

TOWN OF HARWICH

Community Preservation Committee

Approved 6.10.21

Community Preservation Committee Regular Meeting Minutes May 7, 2021

Meeting Held Remotely

1. Call to Order

Harwich Community Preservation Committee Meeting called to order per Roll Call Vote by Chair Dave Nixon at 6:03 PM, on Friday, May 7, 2021, via GoToMeeting.com remotely. By Roll Call Present: Chair Dave Nixon – Aye; Vice-Chair Mary Maslowski – Aye; John Ketchum – Aye; Donna Kalinick – Aye; Kathy Green – Aye; Joseph McParland III – Aye; Bob Doane – Aye; Elizabeth Harder – Aye.

Motion carried unanimously.

Meeting called to order.

Guest: Town Administrator Joe Powers, Selectman CPC Liaison Don Howell, Selectman Ed McManus, REOS Chair Elaine Shovlin, HCT Director Michael Lach, HCT President Tom Evans, and John Giorgio of KP Law

Meeting Rules read into the record by Board Secretary Jan Moore

2. No Public Comment.

3. New Business:

a) Discussion of 2021 Town Meeting Warrant Article #33 Hinckleys Pond Watershed Preservation Project

Chair Dave Nixon read aloud the written 2021 Town Warrant Article #33 that is going before the town tomorrow.

The CPC approved funding \$360,000 for the Hinckleys Pond Watershed Preservation Project that was submitted by the REOS committee. Dave stated somewhere along the way, the original project has been changed. The CPC did not vote and approve what is written in the Town Warrant for this project. The CPC motion to approve the project is not correctly stated in the Town Warrant.

The project was changed by the Board of Selectmen. Dave attended a BOS Executive Session when a lot of the information was relayed to him, but he is not at liberty to share the information with the CPC. He did investigate the property independently. In the assessor's office he learned that the property is under an agricultural restriction. The State's DOR website explains what this means. If the property owners sell, the town has the right of first refusal and the property's tax category is changed and a tax lien must be paid to the town. The property cannot just be sold to developers without care as the CPC had been told in the original project presentation. If the property is sold to a private party, the tax lien must be paid. If the property is sold to the town, the town can waive the tax lien. This agricultural lien restriction must be reviewed annually. Under the restriction of 61, 61 A and 61 B, the town has the right of first refusal. The town must be notified within 120 days of the property owners receiving a confirmed sales notice. Then the town has 90 days to act if they want to buy the land. If the Town wants to not purchase the property, that is also 120 days after notification of sale from the owners. Has the Town received this notice?

Mary questioned how the CPC could vote on this morphed project, when two things are missing in this arrangement:

1) The requirement of 61 A to see the notice; 2) An appraisal. How could the BOS vote on a project when they have not voted on their right of first refusal? She stated the CPC has no vote on the presented warrant article. She stated she wasn't comfortable that these two important items were missing still on the night before Town Meeting. She stated she didn't think the CPC had enough information to vote on this project. She suggested to let the process of first refusal take place.

Elizabeth agreed with her. She stated the Town Meeting is tomorrow and there is still so much the CPC doesn't know. She stated she couldn't go forward with this.

John stated it would be irresponsible to not move forward on this opportunity. He stated he is not happy with some of the particulars with this project's change, but he feels we can go forward. Before this project can be finished, we need things in place, so we have time. The BOS can negotiate the purchase price with what appraisals, etc. are needed. He stated it is critical to preserve this land because of who knows what can happen in the future.

Donna stated the original CPC project requested \$360,000 for acquisition of some 31 acres. And now the project is some 1.7 acres. She stated she is not comfortable moving forward. She stated she wished the parties involved had told

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the CPC what changes were made as they were happening. The process is the problem. She stated she thought the CPC should revote. She stated she would not support the article, though she supported the property purchase.

Bob stated he supported the project but needs the appraisal. He stated following the CPA guidelines, the CPC cannot pay more than the appraised value. We don't have the appraisal. The tax records currently appraised an acre at \$60.00 of this property.

Joe asked when the committee could look at this project again?

Dave offered that in September or October there may be a Special Town Meeting. Maybe an election, too. There is nothing to stop someone from submitting a special or early CPC application to the committee. The committee could change their process to accommodate an early submission.

Joe asked if the Town acted on the right of first refusal?

Selectmen Larry Ballantine reported to his knowledge, no.

Mary asked Larry if the Town received notice of the right of first refusal?

Selectmen Larry Ballantine reported to his knowledge, no.

