



Wellfleet Selectboard

Note: Start Time of 7pm

The Wellfleet Selectboard will hold a public meeting on **Tuesday, March 10, 2020, at 7:00 p.m. at the Wellfleet Senior Center, 715 Old Kings Highway, Wellfleet, MA 02667.** *It is anticipated that the meeting will be recorded by the Town. Anyone else desiring to record the meeting may do so only after notifying the chair and may not interfere with the conduct of the meeting in doing so.*

I. Announcements, Open Session and Public Comments

Note: Public comments must be brief. The Board will not deliberate or vote on any matter raised solely during Announcements & Public Comments.

II. Meeting with Massachusetts Dept of Transportation and Dept of Conservation and Recreation to discuss the redesign of the Main St and Route 6 intersection and the Cape Cod Rail Trail extension.

III. Business

A. Opening of Herring River to Shellfishing

B. Discuss, deliberate, and take appropriate action against the Open Meeting Law Complaint filed by Jude Ahern on February 19, 2020 regarding Selectboard Executive Session Minutes from April 2019 to current.

IV. Adjournment



BOARD OF SELECTMEN

AGENDA ACTION REQUEST
Meeting Date: March 10, 2020

II

**Meeting with Massachusetts Dept of
Transportation and Dept of Conservation and
Recreation to discuss the redesign of the Main St
and Route 6 intersection and the Cape Cod Rail
Trail extension.**



BOARD OF SELECTMEN

AGENDA ACTION REQUEST
Meeting Date: March 10, 2020

III

BUSINESS – A

REQUESTED BY:	Chair
DESIRED ACTION:	Open and Closing of Herring River
PROPOSED MOTION:	I move to open the Herring River as of sunrise on Tuesday, March 16, 2020, and to close it at sunset on Monday, August 31, 2020, as directed by the Mass. Division of Marine Fisheries.
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____



BOARD OF SELECTMEN

AGENDA ACTION REQUEST
Meeting Date: March 10, 2020

III

BUSINESS – B

REQUESTED BY:	Chair
DESIRED ACTION:	Discuss, deliberate, and take appropriate action against the Open Meeting Law Complaint filed by Jude Ahern on February 19, 2020 regarding Selectboard Executive Session Minutes from April 2019 to current.
PROPOSED MOTION:	
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

The Wellfleet Selectboard held 5 Executive Sessions from 4/9-10/25, 2019, concerning the purchase of intertidal land (the HDYLTA Trust). It was complex and controversial and throughout the process, the Public had to insist on transparency and access to basic information.

There was never one survey both parties could agree upon, the discrepancy in acreage was significant (162.5 or 168 acres versus 254 acres=86 acre difference) and the excessive drop in price was never explained. The Town of Wellfleet used two appraisals: one to deceive and placate the public and another from the Seller for filing with the Registry of Deeds with a misleading Warrant article stating the overinflated price of \$ 3.4m to lessen the Sellers' capital gains tax liability. These Exec Sessions are important and have far-reaching unintended consequences for every coastal community in the State. There are still many unanswered questions. No member of the Public could question anything about the appraisal that Attorney Katy Klein did not read (curiously absent from 10/25/19 meeting), yet advised the Selectboard to sign off on.

For a real estate transaction of this significance, several drafts of agreements, surveys and appraisals and proposals and counterproposals exist. Yet, nowhere on any of the minutes are any Public Documents listed. I made a public records request on 11/15/19, and was given a \$200 Fee Estimate by Town Clerk Jennifer Congel for 8 hours work to find these Public Documents. The Selectboard Secretary needs to maintain (at the very least a list of) these public documents and should have anticipated public interest.

I emailed the DOG on 12/16/19. Their response was: "We have said that a public body may not charge a fee for review, including search and segregation, of executive session minutes. See attached Open Meeting Law Determination. If your request for executive session minutes is part of a larger public records request, you may want to contact the Public Records Division within the Secretary of the Commonwealth's office for further guidance. THIS SPECIFIC COMPLAINT IS NOT PART OF A LARGER PUBLIC RECORDS REQUEST SO IT REMAINS IN THE JURISDICTION OF THE DIVISION OF OPEN GOVERNMENT." They also attached a 2015 ruling. Town Clerk Congel double checked with OML and "they" said we only need to include with the minutes any documents physically presented at the meeting.

When I pressed further, Congel sent a link to the Order of Taking on 12/16 and on 12/18 sent the "Waiver of Appraisal and Damages" which one could have only known existed by reading 10/25/19 Executive Session minutes wherein it was referenced. I am happy to have finally received these documents but there is no easy way for the Public to know that these documents even exist let alone how to access them.

The Town Clerk claims there were no documents about HDYLTA from our Shellfish Constable. This contradicts the Shellfish Constable's Monthly Reports of April, June, August and Sept.

I believe that this obstruction is intentional and done to appease the Sellers, the "anonymous donor" and Selectboard member Wilson, and Shellfish Constable, Nancy Civetta.

ATTACHMENTS:

- 1) Exec Session minutes regarding HDYLTA (5) with no Public Docs listed:
April 9, 18, 22; Sept 30; and Oct 25**
- 2) Shellfish Constable Monthly Reports: April, June, August and Sept**
- 3) email thread: Ahern and Congel for OML Public Records Request**
- 4) \$200 Fee Estimate**
- 5) email between Ahern and DOG regarding Fee Estimate**
- 6) DOG ruling to KP Law dated 2015 about fees**
- 7) DOG OML excerpts about Exec Session minutes**



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: Jude Last Name: Ahern

Address: PO Box 394

City: South Wellfleet State: MA Zip Code: 02663

Phone Number: 917-488-1513 Ext. _____

Email: jude@judeahern.com

Organization or Media Affiliation (if any): _____

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual Organization Media

Public Body that is the subject of this complaint:

City/Town County Regional/District State

Name of Public Body (including city/town, county or region, if applicable): Town of Wellfleet Selectboard

Specific person(s), if any, you allege committed the violation: Wellfleet Selectboard, Wellfleet Shellfish Constable Nancy Civetta, Selectboard Secretary Courtney Butler, Town Administrator Dan Hoort, Wellfleet Town Counsel Katy Klein and Carolyn Murray

Date of alleged violation: April-ongoing

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

See attached 2,997 character explanation.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

For the Wellfleet Selectboard to amend the Executive Session minutes regarding the HDYLTA purchase to include ALL of the documents relied upon listed as Public Documents. For all committee Secretaries to list Public Documents at the bottom of every Executive Session minutes as already required by Open Meeting Law. For the Town Clerk (RAO) to organize and maintain these documents in an accessible way for future use by the Public.

