

Town of Kennebunkport
Board of Selectmen Meeting
June 8, 2023
5:00 PM

MINUTES

Selectmen attending: Ed Hutchins, Sheila Matthews-Bull, Allen Daggett, Jon Dykstra, Mike Weston.

1. Call to Order:

Selectman Hutchins called the meeting to order at 5:06 PM.

2. 5:00 PM – Executive Session per MRSA 1, §405-6E to consult with the Town Attorney concerning pending or contemplated litigation:

Motion by Selectman Dykstra, seconded by Selectman Daggett, to enter Executive Session. **Voted:** 5-0. **Motion passed.**

The Selectmen moved to the lounge for the Executive Session, which lasted for 50 minutes. Selectman Hutchins stated that no action was taken during the session.

(The Board accidentally skipped item 3 but returned to it later).

4. Public Forum: (This is an opportunity for anyone who wants to address the Board of Selectmen with any issue that is not on the agenda.)

Heidi Maynard expressed her concern about the regulation of short-term rentals. She asked if there was pending litigation against the Town at this time. Town Manager Laurie Smith answered that there is one case involving 15 Langsford LLC regarding the zone they are in and what is permitted in that zone for commercial use. Heidi asked if there was any pending litigation from property owners being told by the Town that they cannot rent their homes. Laurie responded that there was none. She also clarified that only short-term rentals (less than 30 days) are regulated by the Town.

Marybeth Gilbert thanked the Board for hosting the Meet the Candidates Night that she and George Bentley took part in.

Maureen Summers, via Zoom, informed the group that the microphone for Zoom was on during the Executive Session. While she heard dialog in the Community Room, Selectman Hutchins explained that the Selectmen were in a different room at the time.

No motion was necessary. No action was taken.

3. Approve the May 25, 2023, Selectmen meeting minutes:

Motion by Selectman Daggett, seconded by Selectman Matthews-Bull, to approve the May 25, 2023, selectmen meeting minutes. **Voted:** 5-0. **Motion passed.**

5. Discussion regarding access to the beach:

Town Attorney Amy Tchao explained that this concerns access to Goose Rocks Beach with adjacent oceanfront property owners in Jeffrey's Way / Sand Point Road area - Tiger 11 LLC and the Poole family. The Poole family signed the original Beach Use Agreement. Tiger 11 came to the Board in December 2022 requesting that they be able to sign a Confirmatory Supplemental Beach Use Agreement. The storm in December 2022 completely washed away a stairway spanning the seawall going down to the beach. There is a private right-of-way allowing several back lot owners on Sand Point Road to access the beach via the stairway.

Adam Chubb, Attorney for Christopher Poole, stated that the Pooles and their predecessors had maintained and replaced the stairs on several occasions over the past several decades, always with the interest of access to the beach for themselves and for the back lot owners with private deeded access. He said that there was a time in 2013 that the stairs had shifted, and the Tiger 11 property owners offered to reposition them. Subsequent to that, he states that Tiger 11 attempted to claim ownership of the stairs and the land and submitted paperwork to the Town for a permit to rebuild the stairs. He requests that the Codes office approve the Pooles' permit and deny the Tiger 11 permit.

Tom Danlick, Attorney for Tiger 11, read a statement for Jerry Rizzieri, who attended via Zoom. The statement claimed that the right-of-way for the backlot owners' meanders onto their property and that the stairs were on their property. However, they want to stress that they have every intention of continuing to allow the backlot owners access to the beach via the path and the stairs, provided the Town allows them to rebuild the stairs. He claimed that the plans and surveys distributed by Mr. Chubb were inaccurate, and that Tiger LLC had attempted to rebuild the stairs in 2013 & 2018.

Selectman Weston asked if the Rizzieris (Tiger LLC) were willing to work with the Pooles to memorialize the back owners' deeded right to the beach. He and Selectman Hutchins expressed irritation and concern that the BUA (Beach Use Agreement) was being used as a sword against the back lot owners when it was intended to be used as a shield.

The Selectmen expressed their strong desire for the Pooles and the Rizzieris to come to an agreement that memorializes the backlot owners' access to the beach as well as the Pooles' right to maintain and repair the seawall in front of their property.

Mr. Rizzieri added that he was a back lot owner in 2013 and signed the BUA at that time. He only discovered in 2020 that his name was not listed on the BUA and sought to have it added at that time.

Sheryl Poole stated that the beach wall is not in a safe condition at this time. She further stated that the past ten years have been full of challenges from Tiger LLC with the details of permits and repairs of the stairs. Since the stairs were washed away in December 2022, the backlot owners have had no access to the beach and her priority is restoring the stairs for them, as well as the responsibility to protect the dunes with the rip rap wall.

Chairman Dykstra stated that it was very unpalatable for the Board to have to step in and make a decision if the two parties cannot come to an agreement and stressed that both parties should make every effort to come to an agreement by the next BOS meeting in two weeks.

Attorney Sean Turley, representing Bob Delhomme (an affected backlot owner) reiterated that there has not been beach access for his client for the past five months and shares concerns with the Pooles that rebuilding the stairs might not be a priority for Tiger 11.