Mary reported the statute states if the notice goes out, the town has four months to buy the land back if there is a bonafide offer to purchase. The town has the first right of refusal, they can match the price. There is a time frame in place for any sale. There is another "bite of the apple". She stated she feels it is premature to go forward on this in tonight's meeting.

Dave stated in the DOR agricultural lien 61 A, the owner must provide a letter of intent to sell or convert the property of commercial, industrial, or residential use to the Town. This notice must be sent to the Harwich BOS, Assessor's office, and Conservation Commission by certified mail or by hand.

Attorney John Giorgio stated he thought the discussion had gone off track. He stated if this land is in 61 A, then the Town can match the Purchase and Sales agreement price. The Town must match that bonafide price. He stated he had seen many litigation cases where if this happens, the costs go up. The Town can wait for that notice, stating that price, but we would have to match that price. We don't know how high it could be. He stated he thought the Town has the opportunity now to work this out and stressed the committee should not rely on a second "bite of the apple" and wait to purchase the property.

Dave stated he felt with Town Meeting in the morning, the committee was being asked to perform without all the information.

Kathy offered the tax assessed value is not the appraised value. She asked Dave if the CPC had received a different appraisal in the last few weeks?

Dave couldn't answer because of privileged information in Executive Session.

Mary stated she thought we had the right to see the appraisal. She stated we had extended the committee vote to the last possible minute to accommodate the project managers. She thought many CPC members thought this property purchase was for 31 acres, not 1 acre. She stated the committee needs to see the appraisal to be able to vote. Mary offered we are talking about a land acquisition. She went on to state the committee is doing a disservice to the Town without doing our due diligence. She had asked about 61 A last year during the presentation, and nothing came of it. She stated that she was not comfortable in going forward at this time.

HCT Director Michael Lach reported REOS did email the CPC two real estate appraisal summaries after the April 22, 2021, CPC Executive Session of the Regular Meeting. On April 30, 2021, appraisal summaries were sent to the BOS via the town counsel. Michael stated there might be some breakdown in communications, but he felt they did send the committee what was requested. He stated he felt they explained the project changes in the April 22, 2021, CPC Executive Session. The BOS did change the custody of the restriction from the Conservation Commission to the Board of Selectmen. Now the legal counsel has changed the article to reflect the change in the appraised value, \$245,000 instead of the requested \$360,000. He thinks the Article is in alignment with the appraised value. He asked the committee to consider all this to protect the larger conservation project.

Dave reported he did receive the appraisal summaries. They were marked "Confidential". He stated he didn't think he could forward, disseminate confidential documents.

Michael offered that the "Confidential" line was a file name, but it is up to the committee's chair of how to deal with things.

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Mary offered an appraisal summary is not the same as an appraisal. What comes out of Executive Session cannot be looked at in Open Session. The committee voted on this project in January. There has been enough time from all this information to be given to the CPC, long before tonight. Mary asked who will sign the Purchase and Sales agreement?

Michael offered that the application applicant is the REOS committee; they will sign. Partnering party is HCT.

Donna asked if the committee and guests were now discussing some things that came from an Executive Session? She stated this conversation was making her uncomfortable. We cannot discuss things in Open Session from an Executive Session. She offered the CPC had received an application for a land purchase of some 31.6 acres. Now the committee was being asked to reconsider that and purchase a smaller parcel. She stated the committee needs an appraisal, that is statutory of CPA law. She stated the committee needs to revote this tonight.

Discussion was had on the revoting of OS 8, now Article #33 for parcel 81 – G1, 1.7 acres.

Elizabeth asked now the only part of this project is one land parcel at \$245,000 and we are asking the town to think this is great?

John stated he was not sure what the committee would be revoting - Mary's motion made in January 2021, or a revote for Article #33, or a revised motion.

Donna offered that the Warrant Article #33 the committee received today is for land acquisition of 81 – G1, for 1.7 acres parcel at \$245,000. The committee had voted approval for the original application at \$360,000 in January. She thought we must vote on this to move forward.

Selectman CPC Liaison Don Howell offered we have done plenty of deals in the past, with others and the CPC. The BOS voted to purchase of this land in public session, in a three – two approval. The BOS did not grant care and custody of the land to Conservation because of a lack in faith in them. The BOS forced this project change because they want it under the BOS jurisdiction. The BOS wants to protect this land. The BOS needs a funding source to purchase this land, that's the CPC. The BOS has seen the appraisal in Open Session, so they felt comfortable in stating the land is valued a \$245,000. Mr. Howell went on to state this land has a potential of having some six Mc-mansions built there. We cannot guarantee a Special Town Meeting in the fall to revisit this property purchase.

