

HARPSWELL BOARD OF SELECTMEN
SHELLFISH LICENSE HEARING
MARCH 31, 2009

Selectmen Present: James Henderson, Chair
Mark Wallace
Elinor Multer

Guest: Sally Daggett, Esq., Jensen-Baird, Gardiner & Henry
Town of Harpswell Legal Counsel

The public hearing was held at the Harpswell Town Office, 263 Mountain Road, Harpswell to hear an appeal of Shellfish Conservation Warden George Lee Bradbury's decision of March 24, 2009 to deny Eliot Boyce a 2009 Commercial Shellfish License.

The hearing commenced at 12:58 PM. Chairman Henderson began with introductions of the Board members as well as the Town's legal advisor, who was present to review the procedure and to advise. The Chairman then explained the meeting procedure.

The Town Attorney reiterated that the issue on appeal was whether Mr. Boyce was a Harpswell resident based on the definition of the term in the Harpswell Shellfish Ordinance, §104.3. She referred the Board to their packet of materials which contained a copy of the Ordinance. She read the definition of "resident" from the Ordinance which stated "a person who has domiciled in the Town for at least six months next prior to the time his/her claim of residence was made." She said Mr. Boyce had made his claim of residence in February, 2009 (six months prior being August, 2008). The Town Attorney then addressed the meaning of "domicile" which was not in the Ordinance, and explained that there had been court cases where the issue had been addressed. She stated that the judicial definition of the term was to "speak about one's fixed, permanent and principle home for legal purposes." The definition had two components: a) the residence where the person resided, and b) the person's intent to return. The court cases mentioned concluded that actions of an individual may be different than factual circumstances when proof of residence was at issue. Intention could be shown through conduct.

The Town Attorney then addressed §304.4 of the Ordinance which states "the place of residence of a licensed applicant as stated on any other license is not determinative of the applicant's true place of residence." She also referred to §305 which addressed the application process and said the Shellfish Conservation Warden (the "Shellfish Warden") would have to make the determination whether or not someone was qualified as a resident. §305 also addressed the responsibility of any Town shellfish harvester to change/update his/her address with the Town Clerk's office.

Chairman Henderson clarified with the Town Attorney that the terms "resident," "home" and "domicile" related to the municipality with regard to the Shellfish Ordinance.

The Town Attorney stated that Mr. Boyce had the "burden of proof;" he had to prove that he qualified as a resident of the Town. §304.4 stated that the applicant must prove residency. She stated that the burden of proof was the "preponderance of evidence;" the applicant must persuade the Board by 51% or more.

She reminded the Board that they were working in their quasi-judicial capacity, and they would have to base their decision on the same information, information which would be presented at the meeting. She suggested disclosure of any private conversations held prior to the hearing regarding the issue.

Chairman Henderson said Mr. Boyce had contacted him the week before and had said that he didn't want to lose his shellfish license and that Deputy Bradbury was investigating whether or not he lived in the Town. Selectman Henderson met with Mr. Boyce at the Town Office and advised him of the right to appeal as

indicated in the Ordinance. Mr. Boyce applied for his license the following day, and the application was not accepted; hence, the present appeal. Selectman Wallace said that Mr. Boyce had called him at home the prior week also, and had related the same information. Chairman Henderson said that none of the current Board members had ever been a part of an occurrence of this sort [shellfish license hearing], and were not aware of the appeal process.

Selectman Multer confirmed that Mr. Boyce was aware of a letter, a copy of which was included with the Board's materials, from Mr. Boyce's Probation & Parole Officer, Danielle Craig, dated March 23, 2009 to Deputy Bradbury. Deputy Bradbury addressed the Board and confirmed that Mr. Boyce had spoken with Selectman Wallace about the issue, but Deputy Bradbury had not spoken of it to any Selectman.

Chairman Henderson formally opened the public hearing. Eliot Boyce addressed the Board and said that he was a single father with a seven year old son. He had to leave his son with relatives, but there was no room for him to live there. Mr. Boyce said he had been moving around to friends and family members, sleeping on couches for the past three months. He said he had met his friend (in the audience) in January, who had said he could sleep on his couch until he found a place to stay. Mr. Boyce complained of the lack of housing in Harpswell for someone in his situation. He explained that he had to give all of his addresses to the parole board, and that his son lived at a Brunswick address, and he visited him often. Mr. Boyce said he had dug clams his whole life and his family had lived in the Town for over 200 years. He also said he had applied for public housing in Brunswick last year.

