

**Wellfleet Selectboard
Hybrid Meeting:
715 Old King's Highway/Zoom
Tuesday August 22, 2023; 6pm
Meeting Minutes**

Members Present: Barbara Carboni, Chair; John Wolf, Vice Chair; Kathleen Bacon, Michael DeVasto, (virtual); Ryan Curley

Others Present: Rich Waldo, Town Administrator; Rebekah Eldridge (virtually), Executive Assistant; Carolyn Murray, KP Law; Chris Merl, resident; Brade Morse, resident; Diane Brunt, resident; Curt Felix, Dredging task force member, John Tansey, Resident; Evan Shellfisherman; Tim Sayre, Resident; David Mead-Fox, Resident; Karen Johnson, Chair of the Shellfish Advisory Board; Dan Robbins, GEI Consulting; David Ricketts, resident; Lisa Dexter, resident; Ginny Parker, resident.

Chair Carboni Called the meeting to order at 6:04pm

I. *Announcements, and Public Comments*

Note **Public comments are limited to no more than two minutes per speaker.** *The Board will not deliberate or cote on any matter raised solely during Announcements & Public Comments.*

Chair Carboni first asked the board members if they had any announcements. No one did, Carboni explained that a public hearing would be held on September 5, 2023, at 7pm to go over the Shellfish Regulations.

Merl spoke to the board reading a letter asking for the board to schedule a public hearing to go over the shellfish constables job description.

Brunt spoke to the board, asking for clarification on what a recused selectboard member is allowed to do during a meeting. Chair Carboni explained that a recused member can participate in a meeting as an individual, he or she is allowed to give personal opinions. Attorney Murray clarified that members can excuse themselves for a variety of reasons, she stated when there is an actual conflict of interest it is recommended the members recuse themselves and sometimes leave the room. They are not permitted to vote on anything while they are recused.

DeVasto spoke to the board reading a specific paragraph from the ethics website pertaining to what a Selectboard member can participate in as an individual.

II. *Business*

A. Discussion and potential vote on Dredging Mitigation

Chair Carboni asked Waldo to speak to the board and public regarding the dredging mitigation. Waldo began stating that town counsel was on the meeting to answer any questions that the board or public had. He explained that he met with town counsel to render an official opinion on the petitioned articles and the impact those articles would have on the dredging.

Murray began explaining that she was asked on August 21, 2023, to put together a formal opinion regarding the mitigation plan. She explained the petitioned

articles that were brought before them to be put on the special town meeting warrant. She stated that the contract for the bids was due to expire on the 23rd of August.

Murray questioned the chair if she would like her to go through each article or would she prefer that she give her final opinion.

Murray began with the dividing up the first two articles and then have a discussion on the third petitioned article.

Murray explained to the board and public; breaking it down stating they need to recognize the separation of powers. She spoke about the powers that the selectboard has and how the courts have defined them. She continued that there is the legislative branch which is town meeting, and the executive branch with is the selectboard. She stated the legislative body is not supposed to encroach on the executive body, nor is the executive branch supposed to encroach on the legislative body. She explained the legislative functions. She spoke about the City of Pittsburgh, giving it as an example stating that the city counsel was able to direct the mayor of the city to enter contracts. She gave specific examples of what the legislative body's responsibilities are, and what he executive body's responsibilities are.

She stated that if town meeting, approved these two petitioned articles, the one that seeks to make sure the town doesn't enter into mitigation until the town has secured any agreements with private parties. Or the second article that instructs the selectboard to switch the parcel within Blackfish creek, she stated that these two in her opinion if they were approved at town meeting, feels that this is a case where the legislative branch is encroaching on the executive branch and explained that the moderator of town meeting can call these articles out of order. She continued on to the 3rd petitioned article. She stated that she felt this article was from the 2019 article, which was cut and pasted; and language was added. She explained that the 7.5 million for dredging had already been borrowed in 2019. She stated she felt the wording of this article was incorrect. To date none of the borrowed authorized funds have been used for mitigation. She stated when discussing funding the mitigation plan, the bond proceeds can only be used for something in which the town has authorized to use the money, she gave some examples of how the bond proceeds can be used. She spoke of article 3 chapter 70. She spoke about the titled lands and the property owned by the town, Mass Audubon and the Commonwealth of Massachusetts. She said currently there is no town meeting vote pertaining to that bylaw.

She answered the question of what happens if the town doesn't meet the Metrix or the goals of the 25 oysters per square meter. She stated as she reads it there is supposed to be annual reporting of the oyster mitigation, along with an ongoing dialog with the town and the Army Corp of Engineers. She stated that the selectboard could decide that the mitigation plan isn't working, they could pay the fee the compensatory fee for not dredging the area.

