



**SELECT BOARD
MEETING MINUTES
JANUARY 22, 2019**

4:30PM Workshop - Committee Interviews

1. Budget Review Committee
2. Conservation Commission

5:00PM Executive Session to meet with Town Attorney (pursuant to 1 MRSAS405.6E, re: Consultation concerning the legal rights and duties of the Select Board related to petition matter).

Motion made and seconded to go into Executive Session at to meet with the Town Attorney pursuant to 1 MRSAS405.6E for a consultation concerning the legal rights and duties of the Select Board related to petition matter; approved 5-0.

1.0 CALL TO ORDER: 6:00PM

Meeting called to order at 6:10pm.

1.1 Roll Call of Members

Members present: Charles L. Waite, III, Chair
John M. Daley, Vice Chair
Richard A. Dolliver
Madeline S. Mooney
Robert N. Winn, Jr.

Others present: Patricia A. Finnigan, Town Manager
Philip R. Saucier, Town Attorney

1.2 Pledge of Allegiance

The Pledge of Allegiance was recited by some in attendance.

Chairman Waite stated that the minutes from the January 8, 2019 meeting were not completed so they would not be acted upon them tonight.

Chairman Waite stated that tonight they would be recognizing someone who is celebrating a very important milestone tomorrow, his 100th birthday. You all know this person and his lovely wife Winnie. Chair Waite stated that he is talking about Paul Mason.

Selectman Winn gave a background on Paul. Paul Elliot Mason was born in Boston on January 23, 1919. Since the age of 6 his heart belonged to Maine where he spent every summer until he built his own home in Ogunquit in 1954. Along the way he graduated from Brookline High School, Boston University, served in Burma during WWII and after retiring from his family import business he was a mainstay of public service, sitting on boards focused on education and social services. Paul and his wife, Winnie, have continued their community involvement all these years in Maine by helping to launch the Wells-Ogunquit Senior Center, the Ogunquit Heritage Museum and participating and furthering arts and other programs. He is a proud dad of three children, three grandchildren and 4 great-grandchildren. His graciousness, elegance and friendship are appreciated by every person lucky enough to know him. Happy 100th Birthday Paul. Also, Winnie and Paul celebrated their 74th anniversary.

Chair Waite stated that to honor Paul, the Select Board officially declares tomorrow, January 23rd, 2019 as Paul Mason Day in Ogunquit.

2.0 LIQUOR AND AMUSEMENT LICENSE - PUBLIC HEARING

Public Hearing called to order at 6:16pm.

There were no comments or questions from the public in attendance.

Public Hearing closed at 6:16pm.

There were no comments or questions from the Select Board.

2.1 Barnacle Billy's, Etc. - Malt, Spirituous & Vinous Liquor License Renewal

This application was recommended for approval by the Police Chief, Fire Chief and Code Enforcement Officer.

Tim Tower was in attendance for Barnacle Billy's, Etc.

012219-01 Motion made by Robert Winn, Jr. and second by Richard Dolliver to approve the Malt, Spirituous & Vinous Liquor License Renewal for Barnacle Billy's, Etc.; approved 5-0.

2.2 Barnacle Billy's, Etc. - *Amusement License Renewal*

This application was recommended for approval by the Police Chief, Fire Chief and Code Enforcement Officer.

012219-02 Motion made by Richard Dolliver and second by Robert Winn, Jr. to approve the Amusement License Renewal for Barnacle Billy's, Etc.; approved 5-0.

2.3 Barnacle Billy's, Inc. - *Malt, Spirituous & Vinous Liquor License Renewal*

This application was recommended for approval by the Police Chief, Fire Chief and Code Enforcement Officer.

Tim Tower was in attendance for Barnacle Billy's, Inc.

012219-01 Motion made by Robert Winn, Jr. and second by Richard Dolliver to approve the Malt, Spirituous & Vinous Liquor License Renewal for Barnacle Billy's, Inc.; approved 5-0.

2.4 Jonathan's Restaurant - *Amusement License Renewal*

This application was recommended for approval by the Police Chief, Fire Chief and Code Enforcement Officer.

Representation was not in attendance for Jonathan's Restaurant.

2.5 MaineStreet - *Malt, Spirituous & Vinous Liquor License Renewal*

This application was recommended for approval by the Police Chief, Fire Chief and Code Enforcement Officer.

Anthony Palladino and Marty Lessard were in attendance for MaineStreet.

012219-01 Motion made by Robert Winn, Jr. and second by Richard Dolliver to approve the Malt, Spirituous & Vinous Liquor License Renewal for MaineStreet; approved 5-0.