Mr. Boyce explained that he was on probation and was required to give them a domicile address; he had given "both residences." He also said he received mail at his son's address because he had medical records, etc. mailed to him regarding his son's condition (described as "special needs"). He said the house in Brunswick had five people living there, and that it was a three bedroom house.

Mr. Boyce said he had contacted an attorney, Elliot Field in Wiscasset, because he felt it was also a personal issue [the Shellfish Warden], not just the issue of his residency. He said Mr. Field had discussed residency with him, and had not wished to attend the proceedings.

Selectman Multer asked where he was sleeping; he said it was in Harpswell, at 23A Dyer's Cove Road. He said he spent 60% to 70% of his time there, at night, but sometimes dug clams at night.

Chairman Henderson asked him if he had been denied rentals in Harpswell; Mr. Boyce responded that he had been denied many times over the past year and a half. The last time was a month ago, on Orr's Island.

Mr. Boyce clarified for Chairman Henderson that he had owned a clam license every year for the past 16 or 17 years, except for one time. He said he had never held any other job in Town; he had been a fisherman since he was eight years old, and other family members still lived in Town. None of the family members had a place for him to stay at the present time.

Selectman Wallace made suggestions of several apartments in Harpswell known to him. Mr. Boyce responded to each, and gave reasons why they would not address his situation.

Chairman Henderson asked if the Board had any more questions for Mr. Boyce; there were none. He then asked Deputy Bradbury if he had any questions for Mr. Boyce.

The Shellfish Warden addressed the Board. He informed them that part of his job was to annually verify residency for the 70 shellfish harvesters who resided in Harpswell. He said that Mr. Boyce's residency had been questionable for the past few years. He had spoken with Mr. Boyce's probation officer, Danielle Craig, and she told him the residency address Mr. Boyce was using was 23A Dyer's Cove Road so that he could keep his clamming license, but that he resided with his son at 19 Merrymeeting Road in Brunswick. The Shellfish Warden said that Mr. Boyce was a hard worker, and he had seen him out digging clams in Harpswell, but felt he did not meet the residency requirement. He informed the Board that Mr. Boyce did have some vehicles registered in Harpswell, and was registered to vote in Town. The Shellfish Warden

referred the Board to their materials which contained a copy of a letter addressed to him from the probation officer and stated that Mr. Boyce said he had been living at 19 Merrymeeting Road in Brunswick as of March 10, 2009 (when she had met with him). The Shellfish Warden had gone to 23A Dyer's Cove Road and said he had not seen any vehicles there. He consequently spoke to Mr. Boyce's room mate, Jordon Owen, who said Mr. Boyce had been sleeping on his couch since mid-January and stayed there five or six nights a week; he spent time with his child, also. The Shellfish Warden explained that, if Mr. Boyce began staying there in January, he would not have met the six month criteria for residency. Deputy Bradbury addressed examples of residency that Mr. Boyce had used in his testimony, i.e. medical records and voter registration, and gave possible reasons why they could be discounted. He said that Mr. Boyce was a "member of the Town for the most part," but he did not feel that he resided in the Town and said that could be substantiated by the letter from the probation officer.

Chairman Henderson asked the Board if they had questions; only Chairman Henderson responded. He asked the Shellfish Warden if he had a copy of the report mentioned in his memo to the Harpswell Town Clerk (report case no. 09-006489). He responded that the report had been sent to his department, and his Sergeant had said the Town would have to request a copy. The Shellfish Warden explained that the reason for the report was that he had also summonsed Mr. Boyce for fraud and falsification. The Shellfish Warden said he did not have any information on Mr. Boyce's residency prior to the six month period; all he had was the information that Mr. Owen had told him (which dated from January). The Shellfish Warden mentioned that Mr. Boyce had been arrested as the result of a traffic violation on October 24, 2008 and, at that time, had given the officer at the jail the address of 19 Merrymeeting Road in Brunswick.

Chairman Henderson asked if Mr. Boyce had any questions for Deputy Bradbury, directed through Chairman Henderson. Mr. Boyce asked what to claim for an address if he was homeless. He also clarified that he had told the probation officer all the addresses where he would be. He said she had asked him to "narrow it down to just one address" and he had told her 23A Dyer's Cove Road.

Chairman Henderson asked Mr. Boyce where he stayed prior to January, and he said he "really didn't have a place to stay." He said he lived in a motel in Brunswick with his son for almost a month, and when school started, he took his son to live with his grandmother in Brunswick, for his stability.