Review, sign, and submit your complaint

I. Disclosure of Your Complaint.

Public Record. Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

Publication to Website. As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

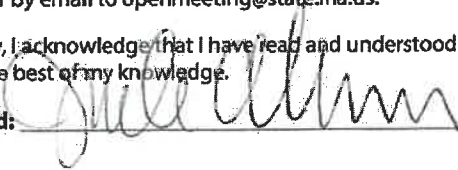
II. Consulting With a Private Attorney.

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

III. Submit Your Complaint to the Public Body.

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to openmeeting@state.ma.us.

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: 

Date: 2/19/20

For Use By Public Body
Date Received by Public Body:

For Use By AGO
Date Received by AGO:

Approved for release July 23, 2019.

4/9/19 Exec Session
minutes

Carlson: Yea

Carlson moved to approve the Town Administrator's recommendations for the Communications Union as printed. Bacon seconded.

Roll Call Vote:

Reinhart: Yea

Wilson: Yea

Bacon: Yea

Carlson: Yea

Bacon moved to approve the Town Administrator's recommendations for Teamsters contract as printed. Carlson seconded.

Roll Call Vote:

Reinhart: Yea

Wilson: Yea

Bacon: Yea

Carlson: Yea

Carlson moved to approve the Town Administrator's recommendations for Firefighters Union contract as printed. Wilson seconded.

Roll Call Vote:

Reinhart: Yea

Wilson: Yea

Bacon: Yea

Carlson: Yea

Carlson recused herself from the discussion of the HDYLTA Trust and left the meeting.

At the request of the Chair, Shellfish Constable Nancy Civetta joined the executive session as the discussion turned to the possible purchase of the HDYLTA Trust property.

Hoort said he has been in discussion with the Trust's attorney, Ed Englander. Wilson acknowledged that she had seen documents sent from Englander to Hoort and asked if they had also been sent to the other board members. Hoort said he would send all documents from Englander to the entire board.

Reinhart questioned 'what is the real value of the property?'. Civetta responded that she thought that we should have our own independent appraisal of the property. Wilson said the trustee's Trust's professional, independent appraisal of the property, done in 2013, was \$4M plus. Wilson continued that the real value of the aquaculture acres is \$20,000 per acre based on recent sale prices, and that it could go higher than that.

Civetta said she thought the Town should buy the entire 254.5 acres minus the 7.5 acres that have already been sold.

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Bacon said this has been handled poorly from the start. The Trust was asking for a purchase price of \$3.4M and are now asking \$2.8M. Bacon said the Town should take the property by eminent domain - have an appraisal done, then take the property by eminent domain.

Reinhart asked if Wilson, Hoort and Civetta were going to meet with the HDYLTA Trust people? Hoort responded that we will as soon as we have direction from the Board. Wilson said we needed to begin to bargain, and that we should purchase all 75 cultivatable acres less the acreage already sold. Up until this time, they (the trustees beneficiaries) have been setting proposing the contingencies.

Reinhart questioned that at a \$2.8M sales price, who and how many people are going to benefit. Civetta stated that 116 people work on the grants on the Trust's property, plus the permit holders who harvest from the wild.

Wilson said the taking by eminent domain could be a friendly or unfriendly taking. Bacon said she expects Wellfleet to maintain home rule regarding shellfishing. She asked how many new grants, new jobs could be created. This purchase could create economic vitality for Wellfleet. Civetta said we can't convert the bottom not already used by farmers to more farms. She felt there would be little economic impact, but that the purchase would create economic stability. Wilson said there would be no new farms created, but that if the Town owned the property it could prevent the re-sale of grants to the highest bidder. She felt we needed to have a conference call with the Trust's counsel. The Town's contingencies should include approval at Town meeting and at the election.

Bacon felt we have been compromised; the horse is out of the barn.

Reinhart said that the asking prices should be reduced because the Trust would have it settled, all in one shot and that was an insensitive for them to sell it to the Town.

Hoort said he will update their lawyer as to where we are at and Civetta will share updated information.

Bacon moved to adjourn at 9:27pm. Reinhart seconded.

Roll Call Vote:

Reinhart: Yea

Wilson: Yea

Bacon: Yea

Approved for release July 23, 2019.

Executive Session
Wellfleet Selectboard
Thursday, April 18, 2019 at 1:00 pm
Wellfleet Town Hall, 300 Main Street, Wellfleet MA 02667

Select Board Members Present: Chair Janet Reinhart – Chair, Helen Miranda Wilson – Vice Chair, Kathleen Bacon.

Regrets: Jerry Houk

Recused: Justina Carlson

Also Present: Dan Hoort, Town Administrator; Courtney Butler, Executive Assistant; Nancy Civetta – Shellfish Constable

There was no audience.

Reinhart called the meeting to order at 1:00 pm.

I. Announcements, Open Session and Public Comment.

- Bacon announced that a Stop the Bleed training will be held on May 8 at 9 am at the Fire Department.
- Civetta announced a beach clean up with the Shellfish Advisory Board on May 11 and said more information will be posted online.

II. Executive session

Reinhart moved, to enter into Executive Session, pursuant to M.G.L.c. 30A, s21(a) (6) To consider the purchase, exchange, lease or value of real estate, the chair declares than an open meeting may have a detrimental effect on the negotiating position of the public body. a. Assessor's Map 17, parcel 34 Property owned by HDYLTA Trust.

Bacon seconded.

Roll call vote:

Reinhart, yea

Wilson, yea

Bacon, yea

Hoort said he had two discussion with Ed Englander. He asked Englander to have the Trustee provide a proposal to the Town. Englander said the Town already had the asking price - \$2.8M – and that the owners would like to keep their parcels.

Wilson said she spoke with the Trustee, Todd Mindebroy, who proposed initially, that each of the 4 Trustee beneficiaries keep 12 acres. Noting the money they would receive would then be less, Civetta outlined the land in the Trust, saying that the four owners currently farm on 21.07 acres, the lots that are already sold are 7.5 acres, and the new request from Englander outlines approximately 51.63 acres that the Trust owners want to keep. Civetta said she would like to hear the Trustee's reasons for not

selling the entire lot. Civetta said she felt uncomfortable not being able to also purchase additional lots that are not now formed, that the Trust wishes to retain. They are now open to permit holders who fish in the wild.

Bacon thanked Civetta and Wilson for their work on this matter. Bacon said her heart is in this, but her head is not because of the changes that have come up. Bacon said there were valid questions asked by residents, and also in an editorial piece in today's issue of the Banner.

Reinhart agreed with Bacon that this is not ready to go to Town Meeting, and also noted the changes. Reinhart said she wants to begin the next phase of negotiations. Reinhart asked about having an appraisal of the land and said the Trustees need to outline their requests and wants. She also noted asking the shellfishermen what they would like to see happen in that area. Reinhart said that, after speaking with shellfishermen, that if the Town does buy it, they would like to see higher grant fees in order to see a bigger contribution to the community as a whole.

