported Peter Joseph, Freeport Manager, has offered to serve on the LPC. Administrator Eiane has served for

the past two years and prior to that Ellie Multer did. Chairman Daniel moved, seconded by Selectman Johnson to vote for Peter Joseph; motion passed 3-0.

**14. Consider Sole Sourcing for Personal Protective Equipment:** Administrator Eiane reported the Board previously agreed to sole source with another company but due to timing issues, Art Howe, Fire Administrator, is recommending the Board sole source with Bergeron Protective Clothing for the Town fire fighters to not exceed \$14,000. Selectman Chipman moved, seconded by Selectman Johnson to sole source with Bergeron not to exceed \$14,000 for personal protective equipment; motion passed 3-0.

**15. Accept Donations:** Chairman Daniel moved, seconded by Selectman Chipman to accept the following donations: for the Bandstand – Edward Blain \$100, Harpswell Garden Club \$100, Helen Norton \$1,050, donation box \$189.01; and Harpswell Garden Club \$100 for the community garden; motion passed 3-0.

**16. Public Comment:** None.

**17. Other Business:** Selectman Johnson stated he would like staff to have a title search done on the common lot with the boat launch at Harpswell by the Sea. It is believed that the Blackwells left a right-of-way to the Town. The Board agreed to have Brian Johnson research the matter.

Deputy Administrator Sawyer stated the Town was awarded a \$2,000 grant from the Cumberland County Development Block Grant Program to purchase smoke and carbon monoxide detectors. The contract just came in and it's laid out the same as past contracts. Selectman Johnson moved, seconded by Selectman Chipman to accept the grant and sign the contract; motion passed 3-0.

Deputy Administrator Sawyer reported that one of the sunken boats (the one near Oakhurst Island) has been removed. The Harbormaster has tracked down a new address of the other boat sunken in Middle Bay and has asked for a new 15-day order for removal to the new address. Selectman Chipman moved, seconded by Selectman Johnson to send a new letter; motion passed 3-0.

Deputy Administrator Sawyer explained that Central Maine Power in lieu of an easement from the Town for hooking up power to Marty's Munchies, they will accept a letter from the Board giving its approval for the power to be hooked up. Selectman Chipman moved, seconded by Selectman Johnson to sign the letter; motion passed 3-0.

Deputy Administrator Sawyer stated that the Harpswell Community Television Manger, Donna Frisoli, has been experiencing technical difficulties with livestreaming the Selectmen's meeting and would like to ask the Town's Energy Technology Committee for assistance. The Board agreed.

**18. Administrative Matters:** Chairman Daniel asked about the Portland Press Herald reaching out for a comment regarding a comic book that will include Harpswell. Administrator Eiane stated she has reached out the librarians for comment but neither were familiar with the comic book. She will forward the link to each Selectman.

**19. Adjournment:** At 8:10 p.m. the Chair adjourned the meeting without objection.

Respectfully Submitted,

Terri-Lynn Sawyer  
Deputy Town Administrator

Attachments: Policy Establishing Municipal Fees and Charges