6. Approve hotel mini-bar applications for:

a. Cape Arundel Inn, LLC, located at 203 Ocean Ave:

Motion by Selectman Dykstra, seconded by Selectman Daggett, to approve hotel mini-bar application for Cape Arundel Inn, LLC, located at 203 Ocean Ave. **Voted:** 5-0. **Motion passed.**

b. Tides Beach Club, LLC, located at 930 Kings Hwy

Motion by Selectman Daggett, seconded by Selectman Dykstra, to approve hotel mini-bar application for Tides Beach Club, LLC, located at 930 Kings Hwy. **Voted:** 5-0. **Motion passed.**

7. Discussion of the following ordinance questions on the June 13 municipal ballot:

a. Administrative Code revision regarding Cape Porpoise Pier Committee members.

Town Clerk Tracey O'Roak explained that this is a proposal brought forward by the Pier Committee to change the composition of the Pier Committee from 75% registered voters to 75% commercial fishermen.

Vicki Benenti asked if other Committees have occupational requirements for membership, expressing concern that occupation might become a requirement for other Committees. Selectmen Hutchins responded, and Laurie Smith clarified that with fewer Town residents in the occupation of commercial fishermen, the Pier Committee felt it was necessary to change the composition of the Committee to be mostly those that use the Pier.

b. Administrative Code revision regarding days of annual town meeting.

Tracey stated that this was a proposal by a resident to change the Town meeting from the Saturday morning following an election to the Wednesday evening following the election.

c. Land Use Ordinance revision regarding accessory dwelling units.

Town Planner Michelle Radley explained that this revision is to make the language regarding Accessory Dwelling Units (ADU's) conform to state law in LD2003.

Vicki Benenti asked if the six-month minimum rental period still stands and if that could be changed. Michelle replied that this revision doesn't address the rental period but rather states that ADUs were a permitted (not conditional) use now, not requiring additional parking, etc.

Heidi Maynard asked about the minimum rental period. Selectman Dykstra responded that the minimum was already in the code, and this revision did not address that aspect of the ordinance.

Robin Phillips asked via Zoom about the required acreage in the Shoreland Zone to add an ADU. Michelle responded that there was no change to the current ordinance in that respect. Director of Planning and Development, Werner Gilliam, confirmed via Zoom that the double lot size is a requirement for the addition of an ADU in the Shoreland Zone.

d. Land Use Ordinance revision regarding private road construction.

Michelle explained that this change to the LUO regarded the specifications for new private roads to allow for the larger size of the new fire truck.

Ben Midgely asked if a private road were repaved would it require a widening of the end of that road. Werner Gilliam replied that it would not. Only in the instance of the addition of dwelling units to an existing private road or the creation of a new private road for two or more dwelling units would the new specifications come into play.

e. Authorize easement deed for St. Ann's Episcopal church.

Selectmen Hutchins briefly explained that part of the seawall is on Town land, and this easement would allow for St. Ann's to repair and maintain the entire seawall.

f. Authorize purchase and sale agreement to purchase land on Langsford Road for boat access.

Selectman Hutchins stated that the funds to purchase the land would come from a contingency fund, and while this is taxpayer funds, it would not affect the mil rate.

Robin Phillips asked if a survey had been taken of Langsford Road residents inquiring if they supported this proposal. Selectmen Hutchins replied that, for the most part, while they did have some concerns, they supported the proposal. Robin followed up with a statement that while the Town promoted the ramp as being available to all Kennebunkport residents, day use was not permitted. Selectman Hutchins and Dykstra responded that while day use would be constrained by the tides and depth of water at the ramp, there was no prohibition of day use.

Selectman Hutchins added that a resident had a concern about whether or not kayaks would be permitted to be launched from the boat ramp. He stated that there is a designated kayak launch area at the causeway in Cape Porpoise. Vicki Benenti questioned if kayak launching would be prohibited from the boat ramp. Selectman Dykstra said that kayaks would not be prohibited but rather that it was not the best place from which to launch them. He continued that the committee is looking for other sites that would be more suitable for launching kayaks.

John Green expressed concerns about launching kayaks and available parking on Langsford Road. But he did add that he supported the proposal.

Theresa of Coastal Maine Kayak asked how the construction at the causeway would affect her business. Chairman Hutchins replied that this was beyond the scope of tonight's meeting but that this would be addressed at future meetings dealing with the construction schedule and process.

Selectman Matthews-Bull stated that she's concerned about traffic congestion on Langsford Road and doesn't want the situation to become so bad that "no parking" signs are posted. Selectman Dykstra responded that while traffic is likely to increase, it's unlikely to be dramatic as hours of use of the ramp are restricted by the tide.

Marybeth Gilbert expressed concern asking if there would be many "day trippers" appearing at the ramp or if the tides would truly limit that traffic. Selectman Dykstra reiterated the process for signing up to use the boat ramp.