Wilson said she also would like to purchase all of the acres in the Trust. Wilson said that she agreed with everyone's comments. The Town has now begun the bargaining stage and has the ability to set contingencies. She suggested a contingency of including all acreage for the asking price. Hoort asked if this was a requirement or a bargaining chip. Wilson said she hoped the Board could agree that they want all the acres the Trust currently wants to withhold if they were going to pay anything for this land. Bacon said she understands Wilson's principles, but there is no strategy to push this to the general public. Bacon said the consensus of the community is that this article will not pass at Town Meeting.

Civetta asked about having a motion that says only the \$1 million donation will be used to purchase the entire parcel. Hoort noted that Town Meeting's role is to authorize purchases, not to allocate funds. Bacon, Wilson, and Reinhart did not think the Trustees would accept the \$1 million offer.

Wilson said it is critical for the Town to own everything that hasn't already been sold and that it is important for the Town to have a purchase-and-sale agreement with contingencies that can be met. She said that she felt the Town should provide the Trust with contingencies on what we would like for the \$2.8M.

Bacon asked what happens if the article and ballot question fail. Wilson said a proposal could be given to the HDYLTA lawyer, asking them to enter into an MOU to purchase the property and freeze any further sales. The MOU would have the following contingencies:

1. Up-to-date survey done according to AVD88 standards

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2. No restriction on Town's authority to license a modest expansion of cultivated acres
3. That the Trust sell to the Town the entire property, except the 7.5 acres already previously sold
4. Approval of purchase at Annual Town Meeting and Election

Bacon asked Hoort, if approval to pursue this through a purchase-in-sale agreement failed at Town Meeting, if this could still be acquired through open gift funds. Hoort said yes. Bacon noted that residents are hopeful that SPAT will make a donation toward the purchase. Wilson said she met with an attorney, Stephen Greenberg who is one of the upland property owners, and that he is supportive of the purchase but wants to make sure the Town is doing its due diligence.

Hoort listed again the contingencies, to clarify with the Board their wants. Bacon said she would like to see the Town match the \$1 million donation. Hoort said he would start the negotiations at \$2 million with the above listed contingencies. Hoort said he will speak with their attorney this afternoon.

There was discussion about the contingencies. Wilson noted a survey, Reinhart said this would be good to get a second appraisal of the land. Bacon noted that conducting an independent appraisal and survey is in the Town's best interest.

Hoort read the offer he will be bringing to the HDYLTA attorney, which says that the Town agrees to offer \$2 million, total, for all acres owned by the HDYLTA trust, contingent upon the Town getting a survey, at the Town's expense, and that the Town is in receipt of a \$1 million gift toward the purchase.

Wilson said she hopes their lawyer understands that the extra acreage being asked for by the Trust in a naturally "productive" area and therefore cannot be used for aquaculture.

Bacon moved that the Town will match the anonymous donation of \$1 million for a \$2 million total price for all acres owned by the HDYLTA contingent upon the Town securing an up-to-date survey, at the Town's expense, according to AVD88 standards and the Town is in receipt of a \$1 million donation.

Wilson seconded.

Roll Call Vote:

Reinhart, yea

Wilson, yea

Bacon, yea

There was further discussion about what could happen if the article fails at Town Meeting.

Approved for release July 23, 2019.

III. Adjournment

Wilson moved to adjourn. Bacon seconded.

Roll Call Vote:

Reinhart, yea

Wilson, yea

Bacon, yea

Meeting was adjourned at 2:10 pm.

Approved for release July 23, 2019.

**Executive Session
Wellfleet Select Board Meeting
Monday, April 22, 2019 at 6:15 pm
Wellfleet Town Hall, 300 Main Street, Wellfleet MA 02667**

Select Board Members Present: Chair Janet Reinhart – Chair, Helen Miranda Wilson – Vice Chair, Kathleen Bacon, Jerry Houk.

Recused: Justina Carlson

Also Present: Dan Hoort, Town Administrator; Courtney Butler, Executive Assistant; Nancy Civetta – Shellfish Constable; Attorney John Giorgo, KP Law

There was no audience.

Reinhart called the meeting to order at 6:15pm

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

- To consider the purchase, exchange, lease or value of real estate, the Chair has determined that (1) an open session will have a detrimental effect on the negotiating position of the Town, and (2) this agenda item was not reasonable anticipated 48 hours prior to the meeting on the negotiating position of the public body.
- *Assessor's Map 17, parcel 34 Property owned by HDYLTA Trust*

Hoort announced that Attorney Englander had contacted him earlier in the day with the news that the members of the Trust had accepted the Town's offer with our contingencies.

Wilson, in regard to the Trustees accepting the Board's offer of \$2 million with contingencies, celebrated cheerfully. Bacon said this was an enormous, historic initiative to subsidize a shellfish industry that is the fabric of Wellfleet. Bacon commended Wilson for her efforts.

Reinhart asked for a motion to discuss.

Wilson moved, Houk seconded.

Roll Call Vote:

Houk: yea

Bacon: yea

Wilson: yea

Reinhart: yea

Wilson discussed determining the boundaries, particularly the seaward line. She said this was not as survey-able as the other property lines, but that since the abutter seaward was the Commonwealth, it wasn't crucial. Wilson asked if the word "exact" needs to be in the

Town of Wellfleet

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BOS Agenda

Meeting materials are available on the Town of Wellfleet web site: <http://www.wellfleet-ma.gov>. Motions may be offered, and votes may be taken by the Board on any agenda item except for Announcements & Public Comment

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contingency. Bacon suggested leaving the word in. Reinhart said that when property lines are surveyed, it is assumed they will be exact, and suggested taking "exact" out.

There was further discussion about whether or not to leave the word in. Hoort reminded the Board that these are contingencies the Town has set.

Bacon asked if the Town would be open to be accepting gifts into the gift fund, if the article does not pass. Wilson asked Hoort if he discussed "what if it fails" with the Trustee's attorney. Hoort noted the contingency says that Wellfleet voters must vote to approve the purchase price of \$2,000,000 and approve a debt-exclusion override at the Annual Election. If these two things do not happen, Hoort said they would go back to the negotiating table.

Wilson noted the gift fund was created at their April 9 meeting. Reinhart said an announcement could be made at Town Meeting saying the Town will be accepting donations into the Fund. Bacon confirmed that, if the Article fails at Town Meeting and Election, this purchase could still be accomplished.

Giorgio said an authorization to acquire the property and the appropriation are needed to obtain the property. Meaning, if the Town does not vote to approve the funding, but ample donations are made, a Town Meeting vote would still be needed. Hoort asked what happens if the Debt Exclusion vote fails, Giorgio said the Town Meeting vote would be null.

Wilson said when she makes her motion at Town Meeting, she will be sure to say \$2 million, not \$2.8 million.