2.6 MaineStreet - *Amusement License Renewal*

This application was recommended for approval by the Police Chief, Fire Chief and Code Enforcement Officer.

012219-02 Motion made by Richard Dolliver and second by Robert Winn, Jr. to approve the Amusement License Renewal for MaineStreet; approved 5-0.

2.7 Perkins Cove Lobster Shack - Malt & Vinous Liquor License Renewal

This application was recommended for approval by the Police Chief, Fire Chief and Code Enforcement Officer.

012219-03 Motion made by Robert Winn, J. and second by Richard Dolliver to table the application for Perkins Cove Lobster Shack (at the applicant's request) until the February 5, 2019 Select Board meeting; approved 5-0.

2.8 The Trap - Malt & Vinous Liquor License Renewal

This application was recommended for approval by the Police Chief, Fire Chief and Code Enforcement Officer.

012219-03 Motion made by Robert Winn, J. and second by Richard Dolliver to table the application for The Trap (at the applicant's request) until the February 5, 2019 Select Board meeting; approved 5-0.

3.0 PRESENTATIONS, PROCLAMATIONS, RESOLUTIONS & COMMUNICATIONS

3.1 Ogunquit Chamber of Commerce Special Event Permits - Sarah Potter & Sherri Hanson

The Town limits the number of Special Event Permits to five (5). The Special Event Permit allows the Select Board to waive restrictions on signs and outside sales for these events.

Sarah Potter, President of the Chamber of Commerce and Sherrie Hanson, Chair of the Chamber Board of Directors, were present to review the Chamber of Commerce's Special Event Permit applications for the following events:

Patriot's Day (29 th Annual)	April 12-14, 2019
Ogunquit's Day in the Park (2 nd Annual)	June 14-16, 2019
Labor Day Weekend Sidewalk Sale (11 th Annual)	August 31, 2019
OgunquitFest (16 th Annual)	October 25-27, 2019
Christmas by the Sea (33 rd Annual)	December 13-15, 2019

There were no questions or comments from the public in attendance.

They were also present for signage and Zoning Ordinance waivers: signs (Chapter 2, Article 3); permitted uses in the district standards (Title X, Chapter 1, Articles 7-18) for the following:

Frannie Peabody Center's Southern Maine AIDS Walk May 4, 2019
Independence Day Fireworks July 4, 2019

012219-04 Motion made by Robert Winn, Jr. and second by Richard Dolliver to approve the Special Event Permit applications as submitted; approved 5-0.

4.0 APPOINTMENTS & RESIGNATIONS

4.1 Appointment to Budget Review Committee - 2 Alternate Members (2 Vacancies)

012219-05 Motion made by Robert Winn, Jr. and second by Richard Dolliver to appoint Elaine Cooper as 1st Alternate to the Budget Review Committee, term to expire June 30, 2019; approved 5-0.

4.2 Appointment to Conservation Commission - 1 Member (1 Full Member and 2 Alternate Vacancies)

012219-06 Motion made by Richard Dolliver and second by Robert Winn, Jr. to appoint Valerie Kaufman as a Full Member of the Conservation Commission, term to expire June 30, 2020; approved 5-0.

5.0 UNFINISHED BUSINESS - None

6.0 NEW BUSINESS

Chair Waite stated that tonight almost all the agenda items under New Business relate to the petitions to recall three of the Select Board members. None on the Select Board has ever been through a recall process. The Town Manager and the Town Attorney think that it is important for the Select Board to understand the recall process, what the Select Board as a body, is required to do and what the Select Board's responsibilities are going to be moving forward. It is also important for the citizens of Ogunquit to hear from the attorney and understand the process going forward and the legal requirements. Town Attorney Mary Costigan is away on a planned vacation, we are happy to have Attorney Philip Saucier here. He is also from Bernstein Shur and he is here to answer Select Board members questions and to provide information publicly regarding the recall process and the Select Board responsibilities.

Attorney Saucier reviewed the process. Once the Town Clerk certified the petition, there were legal challenges, the Town Clerk held a hearing to review the evidence to make a determination. The determination was made and is being presented to the Select Board at this meeting. Under the Charter, within ten (10) days of receipt (which would be 1/22/2019), the Select Board will have to set an election for the recalls. When the Select Board makes that decision on when it will be, it must fall between a 45-60-day window. Another deadline in the Charter is that any of the Municipal Officials (Board members) who are the subject of the recall, have ten (10) days from the certification of the petitions (01/18/2019) to request in writing to the Select Board a public hearing. The Municipal Officials continue to serve until the day of the election. If the election recalls an official, then that member is removed from office. Then the town would have to set a new election for the vacancies (if there are any).

There were no comments or questions from the public.