Curley stated that rather than having a disorganized discussion, go through each article to have questioned answers.

Curley questioned if private property owners were to require an easement rather than a license agreement by the town would it require a town meeting vote.

Murray explained that Mass Audubon could grant an easement or enter into a license which she explained could be problematic as a license if revokable and is more liable to the town. She stated that if the town needed an easement, it would need a town meeting vote. Curley asked if the same was true with private property owners.

Chair Carboni spoke to the public stating that she wanted to allow the public to have a block of time be given to participants of the public, so that they are not being constantly cut off at the 2-minute time limit. There was a conversation on how the discussion with the public would be held and how the process would proceed. It was decided that each article would be addressed one at a time.

Wolf spoke to the board about the process and explained to the public the goal of the board is to allow them to discuss their concerns and have the time to do so. The discussion continued and Curley spoke to the second petitioned article. He questioned Murray what would happen if the town owned property included the title flats. Murray stated there is still a question if there needs to be a town meeting vote for disposition of town owned land. She explained about a recorded restriction, the authority of the board to temporarily close areas to shellfishing. Discussing change of use. Wolf questioned article 2, the closure of the area temporarily during the mitigation process, legally speaking he asked how it plays out if it closed for 3 years (per Department of Marine Fisheries) and then opened for 1 day, and then closed for another 3 years. He stated that doesn't seem like the definition of temporary. Murray explained that the Selectboard could close town land for a period of time giving an example about a tornado hitting a school, the board would close the school for safety concerns. She stated the board has the authority to close an area of land that is town owned.

Curley spoke about the bonding and funding of this mitigation agreement. He questioned Murray about the labor and third-party monitor. He questioned that her opinion those monies would have to come out of the shellfish budget? She stated it didn't need to come from that specific budget but the money that was borrowed couldn't be used for anything other than the mitigation as described in Chapter 70 and couldn't be used to cover staff time or department expenses. Discussion on the second petitioned article ensued and funding and costs associated with this article. Detailing what could be a town meeting article and what didn't need to be done. The use of the money from borrowing was discussed and detailed. Wolf gave a hypothetical situation about if the town couldn't do what they have stated and needing to budget for additional employees, and it didn't pass at town meeting. Murray explained that if the town couldn't perform the duties they committed to perform under the mitigation agreement then the town needs a "Plan B" if town meeting won't fund additional employees, would town meeting agree to hiring a consultant, if it reaches a point where there is no way to get approval of town meeting the selectboard is in the position of going back to the Army Corp and renegotiate the plan with them. She stated the mitigation plan language does make it clear that anything that the town is required to do is subject to appropriation of funds at town meeting.

Bacon questioned Murray that on the last page of the opinion, it is possible the selectboard may decide to pay the fee to the army corps at year three would the town have been at least paying down the cost to the corp. would they be able to come up with a buy out for less, like a credit.

Waldo answered that he would defer to the Dredging Task Force, stating that from his understanding the town may get credit for the work completed. The Corp will take into consideration the work that the town has done with the dredging. Bacon asked how it works with inflation. Waldo explained he wasn't sure how the corps would do that.

Curley made a comment stating that a concern is that the town might be underestimating the amount of effort that will be required to be expended to achieve the metric. He stated Bob Wallace stated that it would require a lot of tender loving care which he believed that it would require someone on the land to make sure the metrics could be met. He stated he was worried about the cost and that it was underestimated, and the liabilities that go along with it.

Chair Carboni stated the board would take comments on the petitioned articles now with a two-minute limit, and later in the meeting a larger amount of time would be allowed regarding the mitigation plan.

Tansey spoke to the board stating there was a lot of uncertainty, he questioned the role of the finance committee. Stating he was on the finance committee; for over ten years in the town of Lennox, continuing that when there were any projects in that town over a million and one dollars their committee was tasked with going to the selectboard and give their opinions and information on those large projects. He questioned who oversaw the money on Wellfleet. He continued talking about the funds that the town is receiving, beach stickers, hotel/room tax fees. He stated he felt the town is on the hook for all this money going down many generations. He stated that he has hired at a municipal lawyer if the mitigation agreement is signed, the group will go to the courthouse on Wednesday morning to file an injunction.