Robin Phillips reiterated her concerns about day trip access. Selectman Dykstra explained that the hours of access are constrained by the tides and adequate depth of water at the boat ramp.

John had questions about who would have access to the ramp. Selectman Dykstra responded that any Kennebunkport taxpayer or anyone with a dock or mooring in town would be permitted to use the boat ramp for their boat launched from a trailer. Kayak users would not need to use the reservation system as they don't need to use a trailer. Selectman Hutchins and Dykstra noted that the process would be refined over time but emphasized that free water access for town residents is one of the most desired things, as shown by surveys, and that this is a prime opportunity to deliver that. If we pass it by, it's gone forever.

Karen Schlegel, via Zoom, expressed concerns about parking on Langsford Road and stated that finding public parking in Cape Porpoise is paramount. The Board agreed.

Ed Francis, via Zoom, supported this proposal as an opportunity that should be seized but does not think this fully satisfies the needs for free water access that have been expressed over the past ten years. He asked if this was the end of the search. The Board agreed, and Selectman Dykstra added that the search, particularly for kayak launches, continues.

8. Consider abatement for sewer service charge for 5 Wharf Lane, MBL 010-001-013A:

Public Works Director, Chris Simeoni, explained to the Board that this property had previously been a two-unit condo but underwent renovations in December of 2022 to become a single-unit dwelling. He is therefore recommending that the Board approve an abatement for the sewer charge in the amount of \$569.87.

Motion by Selectman Dykstra, seconded by Selectman Daggett, to approve the sewer charge abatement for \$569.87. **Voted: 5-0. Motion passed.**

9. Update and Authorization of repairs at Colony Beach:

Chris and Laurie described their meeting with Megan McDevitt & Barry Sheff of Woodward and Curran regarding the Colony Beach parking area. The lot is currently at 16 feet elevation. It would need to be at 20 feet elevation to withstand a storm surge at high tide by flood map projections, but this would put the parking lot higher than the seawall, the parking area for neighboring condos, and Ocean Avenue itself. It was therefore concluded that repairs should be made but only to the existing 16-foot elevation.

Motion by Selectman Weston, seconded by Selectman Dykstra, to approve the use of contingency funds to repair the Colony Beach parking area to the existing 16-foot elevation. **Voted: 5-0. Motion passed.**

10. Authorize the annual Animal Welfare Society shelter agreement:

Motion by Selectman Matthews-Bull, seconded by Selectman Weston, to approve the annual Animal Welfare Society shelter agreement in the amount of \$5295.42. **Voted:** 5-0. **Motion passed.**

11. Consider renewing the agreement for public safety answering point service:

Police Chief Sanford explained that this is a contract with the York Public Safety Answering Point (PSAP). They answer the 911 calls and transfer the appropriate calls for police, medical & fire to our dispatch center, which is required of us.

Motion by Selectman Daggett, seconded by Selectman Matthews-Bull, to approve renewing the PSAP agreement in the amount of \$69,762.47. **Voted:** 5-0. **Motion passed.**

12. Appoint Frederick Stafford to the Climate Action Plan Task Force:

Motion by Selectman Daggett, seconded by Selectman Matthews-Bull, to appoint Frederick Stafford to the Climate Action Plan Task Force. **Voted:** 5-0. **Motion passed.**

13. Discussion of Summer Schedule:

The choice is whether or not to have two full BOS meetings each month in the summer months or a full meeting on the second Thursday and a warrant-signing meeting only on the fourth Thursday of the month.

Motion by Selectman Weston, seconded by Selectman Matthews-Bull, to hold full meetings only on the 13th of July and the 10th of August, with warrant-signing meetings on the 4th Thursdays of these months. **Voted:** 4-0-1. Selectman Hutchins abstained as he will no longer be a selectman on these dates. **Motion passed.**

14. Accept the \$50.00 donation from an anonymous donor dedicated to the general nurses' fund:

Motion by Selectman Matthews-Bull, seconded by Selectman Dykstra, to accept the \$50.00 donation to the general nurses' fund. **Voted:** 5-0. **Motion passed.**

15. Other Business:

Selectman Weston, on behalf of the entire Board, thanked Ed for his ten years of service to the Board of Selectmen, stepping into the vacancy left by the tragic and sudden death of Mat Lanigan. He provided a history of major issues, events, and accomplishments of the Board during Ed's tenure. He presented an enlarged picture of Ed with President George H.W. Bush and of Ed on his lobster boat.

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Ed expressed his appreciation for the other Board members and the Town staff for their hard work.

Neither the other Selectmen nor Laurie had any other business.

16. Approve the June 8, 2023, Treasurer's Warrant:

Motion by Selectman Weston, seconded by Selectman Dykstra, to approve the June 8, 2023, Treasurer's Warrant. **Voted:** 5-0. **Motion passed.**

17. Adjournment:

Motion by Selectman Matthews-Bull, seconded by Selectman Dykstra, to adjourn. **Voted:** 5-0. **Motion passed.**

The meeting adjourned at 7:57 PM.

Submitted by,
Dave Powell,
Technology Specialist