Giorgio then corrected his previous statement, saying that if this passes at Town Meeting, but fails at the ballot box, then the acquisition can still occur. He said the ballot box vote is only to allow the Town to borrow money, and the Gift Fund and donation could allow for the Town to not have to borrow, if the Trust found the amount to be sufficient.

Wilson read the motion she would be making later that evening at Town Meeting:

"I move that the Town vote to authorize the Board of Selectmen to acquire by purchase, gift, eminent domain or otherwise land owned by the HDYLTA Trust, as shown on Assessor's Map 34, Lot 17, not including land owned and deeded to others within the bounds of that lot for shellfishing, aquaculture and beach access: and further to appropriate the sum of \$2,000,000 for the purpose of paying all costs related to the acquisition of said land, and that to meet this appropriation, the Town Treasurer, with the approval of the Selectmen, be and hereby is authorized to borrow said amount under and pursuant to M.G.L. c. 44, §7, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; provided, however that no sums shall be borrowed or expended hereunder unless and until the Town shall have voted to exclude the amounts necessary to pay debt service on any bonds or notes issued pursuant to this vote from the limits of M.G.L. c. 59, §21C (Proposition 2½). Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in

Town of Wellfleet

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BOS Agenda

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accordance with M.G.L. c. 44, §20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount. Further, no funds shall be borrowed or expended for the acquisition of said land unless or until the Town shall have received a donation or donations of at least \$1 million for this purpose, and further, that the amount to be borrowed under this authorization shall be reduced by the amount of any donated funds received for this purpose.”

Adjournment

Bacon moved to adjourn. Wilson seconded.

Roll Call Vote:

Reinhart yea

Wilson yea

Bacon yea

Houk yea

Meeting was adjourned at 6:37 pm.

Approved for release November 26, 2019

**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.

Approved for release November 26, 2019

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.

Approved for release November 26, 2019

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.

Approved for release November 26, 2019

**Executive Session
Wellfleet Select Board Meeting
Friday, October 25, 2019 at 2:00 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: Mike Trovato, Assistant Town Administrator; Courtney Butler, Executive Assistant; Nancy Civetta, Shellfish Constable; and Katie Klein, KP Law (via phone)

Reinhart called the meeting to order at 2:05pm.

Announcements, Open Session, and Public Comment

- Audience member Irene Daitch said she was looking for information about the purchase and a sense of what the determination will be. Reinhart noted this is the first time the Board will be seeing the appraisal for the HDYLTA Trust. She said if the Board deems it a fair decision and advantageous to the Town it will be signed today. Reinhart said the public will know the final result as soon as the Board decides.
- Audience member Barbara Caray asked if the Board has seen the survey yet; Reinhart said yes, and the Board is discussing the appraisal of the property. Cary was concerned about substantive discussion taking place without public input.

Reinhart moved to close Open Session and 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:

Bacon yea

Carlson yea

Reinhart yea

Civetta said she was looking through the 90-page document of the appraisal, which was received prior to the meeting. Bacon asked Trovato appraised amount was for the acreage, listed as 168 acres. Civetta confirmed that it was 168.01 acres, found on page 8 of the appraisal document.

Bacon asked Klein how she felt about the assessment. Klein said she hasn't had a chance to evaluate the appraisal itself, which is based on the survey the Town had done, reflecting the lower acreage. Klein said the Order of Taking reflects the outermost survey which was done by HDYLTA, because the Town wants to take everything owned by the Trust. She said this does not refer to the coastal survey, it refers to the outermost survey. Klein said the survey indicates the deeded right to pass from Omaha Road to the tidal flat. She said the Town has been aware all along that that right has been by permission of the residents of the subdivision. Klein noted these

are private roads. Klein noted that the value came in substantially above what the Town is obligated to pay.

Civetta noted there is another access through Town-owned property at Burton Baker Beach as well as Hiawatha Road, should the rights to Omaha Road ever go away. She said she does not see access being an issue.

Carlson said it was her understanding that private road denotes a responsibility for private maintenance, asking if this would change if public access was being provided regularly. There was further discussion of the use and access of private roads.

Klein said there was not guaranteed access from Omaha Road, it is permissive, because the owners in the subdivision have implicitly given permission. Bacon asked Klein to repeat her comment about Omaha Road; Klein said the only reason she raised the question of Omaha Road is not because there is an issue, as there are alternate ways to reach the property, but because there is an evaluation of the appraisal is based on the assumption that the Town has the absolute, legal right to use the road. She said that should this access change, it will not impact the result of the appraisal. Bacon thanked Klein and said she would be very surprised if the residents of Omaha Road would revoke access. Bacon said she was comfortable moving forward because of the understanding that the Town could have access from other areas should the access from Omaha Road be taken away.

Carlson asked what an Order of Taking was. Klein said it is the Town exercising its power of eminent domain, but this is a friendly taking. She said because of title reasons it is being done this way. Klein also noted that the seller requested a Taking and she had them sign a document stating they will not be challenging the Taking.

- Bacon moved to sign the Order of Taking and proceed with the acquisition.
- Carlson seconded
- Roll Call Vote:
 - Bacon yea
 - Carlson yea
 - Reinhart yea

Carlson said this is a historic moment for the Town and it has been a road here, and there may be a bit of a road in explaining this to the citizens who had questions. She said she thought the Selectboard was making a terrific move on behalf of the Town with the historic purchase. Klein concurred. The Board thanked Klein, the Town, and the Trustees for all their cooperation and patience.

Adjournment

Bacon moved to adjourn. Carlson seconded.

Roll Call Vote:

Reinhart yea

Bacon yea

Carlson yea

Meeting was adjourned at 2:30 pm.



MONTHLY REPORT APRIL 2019

Commercial and Recreational Fisheries

- The state Division of Marine Fisheries allowed us to extend the bay scallop season for 14 extra days through April 15, 2019. This enabled at least one fisherman to significantly increase his landings for the year due to the abundance of the resource.
- Duck Creek and Chipman's Cove closed to shellfishing on April 30.
- This was the Noah's ark of shellfishing month because oysters have not yet started to grow much, and we are still dealing with the winter's ice aftermath, so there was not a lot of legal-sized product. Therefore, fishing effort was spread out in all areas from Lt. Island to the Herring River with fishermen coming two-by-two to each area.
- Boat activity has been on the increase with significant daily landings of oysters and blood clams.
- A rough, conservative estimate of commercial catches for the month is more than 184 bushels of oysters, 21 bushels of quahogs, 10 bushels of bay scallops and 41 bushels of blood clams landed as tracked on commercial patrol.
- So far, for 2019, we have sold 349 recreational permits, totaling \$19,550. By category: 129 resident, 181 senior resident and 39 non-resident.
- We estimate that more than 9 bushels of oysters and 7 bushels of quahogs were harvested by recreational harvesters this month.