Selectman Multer asked the Town Attorney if State law addressed homelessness in this context. She responded that she was not aware that it did.

Jordon Owen, a Harpswell resident, addressed the Board. He stated that Eliot Boyce had been living with him at his apartment at 23A Dyer's Cove Road since early to mid-January; he was there "a good five nights a week," when he could be.

Selectman Wallace asked if Mr. Boyce paid him anything; Mr. Owen responded that he paid him "in clams, when he digs."

Chairman Henderson asked Mr. Owen if Mr. Boyce had ever expressed a wish to be living at another place and he responded that "daily" he said he wanted to find a place in Harpswell, "preferably on Orr's Island." Mr. Owen said he had offered to Mr. Boyce that he could stay with him, and that Mr. Boyce was "making an effort."

Chairman Henderson asked if the Board had any questions for Mr. Owen; there were none. There were no questions from the audience.

Chairman Henderson asked Mr. Boyce to speak again, and to address any questions to the Board. Mr. Boyce said the letter the Board had from his probation officer was not representative of the whole conversation she had with him, and she had told him to "narrow it down" to one address. He told the Board that he was proud to be from Orr's Island and proud to be a clammer, and would like to own a house on Orr's Island someday. He said that there was no place to live; the shelters in Brunswick were "always full," and he had applied for housing, but it would take a year to a year and a half. He said "times were

tough” and he did not have the security deposit and first month’s rent usually required for an apartment.

Selectman Multer asked if he had ever applied for a clamming license anywhere else. Mr. Boyce responded “never;” he only liked to “dig clams in this town;” it was where he was from.

Selectman Wallace asked where he had been living from the fifth month of last year until January, when he moved in with Mr. Owen. Mr. Boyce responded “homeless,” and that he had slept in his car or pitched a tent at friends’ houses. He had had a “falling out” with his family, and couldn’t go there.

Chairman Henderson asked if there were any questions from anyone; there were none. He closed the public portion of the hearing so the Board could deliberate.

Chairman Henderson asked the Town Attorney if a person was absent but had an intent to return, would they lose their domicile? He also asked if it was analogous to the residency requirement for voting. The Town Attorney said that it was a different standard; residency requirements for voting were different from residency requirements with relation to the shellfish ordinance. There was discussion regarding the definition of “residency” in the Harpswell Shellfish Ordinance. “Domicile,” however, was not specifically defined in the ordinance, but was “fleshed out in other context.” She reiterated that the definition has “two parts, generally speaking” – residence and intent to return, and the court cases made it clear that intention could be shown through conduct. There was further discussion regarding “domicile,” and the Town Attorney clarified that, for purposes of the Ordinance, both requirements of domicile had to be met.

Chairman Henderson stated that the Board had not heard any evidence of Mr. Boyce’s intention to live anywhere but Harpswell, and to dig clams in Harpswell, which “he had been doing for a long time.” There was further discussion among the Board members, and Chairman Henderson asked the Town Attorney to clarify whether someone had to physically be living in Harpswell for six months. She said it didn’t “have to be every night,” and stated that Mr. Boyce’s testimony included times when he had lived in Brunswick or out of his car or tent and had not indicated where that was.

Chairman Henderson read a definition of “domicile” from State Statute Title 34(a). There was further discussion with the Town Attorney regarding the issue. She stated several factors that could be used to determine a person’s domicile, e.g. property owned, vehicle registrations, voter registration, various licenses (hunting/fishing), etc. and suggested the Board include those factors when determining both physical presence and an intent to return.

Chairman Henderson reopened the public hearing to hear responses to questions from the Board. Selectman Multer asked Mr. Boyce where he had been getting his mail prior to January. He responded that he had been getting it at a Post Office Box (#32) on Orr’s Island, which he had since the age of eighteen, but said it was not counted toward residency.

Chairman Henderson asked where his vehicle was registered, and Mr. Boyce confirmed it was in the Town of Harpswell. He reiterated earlier testimony, and stated “everything I said was honest.”

Deputy Sam Cafone, also a Harpswell Shellfish Conservation Warden, addressed the Board. He said that Mr. Boyce had testified earlier that he received mail in Brunswick with regard to his son, and asked if he had two mailboxes. Chairman Henderson responded “apparently.” Shellfish Warden Cafone also reminded the Board that Mr. Boyce had testified he had applied for public housing in Brunswick. He intimated that the statute specifically addressed the residency requirement, and said if that was not enforced, it would be “impossible” to enforce any of the statute; it could be changed, however. He said that, as written, Mr. Boyce did not meet the criteria of the statute.