Brunt asked if Murray was asked just yesterday to give an opinion. Murray explained that she has been in many conversations about dredging over the past weeks but was asked yesterday to write something up to be able to give the board and public in her opinion as town counsel. Brunt asked for an explanation of legislation verses executive bodies. Murray explained each to her and the public. Murray explained that with article 3 of the petitioned articles was cut and pasted from 2018 and it is asking to borrow another 7.5 million dollars. Brunt asked if it was borrowing, and Murray explained that it was not borrowing and what town meeting can do is appropriate the funds. Brunt had other questions about authority of shutting down the area. Murray explained her opinion. Brunt asked if Murray had read the mitigation plan, Murray explained that she did read and then pointed out where in the plan that funds were subject to the appropriation of funds. She stated that was her language, and the last sentence stated the funds had already been appropriated.

Evan spoke to the board about the petitioned articles, he stated the town hasn't made any sort of other plans explaining that he spoke to home and landowners

that they had no idea there was a five-year plan with the Army Corps. He stated he is worried about what might happen to his grant on Black Fish Creek.

Morse spoke to the board and questioned Murray about Duck Creek, about a certain parcel wasn't town owned property, Murray corrected him with the right parcel numbers. It was discussed who owned the surrounding properties, Murray stated that it looked as though the Commonwealth of Massachusetts, and the Massachusetts Audubon were the abutting owners.

Murray explained the understanding of bond counsel; Sayre continued to ask about the legalities.

Chair Carboni stated that at this time in the meeting she would allow for the group which she considered Brunt the leader of to have 20 minutes to discuss the mitigation plan and alternatives to that plan.

Brunt got up and spoke to the board and public, reading a statement asking the board to vote to end all further support of the adaptive mitigation plan in favor of alternatives; they have concluded that signing into a mitigation plan with the Army Corps of Engineers is detrimental to the citizens of Wellfleet. She stated that after reading town counsel's report they feel this is even more absurd. She continued giving the reasons this plan is harmful for the town. They have no direct link to the Army Corp. She stated taking 28 acres of resident's property in perpetuity that doesn't allow them to use their property, leaving them the ability to no longer use that property. Brunt continued to express her group's opposition to the dredging and mitigation plan. She explained she and the group believe it will fail.

Morse spoke to the board again stating his concerns and why he is against entering into a contract with the Army Corps. He gave his reasons on why he believes this is against the town Bylaws. He read a letter that was submitted to the Selectboard by the Shellfish Advisory Board. He continued explaining his reasoning on why the mitigation plan is not right for the town of Wellfleet.

Brunt got up again and spoke about other alternatives. Going to town meeting trying to raise all or a portion of the dredging costs. She stated one of the main issues with this plan is that there is no direct communication with the Army Corps. She stated that there are only a small group of people that are allowed to speak with them and that that group has misinformed the public.

Merl spoke to the board stating that there are so many questions for this plan and no answers being given. He stated that the contract is so open ended, that it shouldn't make sense to enter into a contract with so many open-ended questions.

Mead-Fox spoke to the board asking about the property owners of where the mitigation would take place. He asked if the town knows which is which with regard to the commonwealth and the Audubon. Waldo gave an explanation on who owns which parcel of land. He spoke to the board about thinking through the mitigation plan, and as someone who hasn't listened to the rumors that have been town wide. He stated he feels that the way it is written, and he had read it many times, he stated why would anyone think this wouldn't work. He would think that it would work, and renegotiation is possible. He stated the longer they wait the more it will cost the town.

Tansey spoke to the board as to why Aberdale was removed from the discussions, Bacon explained that Aberdale stepped down on his own. Tansey disagreed.

Wolf spoke to the public, discussing going to town meeting to go through with this plan. He stated he has been uneasy with this plan and wants to see the dredging move forward for the town. Bacon made a statement that this is a gift for Wellfleet, the town has had a bid for the dredging for over 18 months. She stated they could get it done, by saving the taxpayers money. Curley stated that there are three articles that have been petitioned articles for special town meeting. He gave the regulations for special town meeting petitions and annual town meeting petitions. He felt the board should give the time for these articles to be heard at town meeting. He continued explaining why Blackfish Creek was chosen as there isn't much fishing there and it is a potential issue if that area needs to be moved. He stated that the board hold off onto entering into a finalized mitigation agreement.

Chair Carboni asked earlier if dredging could be broken into three parts, Waldo referred to Robbins to see what the process of dividing it up and prorating them. Robbins explained that the number of credits for this could be reduced, rescinding the application from the Army Corps. He explained what prorating means and what it would mean for the dredging project, he stated the corps would think of this as a piece meal project.

It was asked to Waldo what was expected of the board tonight, he stated it was expected for the board to make a vote on the mitigation plan, do they support it and submit it or do they vote to not support it and wait to special town meeting. Does the board want to continue to work through the plan. He stated the contractor needs to know what that decision is.