Enforcement

- A few fishermen have expressed concern about the blood clam resource and wondered if we should look at reducing daily limits. We will bring this issue to Shellfish Advisory Board.
- A commercially-permitted fisherman was with his daughter, who had a recreational permit, in the Indian Neck recreational only area. He said he was teaching her. We made him put his basket and rake back in his vehicle.
- We gave verbal warnings to a boat owner about proper tagging, conch regulations, and shellfish storage and delivery.
- We found three commercial fishermen in the recreational only area at Burton Baker Beach and made them throw their catch back and move south.
- We educated two commercial fishermen about proper fishing etiquette regarding other fishermen in the same area.
- We gave a verbal warning to a fisherman who was over his limit in Chipman's Cove.
- We pulled a fisherman's truck out of the sand at the Herring River.

State and Town Relations

- Shellfish Constable Nancy Civetta worked with the Select Board and Town Administrator toward the potential town purchase of the HDYLTA Trust intertidal bottom, creating many detailed documents and participating in meetings to educate the public prior to Town Meeting, such as a Community Forum and a meeting with a member of the Field Point Neighborhood Assn.
- Civetta attended two executive session meetings with the Selectboard regarding the HDYLTA Trust intertidal land purchase.
- Civetta attended two Shellfish Advisory Board meetings.
- Civetta and Asst. Constable John Mankevetch attended the Northeast Shellfish Sanitation Association conference in Plymouth

- They also held a meeting with staff from Barnstable County Extension, Woods Hole Sea Grant and the Center for Coastal Studies on potential scientific collaborations.
- Civetta and Mankevetch presented a grant application to Wellfleet SPAT for financial support for the department's propagation efforts.
- We worked with the Health and Conservation Department on an Americorps application for an Individual Placement member for the 2019-2020 season.

Propagation

- We took delivery of our new cultch barge from Bay Sails Marine and launched it on April 16. We are grateful to the DPW for all its help getting the spreader onto the barge and making test runs.
- The department updated its draft propagation plan and worked with the Conservation Agent, the Conservation Commission and the National Seashore on its cultching plans for 2019.
- Civetta and Mankevetch presented the department's propagation plan to Shellfish Advisory Board and solicited feedback on siting of potential rotational closed areas for draggers.
- We hosted an AmeriCorps day where they cleaned and painted our boat and helped with other propagation projects with the new barge and making oyster grow bags.
- We brought the boat to Bay Sails for maintenance.

Respectfully submitted,
Nancy Civetta
Shellfish Constable



MONTHLY REPORT JUNE 2019

Commercial and Recreational Fisheries

- June 1 started the seasonal closure of the Lt. Island South (Audubon) area and began the seasonal recreational limitations of shellfishing only at the Indian Neck recreational area and only on Sundays and Wednesdays.
- June brought warmer waters and good oyster growth.
- Shellfish farmers are busy keeping up with growing oysters and planting seed.
- Commercial wild fishing has dropped off, probably due to efforts required to comply with the state's vibrio control plan and the fact that many fishermen are also shellfish farmers with their hands full on their grants.
- Many commercial harvesters are harvesting oysters from the water in batches and icing them immediately. This extends the amount of time they can work, allowing them to get their limits.
- Some commercial shellfishermen are targeting quahogs because the price is very good.
- A rough, conservative estimate of commercial catches for the month is more than 195 bushels of oysters, more than 95 bushels of quahogs (double last month's harvest) and 50+ bushels of blood clams as tracked on commercial patrol.
- So far, for 2019, we have sold 602 annual recreational permits, totaling \$28,570. We have sold 72 seasonal recreational permits so far, totaling \$4,590.
- We estimate that more than 40 bushels of oysters and 5 bushels of quahogs were harvested by recreational harvesters this month.

Enforcement

- We pulled a grant holder's truck out of the sand at Powers Landing.
- We gave a few verbal warnings to commercial harvesters for writing clear tags and having shade on their oysters.
- Deputy Constable Chris Manulla has been running boat patrols and performing grant checks, including photographing tags and logbooks.
- We gave a verbal warning to a fisherman stopped from fishing over the line at Herring River. Next time, he will lose his entire catch and get a written citation.
- We continue to receive complaints from two grant holders about their buoys being cut. It is hard to be everywhere at once all the time to understand how and when this is happening.
- Shellfish Constable Nancy Civetta continued surveying Egg Island, taking photos of inactive grants, purging cages and tags, gear on wrong grants, and derelict gear, advising those involved.
- Three grant holders were asked to flip over their rebar racks as a safety precaution, so the legs were not sticking up.
- One grant holder was asked to get his gear off an adjacent wild shellfishing area.
- We gave a written cease-and-desist order to a recreational permit holder who continued offering paid AirBnB experiences for people to watch the harvest of oysters and clams and then serve the shellfish to them back at her house. Meeting will be set up in July.
- We stopped one recreational fisherman from fishing at Indian Neck rec area on a closed day.
- We gave verbal warnings to four recreational permit holders about how we don't have family permits in Wellfleet. This continues to be an issue, both with children, where we take a softer approach, but also with adults, with a hard line, except with companions of the elderly.
- Four seed warnings were given to recreational harvesters.

- ● We received a complaint on our machine on a non-rec day that a group of foreigners was harvesting oysters and shucking them on the flats. We got the message too late.
- One person was shellfishing with last year's permit. He was allowed to keep his catch, and he renewed his permit.

State and Town Relations

- We trained two dedicated Beach Dept. staff on selling shellfishing permits with new applications and database system.
- Civetta attended a Shellfish Advisory Board meeting and a Dredging Task Force meeting.
- Civetta escorted a consultant to the area of HDYLTA Trust intertidal land to inform their proposal for a survey of the area.
- Civetta attended the retirement celebration for shellfish biologist Diane Murphy from Barnstable County/Woods Hole Oceanographic Institution.
- We had to get a tire re-fixed on the 2016 truck.

Propagation

- Assistant Constable Johnny Mankevetch beautifully led our multiple propagation efforts with adept coordination.
- We began cultching with the new barge, which worked wonderfully. However, the spreader had clogging problems and eventually broke down. Many thanks to the DPW for fixing it for us; we were only out of commission for about a week.
- We received five more deliveries of sea clam cultch, all that was budgeted for 2020.
- We planted 135,000 seed oysters from ARC Hatchery (paid for by County and State funds) and 200,000 seed oysters from Cape Cod Oyster Co.
- We broadcasted approximately 40,000 oysters from 2018 around the harbor.
- We hosted three AmeriCorps project days to complete these initiatives.
- Civetta swept clam nets.