The Select Board are receipting the petitions as outlined in 6.1, 6.2 and 6.3. The Charter requires that the Town Clerk submit certified petitions to the Select Board.

6.1 Submission and Receipt of Certificate and Petitions to Recall Select Board Member Madeline Mooney (Town Charter Article VIII, Section 804.3)

No motion is necessary as the Select Board is receipting the petitions.

6.2 Submission and Receipt of Certificate and Petitions to Recall Select Board Member Charles L. Waite, III (Town Charter Article VIII, Section 804.3)

No motion is necessary as the Select Board is receipting the petitions.

6.3 Submission and Receipt of Certificate and Petitions to Recall Select Board Member Robert N. Winn, Jr. (Town Charter Article VIII, Section 804.3)

No motion is necessary as the Select Board is receipting the petitions.

6.4 Discussion regarding setting a Recall Election.

Attorney Saucier stated that now the Select Board has receipted the petitions, the Select Board's role is to set, within ten (10) days, the election.

Town Clerk Christine Murphy was present to outline the time frame for a special election. Ms. Murphy stated that she did three different calendars based on the next three weeks.

If a meeting was set today it would have to be held between March 8th and March 23rd. If the Board set the date on January 29th (which would be a Special Meeting of the Select Board) it would have to be held between March 15th and March 30th. If the Board set the date on February 5th it would have to be held between March 22nd and April 6th.

012219-07 Motion made by Madeline Mooney and second by Robert Winn, Jr. to set the date for the recall election at the next Select Board meeting on February 5th; approved 5-0.

Town Clerk Murphy outlined the date issues with the Special Town Meetings and the Annual Town Meeting. Town Clerk Murphy stated that she recommends that the Select Board wait until the February 5th meeting.

6.5 Correspondence Regarding Recall

The agenda packet has two letters from Steven Langsdorf that were sent to the Town Clerk that raised serious legal questions about the recall process; and also, a letter from a Town Attorney, Mary Costigan. These are included in the agenda packet for informational purposes.

There were no questions from the public in attendance.

Chair Waite asked the Select Board if they would want to ask Bernstein Shur for recommendations on outside counsel to represent the town in court if necessary, to direct the Town Manager and contact them and bring a recommendation to the Select Board for approval. The reason that he is reading this first as tonight there was a discussion.

Attorney Saucier stated that it is his understanding that there are some members of the Select Board that may want to engage separate legal counsel to advise the Select Board on the process. He stated that his firm represents the Town generally, they do not represent individuals, they represent the Town with the Town's interests in mind. Attorney Costigan has been assisting the Town Clerk through this process. He stated that he has heard that there may be some questions from Board members regarding the process, that they may want to have a separate attorney to look at it. Attorney Saucier stated that his firm represents the town and would represent the Clerk's certification process.

Leah Rachin, Bergen & Parkinson, represents Mr. DeHart

- Comments regarding representation.
- Who would be paying for the separate representation?
- Asked for a clarification on exactly what the second opinion would be on.

Chair Waite asked the Select Board if they would like to ask Bernstein Shur for recommendations for outside counsel to oversee an investigation of alleged irregularities in the recall process if necessary.

012219-08 Motion made by Madeline Mooney and second by Robert Winn, Jr. to seek separate legal counsel for the Select Board related to the recall process.

Motion by Madeline Mooney and second by Robert Winn, Jr. were withdrawn.

Boriana Dolliver, Shore Road

- If the Charter tells how to do the recall and the process was followed with assistance from the Town Attorney, why is separate attorney needed?

Mark MacLeod, 57 Bayview

- Seems that the process has been followed per the Charter, have had legal advice from Town Counsel and the Town Clerk has certified the petition. At this point the Select Board's role is to set the date for the recall election. If members of the Select Board as individuals or people that support them choose to file an appeal, that should be on the individuals or the individuals that support those board members not on the town. The Town Attorney has weighed in on what the options for the Select Board are and the Select Board has an obligation to follow the Charter and set the election date.

Kirk Lavoie, 17 Glen Avenue

- Sounds like hearing two separate things, trying to get them straight.
- If one part of the Town, one board disagrees with a decision made by another they can appeal that decision. What it sounds like that if the Select Board is looking for counsel at this point, it sounds like (to him) that the Select Board would be challenging the Clerk's certification of the petitions.
- If that is not the case, if there were to be an independent legal challenge over the certification process brought by a citizen, outsider or whatever it is, it seems that the Select Board would not need its own counsel because the Select Board should be standing behind the Town's process and decision. The Select Board members take an oath to support the Charter, the Charter

spells out the process, Town Counsel has agreed that the process has been followed.

