

IPSWICH SELECT BOARD
Meeting of Monday, March 29, 2021

The Select Board participated in this meeting remotely utilizing Zoom in accordance with the Governor's March 12, 2020 Order suspending provisions of Open Meeting Law and to promote public health and social distancing.

Board Members present: Linda Alexson, Chair; Kerry Mackin, Dr. Tammy Jones, Vice Chair; Nishan Mootafian; William Whitmore

Also present: Anthony Marino, Town Manager, Attorney Meredith Fine, Chief Paul Nikas

With a quorum present, Ms. Alexson called the meeting to order at 6:30 PM.

Citizen Queries

None.

Vote 2021 Commercial Shellfish License Applications

1. Adiel Merlos, 333 Linebrook Rd.
2. Jose Morales, 333 Linebrook Rd.

Ms. Alexson summarized that the applicants were denied the opportunity to renew their permits based on not qualifying under a state law the town recently became aware of. MGL 130 Section 55 requires 5-year residency for non-US citizens to get commercial shellfish permits. Applicants are residents of Ipswich but not US citizens. Both applicants previously received commercial shellfish permits in Ipswich, Mr. Merlos since 2016 and Mr. Morales since 2018.

MGL 130 Section 55 states: "No permit for the taking of shellfish for commercial purposes, except in the city of New Bedford, shall be issued by the aldermen or councilmen of any city or the selectmen of any town to an alien unless he has resided in such city or town for at least five years next preceding the date of his application therefor, or has been a resident of the county in which such city or town lies for at least five years next preceding the date of such application and has taken shellfish commercially therefrom for such period."

Ipswich Shellfish Rules and Regulations Nov 2020

Section 12: "The holders of permits issued for the harvesting of shellfish must at all times conform to the provisions of Chapter 130 of the Massachusetts General Laws, as amended."

The town of Ipswich must follow state law. The Shellfish Advisory Subcommittee at its meeting in February suggested referring to this state law on the commercial permit application. Chief Nikas indicated the MGL reference is now on the application. Dr. Jones wanted to know if there was a way to make a specific exemption or home rule similar to New Bedford.

Ms. Alexson noted that according to the Town Clerk, Mr. Merlos has lived in Ipswich since 2016 and received his first commercial permit in 2016. Mr. Morales has lived in Ipswich since 2017 and received his first commercial permit in 2018. Ms. Mackin asked about how long they lived in Essex County. Mr. Merlos now qualifies with his 5 year residency in Ipswich.

Attorney Meredith Fine, 2 North Main Street, representing the applicants, had a conversation with town counsel George Hall and referenced his opinion that this statute is flagrantly unconstitutional. Ms. Fine further stated that the statute is untested on this question and the statute wouldn't stand up if questioned. Ms. Fine indicated there is a statute of limitations of one year and that has expired since the previous granting of these commercial shell fishing licenses to Mr. Merlos and Mr. Morales.

Ms. Alexson said it was her opinion that, according to town counsel, any challenges would be have to be with the state, not the town.

- *Vote: Dr. Jones moved to approve the license applications, Mr. Whitmore seconded. The motion carried unanimously via roll call.*

Ms. Alexson indicated the applicants should receive their permits before April 1st the start of the season. She noted that the Shellfish Advisory Subcommittee will meet on April 6, 2021 and will be joined by three Division of Marine Fisheries staff members and Representative Brad Hill and is sure this topic will come up. Dr. Jones supports the discussion of this law and hopes it will be challenged and thrown out.

New Business

None

Old Business

Ms. Mackin proposes the Select Board issue an additional letter to the ZBA regarding the proposed Essex Pastures development based on comments made in a letter from Attorney Dennis Murphy waivers are not applicable to 40B and town meeting voted down rezoning.

Mr. Whitmore indicated the Select Board has sent multiple letters to the ZBA and didn't feel comfortable endorsing private attorneys. Comments on water are not new. Ms. Mackin requested town counsel review and respond to Attorney Murphy's letter. Mr. Marino indicated it could go on a meeting and he would follow up with the Select Board.

Ms. Mackin requested a vote on her proposal for an environmental impact policy not a committee, at a later date.

- *Vote: Ms. Mackin moved to adjourn. Mr. Mootafian seconded. The motion carried unanimously via roll call.*

The Select Board adjourned at approximately 6:50 PM.

*Respectfully submitted by Linda Alexson
03.30.2021*