Respectfully submitted,
Nancy Civetta
Shellfish Constable



MONTHLY REPORT August 2019

Commercial and Recreational Fisheries

- There was significant commercial shellfish harvesting activity in the harbor this month, mostly concentrated in the dragger fishery and on aquaculture grants. Many wild quahogs are being brought to market by draggers, while grants are moving tens of thousands of farmed oysters.
- The Selectboard approval of opening Lieutenant Island South (Audubon area) to the harvest of clams has proven productive. Many commercial intertidal harvesters have been meeting their daily catch quotas in the area throughout August.
- A rough, conservative estimate of commercial catches for the month is more than 96 bushels of oysters (down from 120 in July), more than 310 bushels of quahogs (up from the July harvest of 120) and 34+ bushels of blood clams as tracked on commercial patrol.
- The increased market price of quahogs is being attributed to the rise in August catch amounts, with dredge boats and intertidal harvesters focusing on that product. This, in addition to vibrio protocols, could also be attributed to the decrease in wild oyster harvests for the month.
- Recreational shellfish permit sales for August were eight Annual Resident, 20 Annual Senior Resident, five Seasonal Resident, and 42 Seasonal Non-Resident. Revenue totaled \$4,650, bringing the total number of recreational permits sold to date up to 859 = \$43,330.
- We estimate that more than 40 bushels of oysters and 16 bushels of quahogs were harvested by recreational harvesters this month from Indian Neck. The oyster harvest numbers for this late in the summer are a testament to the sustainable nature of the oyster stock at Indian Neck!

Enforcement

- A single source case of vibrio parahaemolyticus (Vp) from Wellfleet on July 1 or 2, was reported by the State on August 2. The Shellfish Department worked with the state on follow up, however, it was determined that harvesters had amply followed protocol. The truth is Vp is in our waters, and the state control plan helps us avoid it, but it can occur from time to time. This single incidence did not result in a closure to oyster harvesting.
- Grant inspections were begun by the Department in July and have been ongoing throughout August. Because many grants are dependent on certain negative tides and because scheduling has been hit and miss, we are about halfway through this effort.
- Dog owners bringing their pets onto public beaches and tide flats has continued to be an issue during the summer months. Numerous parties were talked to during the month, particularly on Indian Neck and Mayo Beaches, where current Beach Regulations prohibit dogs.
- Multiple individuals were caught poaching shellfish during August, with a concentration occurring during the spring tides (extremely low ones) at the beginning at end of the month. Verbal warnings were given to most individuals, with one individual receiving a written citation and fine for a second offence. The \$150 fine was paid.
- Issues with shack being dumped in Chipman's Cove were reported during the month. An information campaign was initiated by the department that this practice is prohibited by state regulations and that all shack should either be returned to the grant of origin or disposed of at the transfer station.
- The DPW reported that shack was being disposed of in the trash bin at Powers Landing. Grant holders using that landing were advised to stop and told about state regulations.
- A few verbal warnings were given throughout the month regarding proper icing and ice times per vibrio protocols. Overall, time-to-ice and icing have not been problematic this season.

- A report of beach grass being dug up and transplanted by a landowner was investigated by the department and information was passed along to the Conservation Dept.
- A few parties were caught harvesting without licenses in the recreational area of Indian Neck. The parties stated that the area was reported to be open on Wednesdays and Sundays, but did not realize they also needed to have a license in order to harvest. Their product was confiscated and returned to the tide flats by the patrolling deputy.

State and Town Relations

- We took the appraiser hired by the Town on a tour of the HDYLTA Trust property.
- Constable Civetta met with County and Mass. Dept. of Agricultural Resources representatives about an upcoming International Trade field trip here to promote oysters to foreign buyers.
- Civetta attended a Shellfish Advisory Board meeting focused especially on overwintering aquaculture gear. As a follow up, the department solicited feedback regarding ideas for overwintering regulation changes as well as info requested from SAB on how many racks were in Wellfleet Harbor during the summer season (more than 11,000) and on transferring oysters at Indian Neck parking lot during vibrio season (no real interest).
- Civetta attended a Selectboard meeting for a grant transfer and overwintering regulations.
- We responded to a citizen complaint about shellfishermen's usage of Old Pier Rd. access to Chipman's Cove through the Conservation Committee and Selectboard.
- We responded to complaint about shellfishermen using Chequessett Yacht & Country Club access to Herring River. Town records show a public landing there. A more thorough investigation with Town Counsel is ongoing, as is collaborative communication with CYCC.

Propagation

- After feedback from the transfer station, we called off any further deliveries of sea clam shell until after Labor Day due to the smell.
- The sepa bags stuffed with clam shell and placed on racks in Chipman's Cove to collect spat were evaluated. Inspections revealed many baby oysters (spat) were caught on the shell.
- We evaluated the cultch that was placed around the harbor and found that Indian Neck, Herring River and Chipman's Cove showed incredible sets of spat, while Lieutenant's Island and Blackfish Creek demonstrated less but still reasonable amounts of spat.
- The contaminated quahogs from the Taunton River that were put out to purge at Burton Baker Beach and in Chipman's Cove were tested per state procedures. Water samples and a random selection of quahogs from the sites were sent off to the Mass DMF on August 19. Test results cleared clams for harvest when they complete the 90-day spawning period on September 16. Chipman's Cove will not open until its usual date of the last Sunday in October, while we will open the Burton Baker area for recreational harvest the last two weeks of September and then close it again until next summer.
- Oysters on our propagation bed are growing well, and we spent time separating them into lower densities for continued optimum growth. We are finding ourselves constricted because we don't have enough gear. More gear is being ordered.
- Clam nets were swept and maintained.

Education and Public Relations

- Civetta took Courtney Butler, the Assistant to the Town Administrator, on a patrol ride-a-long.
- Civetta did an interview survey with the Friends of the Herring River.

Respectfully submitted,
Nancy Civetta, Shellfish Constable



MONTHLY REPORT SEPTEMBER 2019

Commercial and Recreational Fisheries

- A rough, conservative estimate of commercial catches for the month is more than 40 bushels of oysters (down from 96 in August), more than 205 bushels of quahogs (down from the high August harvest of 310) and 75+ bushels of blood clams as tracked on commercial patrol.
- Recreational shellfish permit sales for August were three Annual Resident, eight Annual Senior Resident, two Annual Non-Resident, and one Seasonal Non-Resident. Revenue totaled \$805, bringing the total number of recreational permits sold to date up to 873 = \$44,135.
- Spring tides in combination with the Labor Day holiday led to elevated recreational shellfishing numbers at Indian Neck during the first week of the month. Sunday, Sept. 1, had 60+ individuals harvesting in the tidal flats, with Wednesday, Sept. 4, seeing a modest 40+ individuals. Numbers tapered off for the remaining three weeks of the month, with an average of 20 people per day harvesting on any given Sunday or Wednesday.
- The state-sponsored quahog relay that we did at Burton Baker Beach and Chipman's Cove reached the 90-day spawning timeframe on September 16. Quahogs and water samples were sent to the state for testing, and all results came back clean. Chipman's Cove will open as always on the last Sunday in October.
- The Burton Baker area was opened for harvesting for the last four Sunday and Wednesday tides of the month. The area saw good traffic, with most individuals leaving with their weekly peck limits. Approximately 14 bushels of quahogs were harvested in these four tides, which translates into 56 happy recreational shellfishermen.
- We estimate that more than 30 bushels of oysters and 20 bushels of quahogs were harvested by recreational harvesters this month from Indian Neck.

