

Selectmen's Meeting Minutes
March 5, 2014
Harpswell Town Office
Approved on April 3, 2014

4:10 PM: Chairman Multer moved, seconded by Selectman Hawkes to enter into executive session pursuant to MRSA § 405(6)(e) to consult with the Town Attorney and 405(6)(c) regarding the possible acquisition of an easement; motion passed 3-0. At 5:15 p.m. the Board returned to open session and recessed the meeting until 6:30 p.m.

Call to Order and Pledge of Allegiance: The meeting was called to order at 6:30 p.m.

Selectmen Present: Elinor Multer, Alison Hawkes and Richard A. Daniel.

Staff Present: Kristi Eiane, Town Administrator; and Terri Sawyer, Deputy Town Administrator

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

1. Adoption of the Agenda: Chairman Multer moved, seconded by Selectman Hawkes to adopt the agenda as printed; motion passed 3-0.

2. Consider Placing Article on Annual Town Meeting Warrant Re: Cedar Beach: Mike Helfgott, President of Cedar Beach/Cedar Island Supporters, Inc. (CBCIS), stated the earlier meeting was constructive with an agreement being reached between CBCIS, the Town and Aspatores. Then prior to this meeting, CBCIS members were provided the proposed article 72 language for the Town Meeting warrant and it contains conditions that are new to CBCIS and do not allow the Town to immediately accept the easement from the Aspatores. Sally Daggett, Town Attorney, stated there are three conditions within the article: a) there has to be a way to get to the easement area over Cedar Beach Road; b) current restrictions on the beach area need to be released by Joan Lester; and c) a full right to Cedar Island must be received since Cedar Island is co-owned by the Aspatores and by Joan Lester. Mr. Helfgott responded this issue has been here since 2 years ago when the Town required an easement from the Aspatores first and now it is requiring an easement for the road first. The issues are separate and the acceptance and resolution of the Aspatores easement will allow all focus to be directed to resolving the other issues. Mr. Helfgott noted the easement area could be accessed by water. Martin Eisenstein, of CBCIS, stated he was surprised by the conditions and he is certain if CBCIS had an opportunity to speak with the Board earlier, the language pertaining to these conditions could have been addressed. Mr. Eisenstein stated that access to the easement area can be by water while the lawsuit regarding the road progresses. Through court ordered mediation, this agreement for an easement with terms and conditions was reached subject to Town approval which must take place by March 31 or the process starts at square one again. Mr. Eisenstein asked if a release of an outhaul imperils use of the beach and stated if it is such a large issue, CBCIS could begin talks about giving a release. Mr. Eisenstein disagreed with the Town Attorney stating that an easement can be given for use of a half interest. He stated the Town is required to put a gift before Town Meeting without attaching terms and conditions and he requested the conditions be removed.

Chairman Multer stated that if conditions a, b and c are removed and the easement is accepted, all of the obligations under the easement terms and conditions (1-16), including providing a paid monitor and parking, will apply. She stated that access by boat only and not by road would make the Town answerable to the full terms and conditions for a relatively small number of people. Mr. Eisenstein responded while access is by boat, parking would not be required and providing a monitor for one hour a day for two months could not cost more than \$3,000. Selectman Hawkes asked how will the monitor get to the beach? Selectman Daniel stated the terms and conditions apply on a year round basis. Mr. Eisenstein assured the Board that Joan Lester has agreed to and can allow the Town monitor to access Cedar Beach Road with her permission and noted the monitor is not required all year. Chairman Multer stated she believes the monitor commitment will be more significant than presented. Mr. Eisenstein stated this easement should be up to a Town vote and this is an opportunity not a burden. David Bertoni, CBCIS trial counsel, stated the conditions effectively tie their hands – this easement

allows water access and allows the work to continue moving forward. He stated the Town Attorney said this could not be done and yet here is an easement – noting that the beach is a rare jewel and they are simply asking to bring this easement to the finish line. Nancy Moran stated the Maine Bar requires attorneys practice good manners. Selectman Daniel agreed stating that the Town Attorney found a lot during the negotiations. Ms. Moran asked what the impact to the Town would be to say no monitor in 10 years and what types of situations could get the Town in trouble with the easement terms and conditions. Ms. Daggett responded the Town and the Aspatores collectively interpret the terms and conditions of the easement and if the parties do not agree, then non-binding mediation is required initially then arbitration. If the Town fails to meet conditions there is a risk of losing the easement as outlined in #16 – should the Town be found not to be enforcing the conditions then the Board can decide to pay liquidated damages of a minimum of \$10,000 or call a Town Meeting vote on termination of the easement in lieu of paying the damages. Ms. Daggett stated the terms and conditions apply year round except for the beach monitor. Charlie Johnson, Jean Sanborn and Marvin Week spoke in favor of allowing Town Meeting to vote to accept the easement without the a-c conditions. Selectman Hawkes stated the issue is not solely about the costs for a monitor – the larger issue is how people will access the beach. Chairman Multer stated she was hesitant to bring an article to voters without all the information. Mr. Johnson suggested there be two articles: 1) to accept the beach easement; and 2) only accept with a-c conditions or without. Dean Kenney spoke in favor of bringing the easement to Town Meeting without the conditions.