Heath Ouellette, Meadow Lane

- Question for the Board, why do you feel like the advice that you have been given is not accurate, not justifiable, what do you disagree with to make this decision to seek separate legal advice?

Pat Hussey, Ocean Heights Lane

- Read from the Town Clerks' Results and Findings.

Jerry DeHart

- Thank you very much for the three of you doing this and the silliness of the public hearing and how residents were attacked; looks forward to the recall and look forward for the people at home seeing how spend tax dollars.

Michelle Tourangeau, 433 Main Street

- Has a letter that she was asked to read from Karen Topchek-Mullen.

012219-09 Motion made by Madeline Mooney and second by Robert Winn, Jr. to seek separate legal counsel for the Select Board related to the recall process; approved 3-2 (Daley and Dolliver in opposition).

6.6 Establish a Comprehensive Plan Committee

The Comprehensive Plan is an important document for the community. It is intended to be a long-range blueprint for the community's future. It is resource that documents the town's natural resources, demographics, economy, the community's character and other data; and helps guide the community's land use, zoning and developmental decisions. The Comp Committee brought its proposed Comprehensive Plan forward to the Select Board last summer. The Select Board had some questions and a group of citizens did a citizens' initiative petition to require the Select Board to put the Comprehensive Plan on the November Special Town Meeting Warrant. The voters did not approve the proposed Comprehensive Plan, this means the 2004 Comp Plan is the Town's Comp Plan. The Town needs to update the Comp Plan; therefore, we are seeking people that would like to work on the Comprehensive Plan Update. The committee will not need to start from scratch. Essentially it is in need for update from public input, and from public input we can put it before the voters when it is completed. Anyone interested in volunteering to be on the Comprehensive Plan Update Committee can get the application online or request one at the Town Clerk's Office. This would be an ADHOC Committee.

Motion made by Richard Dolliver to table this until February 5, 2019

7.0 TOWN MANAGER'S REPORT

A big thank you to Public Works and Facilities & Parks Departments who worked very hard to make sure that everyone could get out and about during the weekend storm.

It is budget season; staff is finalizing their draft budgets that will be headed for the budget committee. Ms. Finnigan stated that she would like to have a workshop to get the Select Board priorities.

Tomorrow night there will be a public meeting regarding the Beach Bathhouse Project. The purpose of this meeting is to get feedback from the public and to update on what is happening. A timeline has been created so that can get project done by next season.

8.0 CITIZEN COMMENTS (For town topics not on the agenda)

The Select Board welcomes public comments and questions about Town-related issues that are not on the agenda. We ask that people keep comments on point and within 3 minutes.

Boriana Dolliver, Shore Road

- Reminded people about Select Board Ethics.
- Commented on the process and the Select Board question of the process.

Mary Buck, Pine Hill Road North

- Commented on the actions of Select Board Waite at this meeting.
- Comments regarding the level of aggression that she has seen through this process.

There were no other comments from the public in attendance.

9.0 OTHER BUSINESS

9.1 Select Board Reports and Announcements

Selectwoman Mooney

- Comments regarding the recall election and support by those who elected her a year and $\frac{1}{2}$ ago.
- Comments regarding the issues creating the recall effort.

Selectman Daley

- Stated that he hoped that Town Clerk Chris Murphy and Town Manager Finnigan do not take this personally (i.e. recall process). Hope that they know that the residents support them.

Selectman Dolliver

- Read an e-mail that he had received.
- Read the information that the Select Board received at their last meeting from the Senior Housing Group.
- Comments regarding the OVS Facilitator/Municipal Campus.
- Comments regarding the DPW Director.
- Comments regarding the purchase of the Jaws of Life.
- Comments regarding no lights in the cove.
- Comments regarding the Purchasing Policy and update of.
- Comments regarding the public 3-minute rule.
- Comments regarding the Bathhouse link on the web page, sometimes it will not open.
- Comments on the lack of a gas station in Ogunquit.
- Stated that Joe from "Lex & Joe" passed away from a heart attack at age 66. Lex and Joe have been playing together for 40 years.
- Michael Koppstein, Cathy Tower's husband passed away at 65 from a heart attack.
- Comments regarding the memo from Mary Costigan.

Chair Waite

- Reminder to audience and those at home watching that the three of them that are being recalled have due process.
- This board has not had clear process advisement, this is not so much about the three but about if something is challenged and the town is sued.
- Comments regarding comments he made and apologized for his response.
- Thanked all who attended the meeting.

10.0 ADJOURNMENT

Motion made by Robert Winn, Jr. and second by Madeline Mooney to adjourn the meeting at 8:08PM.

Respectfully submitted,

Cheryl L. Emery, Administrative Assistant to the Town Manager