Enforcement

- Grant inspections continued. It is taking a while because we need a grant holder present, and it has to be a convenient time for them. Tides and daylight are beginning to constrain operations.
- An individual was reprimanded for fishing at night at Indian Neck and was given a verbal warning and escorted out of the area.
- An individual was reprimanded for fishing in a commercial area without a license and escorted out of the area.
- A commercial harvester was in violation of exposure time per vibrio protocols and was made to dump his catch.

State and Town Relations

- Shellfish Constable Nancy Civetta met with the surveyors of the HDYLTA property and attended a BOS Executive Session meeting to discuss it.
- Assistant Constable John Mankevetch with the Center for Coastal Studies about doing a sonar survey of the harbor to identify areas with derelict fishing gear for subsequent removal as part of a grant they have.
- Civetta attended a Selectboard Association meeting in Eastham to hear the Division of Marine Fisheries discuss grants and other shellfishing issues.
- Mankevetch attended the Mass. Shellfish Officers Assn. fall meeting.

- The topics of overwintering of aquaculture gear and dredge boat regulations were taken up by the Selectboard and Shellfish Advisory Board. The BOS approved new overwintering regulations and a new contract with growers. Boat regulations will go back to SAB.
- Civetta attended a Dredging Task Force meeting with the Rep. Sarah Peake and the new Massachusetts Housing and Economic Development Secretary Mike Kennealy.
- We hosted an AmeriCorps site visit and attended orientation, welcoming our new Individual Placement member, Travis Lavenski.

Propagation

- The Shellfish Department has been utilizing the new barge to assist grantholders in removing spat collection devices from Chipman's Cove. Grantholders have been removing the oyster seed from these, and the Department has received some significant donations from several individuals. We appreciate these gifts and the benefit it has to our propagation efforts throughout the harbor by saving the department money and allowing us to grow Wellfleet's own oyster spawn in our waters.
- AmeriCorps participated in propagation projects on September 30th. They assisted with removing spat collection devices from Chipman's Cove, and harvested quahogs from the department grant for relay into other parts of the harbor.
- Our AmeriCorps member Travis Lavenski started and helped broadcast oysters and quahogs around the harbor. He will serve with us on Tuesdays until the end of July 2020.
- On September 5, the department began the second year of a study to determine the occurrence of a late fall oyster spawn. We are working with Barbara Brennessel and John Portnoy.
- We have relayed over 60,000 oysters this month throughout the harbor from seed that has been growing on the town grant. They have been growing from hatchery seed put out in June, and most of the stock was already approaching legal size.

Education and Public Relations

- Civetta did an interview with an artist/journalist who is doing a photographic series as an art project and for The Provincetown Independent.
- We provided seed oysters to Nauset Regional High School's Environmental Science class for its annual oyster growth study in Wellfleet Harbor.
- The department is beginning to collaborate with Barbara Brennessel and John Portnoy with input from Mass. Audubon and Barnstable County Extension on a study of oyster spat in the Herring River pre-restoration, as compared with other sites around Wellfleet Harbor where the department cultches. This should help inform our future cultching efforts in addition to giving us important foundational knowledge about Herring River oyster recruitment.

Respectfully submitted,
Nancy Civetta, Shellfish Constable

From: Jude Ahern <jude@judeahern.com>
Subject: Fwd: new public records request: All executive session minutes and supporting public documents related to HDYLTA Trust purchase
Date: February 19, 2020 at 9:08 AM
To:

Begin forwarded message:

From: Jennifer Congel <Jennifer.Congel@wellfleet-ma.gov>
Subject: RE: new public records request: All executive session minutes and supporting public documents related to HDYLTA Trust purchase
Date: December 5, 2019 at 2:25:22 PM EST
To: Jude Ahern <jude@judeahern.com>

Jude

As stated on the good faith estimate work will commence on gathering any information that you asked for once we have received the payment.
Let me know if you need another copy of the estimate.

Best regards
Jennifer

From: Jude Ahern <jude@judeahern.com>
Sent: Tuesday, December 3, 2019 8:18 AM
To: Jennifer Congel <Jennifer.Congel@wellfleet-ma.gov>
Subject: Re: new public records request: All executive session minutes and supporting public documents related to HDYLTA Trust purchase

Jennifer, These public documents should be part of the executive session minutes. I will spend today looking at those minutes closely but tell me, if I pay the Town \$ 200 will it include all of the emails sent from Helen Miranda Wilson's private list-serve account and all of the mails from Barbara Austin, Chair of the Shellfish Advisory Committee. Barbara Austin's emails are necessary for a full understanding. Please let me know and if so, I'll send a check TODAY.

On Nov 19, 2019, at 10:55 AM, Jennifer Congel <Jennifer.Congel@wellfleet-ma.gov> wrote:

Did attachment come through?
I have not been given anything yet. Work will begin on your request when payment is received.

Thank you!

From: Jude <jude@judeahern.com>
Sent: Tuesday, November 19, 2019 10:40 AM
To: Jennifer Congel <Jennifer.Congel@wellfleet-ma.gov>
Subject: Re: new public records request: All executive session minutes and supporting public documents related to HDYLTA Trust purchase

Please give me everything you have to date then and I will decide how to proceed.
Thank you.

Sent from my iPhone

On Nov 19, 2019, at 9:48 AM, Jennifer Congel <Jennifer.Congel@wellfleet-ma.gov> wrote:

Dear Jude,
I have sent your request for these public records to the custodians of those records.
I have been presented with a fee estimate in order to complete your records request.
Please see attached invoice.

Best regards
Jennifer

From: Jude Ahern <jude@judeahern.com>
Sent: Monday, November 18, 2019 8:52 AM
To: Jennifer Congel <Jennifer.Congel@wellfleet-ma.gov>
Subject: Re: new public records request: All executive session minutes and supporting public documents related to HDYLTA Trust purchase

Dear Jennifer:

Every single time the Selectboard met in executive session there should have been minutes with a list of public documents at the bottom. This would include anything they would have had to read, drafts of agreements, drafts of surveys, drafts of appraisals, emails, notes and any and all correspondence between Town Administrator and staff and/or Town Counsel concerning its purchase. Basically, everything related to its purchase beginning back in February. Therefore it includes any and all correspondence through Helen Miranda Wilson's private email back channel, what she refers to as "her list-serve" and Shellfish Constable Nancy Civetta's emails and notebooks.