Wolf stated that there is a mooring field of boats that if the boats needed to be moved if there was a decision made.

Ricketts spoke to the board about the restraining order/injunction that was mentioned previously in the meeting. He stated that if the group went to the court with this how would that affect the September 5th meeting and the special town meeting. Murray explained that she couldn't answer as it hasn't happened yet. She gave an example of the courts stating that sometimes these take a short amount of time and sometimes they take months.

Johnson spoke to the board addressing when the mitigation plan was brought to the advisory board, and it was presented as a done deal. She stated at that time it was 14 acres when it was brought to them. She stated that the shellfishing community is not against dredging however they are against the mitigation plan, she stated this is costing the shellfishing community money that they could be bringing in as part of their business.

Brunt questioned Robbins about a comment he made on May 2, 2023; she stated he told them in order to pro rate the permit they needed to resubmit the permit for the acreage they were looking to dredge. Robbins responded, stated he met with the Army Corps of engineers and the opinion that was presented to them from the Army Corps. Dexter spoke to the board about fishing in the wild stating that it is very difficult to get more than 100 oysters in the wild. Stating

that unless there is something to be done from the management aspect of those areas, mistakes can't be made and moving forward with the mitigation would cause mistakes.

There were more comments from Sayre; about money voted on for the dredging at town meeting, not the mitigation plan.

Felix spoke to the board about the Dredging Task Force has taken a lot of criticism about this plan and there was a lot of character assassination. He stated there have been a lot of slanders to him and his business. He stated that most of the people that are against this plan have grants and aren't expected to fish in the wild. There was an argument about Felix's credentials, he was asked what degrees he has; he explained all of his schooling and degrees.

There were more comments from the audience that had spoken previous. Once the comments were finished from the audience the board agreed tonight a vote needed to be made.

Board member Wolf Moved; Board Member Bacon Seconded; to approve the mitigation agreement as presented.

Chair Carboni asked if there was discussion. Curley stated that he would vote against.

Wolf recrafted the motion to state that the board does not approve the mitigation agreement as presented. He then restated the motion in the affirmative:

Board Member Wolf Moved; Board Member Bacon Seconded; to approve the mitigation agreement as currently submitted.

Roll Call Vote:

Wolf: NO

Carboni: NO

Curley: NO

Bacon: ABSTAIN

DeVasto: RECUSED

It was voted NOT to submit the mitigation plan as presented tonight.

Waldo explained that tomorrow the Army Corps of Engineers would be notified tomorrow to withdraw the mitigation plan and he would contact the bidder explaining it has been put on hold. He stated that he would continue on how they would move forward with the town meeting.

Bacon thanked all who were involved with the discussions on the mitigation plan and negate the expense of the dredging.

III. Minutes

- A. July 11, 2023 – Board Member Bacon Moved; Board Member Wolf Seconded; and it was voted to approve the meeting minutes of July 11, 2023; as amended. Roll Call Vote: 5-0**
- B. July 13, 2023 – Board Member Bacon Moved; Board Member Wolf Seconded; and it was voted to approve the meeting minutes of July 13, 2023, as amended. Roll Call Vote: 4-0-1 (Bacon Abstained)**

- C. July 18, 2023, these were taken in two parts – **Board Member Bacon Moved; Board Member Wolf Seconded; and it was voted to approve the meeting minutes as amended up until Business A.**

Roll Call Vote: 5-0

Board member Bacon Moved; Board Member Curley Seconded; and it was voted to approve the remaining meeting minutes of July 18, 2023, as amended.

Roll Call Vote: 4-0-1 (Bacon Abstained)

- D. July 25, 2023 – **Board Member Bacon Moved; Chair Carboni Seconded; and it was voted to approve the meeting minutes of July 25, 2023, as amended.**

Roll Call Vote: 5-0

Waldo spoke to the board on the meetings scheduled for September. The board continued to keep the meetings as scheduled. Of another meeting needed to be scheduled they would do so.

Pickard questioned how long it would take for the minutes to be posted. It was stated by Eldridge that they would be posted first thing tomorrow morning.

IV. *Adjournment*

Board Member Bacon Moved; Chair Curley Seconded; and it was voted to adjourn the meeting.

Roll Call Vote: 5-0

Meeting adjourned 9:15pm

Public Documents:

Dredging Mitigation Plan

Town Counsel Report on Mitigation.

Meeting Minutes

July 11, 2023

July 13, 2023

July 18, 2023

July 25, 2023