Elizabeth asked to clarify if we are only buying 1.7 acres, where was the guarantee that the Mc-mansions couldn't be built on the remaining land. She stated it was too late now to be getting all this information for her to absorb.

Kathy offered this is a collaboration project to protect this land. It was redrafted by town counsel.

Mary offered the Warrant Article doesn't reflect the original CPC affirmative vote taken in January. CPC funds cannot be spent without an affirmative motion.

Attorney John Giorgio stated the committee could vote to reconsider the vote.

Donna offered that the original vote of application OS 8 was for \$360,000 for 31 plus acres. The Warrant Article #33 is not what the CPC voted. The Town Meeting participants would not see what the CPC approved. She stated she would like to ask the BOS to come back to the CPC to work together if they are going to change the article.

Attorney John Giorgio stated the committee needs to vote to reconsider the previous motion. He stated if the CPC does nothing tonight, the Town Meeting may vote the Article at a lower amount, regardless of what the CPC voted.

A motion was made by Donna Kalinick, seconded by Mary Maslowski to reconsider the OS 8 application and the motion that we took on that.

ROLL CALL VOTE:

Chair Dave Nixon – Aye; Vice-Chair Mary Maslowski – Aye; John Ketchum – Aye; Donna Kalinick – Aye; Kathy Green – Nay; Joseph McParland III – Aye; Bob Doane – Aye; Elizabeth Harder – Aye.

Motion carried. 7 – 1.

Attorney John Giorgio suggested a screenshare or emailing the CPC members the appraisal summary and the discussion of this matter could happen at tomorrow's CPC meeting before Town Meeting.

Bob asked if the committee could see Michael's appraisals?

Michael stated this is an awkward request because the appraisals were requested in Executive Session, and now we want to see them in Open Session. He offered one appraisal from the property owner, who gave permission to share.

Donna objected, stating this is incorrect procedure.

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Mary stated she supports the project, but not this process and the changes. She went on to offer seeing this appraisal the night before ATM isn't going to change her mind; this matter requires more time.

Michael offered the committee could see the appraisal in tomorrow's CPC Executive Session meeting. The town counsel and BOS saw it on April 30, 2021. He went on to state he really would love to make this work. If the CPC could make this work based on what was discussed tonight, that would be great to advance this project.

Michael went on to clarify the application. G1 was to be purchased by the Town. The remaining parcels would be purchased by HCT, all with conservation restrictions. After the CPC application was submitted in October 2020, Mr. Jenkins told the HCT that they were not going to continue farming cranberries there. Also, it was the town counsel that had restructured and revised the Warrant Article.

Dave stated there have been so many changes, and that is the issue. It has not come back to the CPC to vote them.

Elizabeth stated Open Meeting Laws are being broken tonight. If this is so important, then the BOS can get it together in the fall. Asking the CPC to do this, as stewards of Harwich tax money, is heinous, to do this on the night before Town Meeting. All the information can be brought to the CPC, and we can do it in the fall. She stated she loves this project, but this is not the way to go about it.

Donna stated she was not comfortable to review this appraisal in this format tonight.

Joe stated he was out of town and had some loss of communication access, but he too is not comfortable voting on this tonight.

A motion was made by Mary Maslowski, seconded by Elizabeth Harder, that the CPC vote not to recommend the acquisition of Parcel 81 – G1 as proposed in Article #33 of the Town Warrant.

Attorney John Giorgio stated Town Meeting cannot act on an appropriation of CPA funds without a positive recommendation from the CPC. The Town Moderator can announce this Article. If no positive motion is made, then FinCom can move to indefinitely postpone the Article.

ROLL CALL VOTE:

Chair Dave Nixon – Aye; Vice-Chair Mary Maslowski – Aye; John Ketchum – Nay; Donna Kalinick – Aye; Kathy Green – Nay; Joseph McParland III – Aye; Bob Doane – Aye; Elizabeth Harder – Aye.

Motion carried. 6 – 2.

4. Old Business

5. Other

6. Next meeting's Agenda points – Saturday, May 8, 2021, Executive Session at 9 AM is cancelled.

7. Adjournment

A motion was made by Mary Maslowski, seconded by Elizabeth Harder to adjourn.

ROLL CALL VOTE: Chair Dave Nixon – Aye; Vice-Chair Mary Maslowski – Aye; John Ketchum – Aye; Kathy Green – Aye; Donna Kalinick – Aye; Bob Doane – Aye; Elizabeth Harder – Aye.

Joseph McParland III not available for vote.

Motion carried unanimously.

Adjournment at 7:27 PM.