This is not something that should be difficult to procure now because it should have been kept up all along with minutes being approved over time and public documents then preserved. I know you came into this as Town Clerk in June but this was something of such obvious importance that your predecessor should have prepared you and the Town Administrator should have designated as high priority and very important. The affects of this appraisal will be long term and the Public needs to understand everything about its complicated acquisition.

Thank you very much.

Sincerely,

Jude

Sent from my iPad

On Nov 18, 2019, at 8:20 AM, Jennifer Congel
<Jennifer.Congel@wellfleet-ma.gov> wrote:

Good morning!
Since I need to figure out who to go to for the
information,
could you be more specific regarding "supporting public
documents concerning the HDYLTA Trust and its
subsequent purchase by the Town of Wellfleet"?

Thank you!
Jennifer

From: Jude <jude@judeahern.com>
Sent: Friday, November 15, 2019 2:37 PM
To: Jennifer Congel <Jennifer.Congel@wellfleet-ma.gov>
Subject: new public records request: All executive
session minutes and supporting public documents
related to HDYLTA Trust purchase

Dear Ms. Congel/Records AccessOfficer:

Pursuant to the Massachusetts Public Records Law,
M.G.L. c.66, §10, I hereby request the following record:

All Wellfleet Selectboard Executive Session minutes and
supporting public documents concerning the HDYLTA
Trust and its subsequent purchase by the Town of
Wellfleet.

I also request that, if appropriate, fees be waived as I
believe this request is in the public interest, as
suggested but not stipulated by the recommendations
of the Massachusetts Supervisor of Public Records. In
the event that there are fees, I would be grateful if you
would inform me of the total charges in advance of
fulfilling my request. I would prefer the request filled
electronically by e-mail attachment.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 business days, as the statute requires.

Sincerely,

Jude Ahern

<PRR fee.doc>



TOWN OF WELLFLEET

300 MAIN STREET WELLFLEET, MASSACHUSETTS 02667

Office of the Town Clerk

Tel (508) 349-0301 Fax (508) 349-0317

To: Jude Ahern

From : Jennifer M. Congel Interim Town Clerk/RAO

Date: 11/19/2019

RE: Public Records Request Response-Good Faith Estimate of Fees

We have received the following Public Records request from you:

Date listed on the request: 11/15/2019

Date Request received: 11/15/2019

Please accept this as the good faith estimate of fees as outlined in 950CMR 32:07(b) Of public records law for your request as outlined above.

Copying Fees(950cmr32:07(2) (e) (.05 cents per copy) #Copies

Other Copying Fees (actual cost)

Postage Fees (Lowest cost available unless otherwise requested):

Storage device fee (950CMR 32:07(2)(g):

Hours required to complete the request (950CMR 32:07(2) (m) 8

(lowest hourly rate of person completing request not to exceed \$25)

Total \$200.00 .



If after beginning the work it is determined that there will be any additional hours needed, incurring more fees you will be notified as soon as possible. Payment of this estimated fee is due before commencing work on your request.

Please be advised that you have the right of administrative appeal to the Massachusetts Supervisor of Records under 950 CMR 32.08(1) and the right To seek judicial review of any unfavorable decision by commencing a

Civil action in the superior court pursuant to M.G.L c. 66 §10A©.

Thank you,

Jennifer M. Congel
Interim Town Clerk/RAO

From: **Jennifer Congel** Jennifer.Congel@wellfleet-ma.gov  
Subject: RE: do executive session minutes have to include a list of public documents?
Date: December 26, 2019 at 4:05 PM
To: Jude Ahern jude@judeahern.com

Jude,

Thank you for your patience.

I have been going back through the executive sessions you listed below. I did not see that there were any documents actually presented at any of those meetings.

I double checked with OML and they said we only need to include with the minutes any documents physically presented at the meeting.

If I missed something(and I could have because I am always interrupted here) let me know.

I do have a copy of the document in regarding the Taking so I have attached it.

The November 26 executive session minutes have not been approved yet. Courtney the SB secretary has been out of the office so I do not know when that is likely to happen.

I have also included the response I received from Helen regarding her list serve and have attached them as well as a note from her regarding it.

I can confirm that Barbara Austin has said she has no emails or notes regarding the HDYLTA. Your initial public records request was..

Pursuant to the Massachusetts Public Records Law, M.G.L. c.66, §10, I hereby request the following record:

All Wellfleet Selectboard Executive Session minutes.

Based on what has been released since then and what documents I have provided has this been satisfied?

Best Regards

Jennifer

From: Jude Ahern <jude@judeahern.com>
Sent: Thursday, December 19, 2019 4:32 PM
To: Jennifer Congel <Jennifer.Congel@wellfleet-ma.gov>
Subject: Re: do executive session minutes have to include a list of public documents?

thank you.

On Dec 19, 2019, at 4:29 PM, Jennifer Congel <Jennifer.Congel@wellfleet-ma.gov> wrote:

I just wanted to let you know I am working on this.

From: Jude Ahern <jude@judeahern.com>
Sent: Wednesday, December 18, 2019 8:12 AM
To: Jennifer Congel <Jennifer.Congel@wellfleet-ma.gov>
Subject: Fwd: do executive session minutes have to include a list of public documents?

Good morning Jennifer,

Please see the DOG response regarding Executive Session minutes and fees below. I expect the document Town Counsel required the Seller to sign regarding the Order of Taking today.

Also please send the list of public documents for each executive session surrounding HDYLTA as well as a simple yes or no as to whether Wilson's private emails are going to be included.

The executive Session dates for HDYLTA are:

April 9
April 18
April 22
September 30
October 25
November 26

Thank you very much.

Sincerely,

Jude

Begin forwarded message:

From: "OpenMeeting (AGO)" <openmeeting@state.ma.us>
Subject: RE: do executive session minutes have to include a list of public documents?
Date: December 17, 2019 at 11:38:30 AM EST
To: "jude@judeahern.com" <jude@judeahern.com>

Good morning:

We have said that a public body may not charge a fee for review, including search and segregation, of executive session minutes. See attached Open Meeting Law Determination. If your request for executive session minutes is part of a larger public records request, you may want to contact the Public Records Division within the Secretary of the Commonwealth's office for further guidance. The Public Records Division can be reached at 617-727-2832.

Sincerely,



BOARD OF SELECTMEN

AGENDA ACTION REQUEST
Meeting Date: March 10, 2020

VIII

ADJOURNMENT

REQUESTED BY:	Chair
DESIRED ACTION:	Adjournment
PROPOSED MOTION:	I move to adjourn.
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____