

**Executive Session
Wellfleet Select Board Meeting
Monday, September 30, 2019 at 1:00 pm
Wellfleet Town Hall, 300 Main Street, Wellfleet MA 02667**

Select Board Members Present: Janet Reinhart, Chair; Justina Carlson; Kathleen Bacon

Recused: Michael DeVasto and Helen Miranda Wilson

Also Present: Dan Hoort, Town Administrator; Courtney Butler, Executive Assistant; Nancy Civetta, Shellfish Constable; Attorneys Carolyn Murray and Katie Klein, KP Law (via phone)

Announcements, Open Session, and Public Comment

There was no public audience.

Reinhart called the meeting to order at 1:05pm.

Reinhart moved to enter into Executive Session – pursuant to M.G.L.c. 30A, s21(6)

- (6) To consider the purchase, exchange, lease or value of real estate, the Chair has determined that an open session will have a detrimental effect on the negating position of the Town
- Assessor's Map 17, parcel 34 Property owned by HDYLTA Trust

Bacon seconded.

Roll Call Vote:

Reinhart yea

Bacon yea

Carlson yea

Carlson noted that she has an appearance of conflict of interest saying that her partner, whom she is not married to, owns a grant on land within the Trust and has taken appropriate action in filing her appearance of conflict with Town Counsel.

Attorneys Murray and Klein joined the meeting by phone call.

Hoort asked Murray if the Board could proceed with the purchase of the land as voted on at the April 2019 Town Meeting. Murray said the vote did not limit or specify the number of acres, so yes, the Board could proceed as voted on at Town Meeting. She said there was implied inference there that the Town did not know the exact amount at the time of Town Meeting. Murray said that if someone had looked at the Assessor's maps, they would see that the acreage is divided into multiple lots. Murray said the Town could purchase for 162 acres for \$2million. Murray said she was comfortable with the Board proceeding with the vote as is, saying the vote was broad enough that the Board could go forward and purchase the land at less than 200 acres. Murray noted the possible concern of Town Meeting Voters of the Town and seeing how holding a Special Town Meeting could ease concerns but said the Town did not have legal obligation to do so.

Reinhart said she did not want to go to Special Town Meeting on the matter, but she does want to continue with the purchase of the Trust land. She suggested presenting the issue at a special Selectboard meeting instead to take the pulse of the Town.

Carlson said it would not be in the best interest of the Town to continue to adjudicate the purchase of tidal land. She said there were two surveys completed which resulted in the same amount of acreage. Carlson recommended not going to Special Town Meeting.

Bacon thanked Klein for her work on the matter. She said there have been too many red flags from the beginning for her and the Voters. Bacon said she will not go forward with the purchase at this time and the residents should decide if this amount of acreage is what they would like to own for \$2 million. She noted there is not an appraisal completed yet. Reinhart asked Hoort when the appraisal would be done. Hoort said within the next 10 to 14 days, saying that the Appraiser was waiting for the survey results to come back.

Civetta asked Bacon if the results of the appraisal came back for \$2 million, would that appease her. Bacon nodded yes. Civetta asked if the Town would prefer to use a survey that gave the Town the most land.

Carlson noted the issue at hand is due to the use of 2 different survey methods. She noted Attorney Englander, counsel for the Trustees, referenced Case Law that discusses the use of the mean low water mark in appraisal of tidal land. Klein mentioned the Spillane case law, which has not been adjudicated at the Supreme Court level. She noted that there are propagation beds located on Commonwealth land. Carlson said she goes back to the principle of why the Town wanted to purchase the Trust lands – to stabilize the public ownership of grants and preserve the Shellfishing community. She echoed Civetta's comment of getting an appraisal that is beneficial to the Town.

Reinhart asked Murray about lack of clarity with the grants on Commonwealth land. Bacon mentioned the Massachusetts Shellfish Initiative (MSI) and grants operating on State land. Civetta said she thought the State would defer to the Town since they have given the propagation permits. Carlson noted the Town has a better chance of dealing with the State rather than a private, or other municipal, entity. Bacon said she has not heard of any other parties interested in buying the land, even though it was offered to several people long before it was offered to the Town. Carlson said the Town has other municipalities looking at us, trying to replicate the jobs created and clean water effect. She said that although there is no other party interested today, it does not predict the future.

Reinhart said even before the purchase came up, there were people working on grants on State land. Civetta said the State issues propagation permits and the Town issues the leases, and it operates smoothly. She said this would not change. Civetta said she only sees the State changing is the permitting process, which the Town does not have to deal with.