Jan Weehey stated there was an agreement with the Abrahamsons for the road access which had a time limit that expired since the Board required an agreement with the Aspatores first. Now there is an easement from the Aspatores and now the Board wants to require obtaining the road first. Ms. Daggett stated on March 13, 2013, Town Meeting authorized the borrowing of up to \$220,000 to acquire both Cedar Beach Road and a portion of Robinhood Beach subject to conditions, same conditions as A and B plus other use conditions. This authorization expires December 31, 2014. Cedar Island was not part of last year's article and CBCIS says it can deliver a deed from Lester for the Island and also for off-street parking on Lester's property for the monitor. Ms. Daggett stated when property is owned as "tenants in common" (as Cedar Island is) each owner has a half interest and the rule under Maine Law is each tenant has a fiduciary responsibility to protect the other's interest. If the Town accepts Cedar Island without Lester, then that is a cause for failure to protect Lester's rights. Ms. Weehey stated the Harpswell Heritage Land Trust maintains access and trails and there are ways to make this work for Harpswell with 216 miles of coastline. Selectman Hawkes asked if the easement is accepted without a-c, is that legal to only have access by the water. Ms. Daggett responded that is the Board's call but she believes there will be a host of issues. Mr. Eisenstein stated if the Aspatores have a fiduciary duty to Lester on Cedar Island, it is the Aspatores' duty not the Town's and the Aspatores have an attorney. He stated the 2013 article conditions were in relation to spending the \$220,000 and this easement is being offered as a gift without spending any of those funds. This easement needs to be nailed down without conditions so work can focus on the road. Selectman Hawkes asked what would happen to the road case if this easement is accepted with a-c; Mr. Eisenstein responded the Aspatores easement has a time limit of March 31. Selectman Daniel asked if the Aspatores mediation could be extended. Mr. Eisenstein stated that not accepting the easement without a-c will hurt the case as when one side is nailed down, the other side comes unhinged. The Abrahamsons side cannot be done first due to the 2013 conditions, including that the Aspatores easement be obtained. C. Matthew Rich asked if he could be heard. Chairman Multer responded no. At 7:30 pm - Chairman Multer moved, seconded by Selectman Hawkes to enter into executive session pursuant to MRSA § 405(6)(e) to consult with the Town Attorney; motion passed 3-0.

At 7:45 pm, the Board returned to open session. C. Matthew Rich stated he was watching the meeting at home and found it offensive as the Board and staff has worked hard to resolve this issue. If CBCIS was serious about getting this on the warrant without conditions, there is a petition method. He stated he agreed with conditions a-c and that the Town Attorney has given acceptable advice.

Chairman Multer moved, seconded by Selectman Daniel to place the article on the warrant as written with conditions a-c.

Mr. Helfgott expressed disappointment and anger about the Board's decision and about constantly hearing "no" from the Board. The conditions were sprung on CBCIS at the last minute after working so hard for this resolution, including raising almost \$120,000 for the cause. Selectman Hawkes stated the terms should have been given to CBCIS at the earlier meeting but she assumed all lawyers know that all the pieces have to be put together. She stated she has worked hard on this issue and it is her job to look out for the entire Town. She sees the disappointment on the faces and feels bad but will leave tonight knowing she did her best for all of Harpswell. Public access is important and she believes CBCIS will get the Road access and keep going. Mr. Bertoni expressed disappointment and handed out a State Statute as he explained that when a gift is presented to a Town, the Town is obligated to bring the gift to the voters. He asked the Board to at least bring the two options to the voters and rely on voters to choose the right one. Chairman Multer pointed out that all the "no" CBCIS says they heard, there must have been a "yes" along the way as there are \$220,000 on the table. Selectman Daniel stated he understands this is hard on some and he regrets he cannot respond to all. He thanked everyone for the input and stated he wants access to the beach to be for all, not just boaters, noting the Board worked hard to reach an agreement to bring to Town Meeting.

The motion passed by a vote of 3-0.

Adjournment: At 8:03 p.m. the Chair adjourned the meeting without objection.

Respectfully Submitted,

Terri-Lynn Sawyer
Deputy Town Administrator

Attachments:

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