Bacon asked if the Town wanted to renegotiate the price of \$2 million with the Trust, noting that Englander has said the Trustees are firm on their price. Reinhart said if the Town wants a Town Meeting then of course the Board would hold one. she said she did not see a problem with

offering less because the Trust has come down on price before. She said the Board cannot move forward without the appraisal. Reinhart said this could be brought to Town at a public forum, and have an informal vote, rather than hold a Town Meeting.

Carlson agreed with Reinhart that the appraisal was needed. She said she was not in favor of an open meeting and an informal vote and that it is important for the Board to show leadership on this issue. Hoort asked the Board if the appraisal came back saying the 162 acres were worth \$2 million, or more, would that appease everyone? Reinhart, Carlson, and Bacon said yes.

Bacon said she needs to see the appraisal before moving forward. She said in addition to having a new survey at 162.5 acres, now an appraisal needed to be done to see where it all lines up. Bacon said the Board was still in a quagmire with regard to the numbers.

Hoort asked Klein if the Town could get an additional 14-day extension to finalize the survey and appraisal. Klein said it was questionable and that it was her understanding that the Trustee is very upset. She noted that the Trustee, Todd Mindebro, could very well walk away from the deal based on past experiences with him. Klein said she would certainly ask.

Carlson asked Klein how many sellable acres of grant the Trustee and his cohorts' control. Carlson noted the Trust has sold some acres in the past. Klein said the Trust has sold to 2 people, one of which appears to be outside of the survey line at this point. Hoort said he told Englander that the Town had the money, and was not trying to back out, but just wanted to be perfectly clear on the number of the acreage of land, asking to wait for the survey and appraisal to be completed.

Reinhart said the first thing is to get the appraisal as soon as possible, then approach the Trust. She said if the appraisal does not come in within soon, the Board should approach the Trust with the survey results and move forward from there.

Hoort said the Trustees feel they are giving the down a great deal on the price of the land. Bacon suggested to postpone indefinitely because a 14-day extension doesn't bring the appraisal in time. Carlson said she felt there was interest in people buying their grants and getting this uncertainty out of their lives. Hoort said the original purchase-and-sale was to close on September 20 and the 14-day extension granted would bring the closing to this Friday, October 4. Klein said she understood that the surveyor was waiting for the end of the month to finalize the survey. She said the question is really how fast the appraiser can act once he has the survey. Reinhart said she wants the appraisal for the understanding of citizens of the Town. She said she feels it is worth the purchase, even with the lesser acreage, but that the Board needs to be up front on the issue. Carlson and Bacon agreed.

Reinhart asked if the Board and Counsel were on board with going forward with the purchase but need to wait for the appraisal to justify the \$2 million. Klein said this was a prudent way to proceed but questioned if the Town was willing to walk away if the seller is firm on the October 4 closing date. Reinhart asked Klein and Hoort to ask Englander for a little bit more time, while the Board awaits the appraisal results. Carlson said if the Board should talk to the Trustee, if it gets to the point of possibly having to walk away on October 4 pending appraisal results, to avoid that situation occurring.

Hoort and Klein will contact Englander requesting a short extension while the appraisal results come back. Klein said the property is being acquired through a taking so another meeting will need to occur to sign the documents. Hoort understood his directive from the Board as moving forward with the purchase if the appraisal comes back at \$2 million or more.

Reinhart noted that she had the feeling from the very beginning was very rushed and the Board operated in fear which was not desirable. Bacon concurred. Civetta said she still feels strongly that it is a good purchase for the Town, not just working farmers, because it ensures good access and a beach. She seconded Carlson's comments that people are worried about the repercussions on them if the deal falls through.

Reinhart asked if there was a stipulation that the Trust could not sell any more land. Hoort said yes, the Town is buying it all and they could not sell to any other buyers under the purchase-and-sale agreement. Hoort said he felt the appraisal will come through at over \$2 million, Civetta agreed. Hoort agreed with Bacon, that the Town needs to have a say in the final purchase once the appraisal comes through.

Reinhart and Bacon agreed that establishing public trust and transparency is important. Civetta noted the public's concern about discussing the issue with proper quorum, citing a previous meeting where Reinhart was discussing the issue by herself at a meeting, and reminded everyone that the purchase first came forward when Jerry Houk was still a Selectmen.

Adjournment

Bacon moved to adjourn. Carlson seconded.

Roll Call Vote:

Reinhart yea

Bacon yea

Carlson yea

Meeting was adjourned at 2:00 pm.