Chairman Henderson asked the Town Attorney if homelessness disqualified a person from having a domicile. She responded that she did not know, and that she could research the issue and return to the Board. The Board discussed whether they should postpone their decision until the question could be answered. The Town Attorney said she did not know how long her research of the issue would take, but

she had to return to Harpswell the following Thursday, April 9.

Mr. Boyce expressed concern for his job; Chairman Henderson informed Mr. Boyce that, once a decision is made on an appeal, the appellant is “reinstated to his original position” [with regard to the shellfish lottery process]. There was discussion among the Board members.

The Town Attorney reminded the Board that the issue was whether Mr. Boyce had convinced them 51% or more that he was a resident of Harpswell with regard to the Shellfish Ordinance. Chairman Henderson was concerned that, by delaying its decision, the Board would be creating an “open space” with regard to the shellfish lottery.

The Town Attorney suggested a brief recess so she could confer with the Town Clerk for clarification regarding the shellfish lottery issue; the Board agreed. Chairman Henderson called a ten minute recess at 2:14 PM.

The hearing resumed at 2:29 PM. The Town Attorney said she had conferred with the Town Clerk during the break and confirmed that the Harpswell shellfish lottery was to be held later that evening. She stated that there may be some shellfish licenses available. She suggested that, if the Board was not ready to make a decision on Mr. Boyce’s appeal, they should consider asking the Town Clerk if she could postpone the lottery. Alternatively, the Town might have to take back a license from a new licensee pending the outcome of Mr. Boyce’s appeal.

Chairman Henderson referred the Board to §310.4 of the Ordinance that addressed when the license became effective. The Town Attorney clarified that the referenced section addressed a revocation or suspension of license, which was not the situation with Mr. Boyce. She stated that his license expired today (March 31).

Selectman Multer asked how many licenses there were. The Town Clerk responded from the audience that would not be known until 4:30 PM. Whoever did not show up for their license by 4:30 – that license would go into the lottery. There was discussion among the Board members.

The Town Clerk addressed the Board and clarified that, if everyone who had applied for a shellfish license picked up their license, there would be none left. She said there were 70 licenses and 71 applications – harvesters who currently held a license, had satisfied the requirements and had done their conservation obligation. Chairman Henderson clarified that, if Mr. Boyce’s application was not accepted, there would be no lottery because there would be no need (unless someone didn’t pick up his license by 4:30).

Chairman Henderson stated that Mr. Boyce had satisfied the requirement for domicile in the six months prior to his application. He stated that the reason for the Ordinance was to “make it enforceable.” He then addressed Mr. Boyce’s claims individually, and said it was not documented that Mr. Boyce intended to live elsewhere. With regard to Mr. Boyce occasionally residing in his car prior to January, he said that the Board had conceded that residency “didn’t have to be continuous.” Chairman Henderson gave examples of evidence presented that had clarified Mr. Boyce’s intention to return: he had been looking for apartments in Harpswell, his vehicle was registered in Harpswell, he was registered to vote in Harpswell, and had a mailbox on Orr’s Island. Chairman Henderson said he did not view ownership of real estate in Harpswell as a qualification, and that was not mentioned in the Ordinance. He also said, since Mr. Boyce had owned a shellfish license sequentially for several years, it was further evidence of his intention to stay in Harpswell. He reiterated that Mr. Boyce had returned to Harpswell and had established a place to stay [with Mr. Owen].

Chairman Henderson moved that the Board uphold Mr. Boyce’s appeal of the finding by the Shellfish. The motion failed for lack of a second. Selectman Multer wanted to ask Mr. Boyce a question; Chairman Henderson reopened the public hearing so he could speak.

With respect to Mr. Boyce living in cars, tents, etc., Selectman Multer asked him where those locations had

been. He said they were in Harpswell, with friends and cousins, and his father had brought a camper in the summer, and he had stayed there, also.

Chairman Henderson closed the public hearing. He moved, seconded, that the Board find that Mr. Boyce had been domiciled in the Town based on the evidence presented, and that his appeal of the findings of the Shellfish Warden be upheld. He asked for comments.

Selectman Wallace suggested to Mr. Boyce that he find a place to live in Harpswell. There was no further discussion. The Board voted unanimously to approve the motion.

The Town Attorney reminded the Board that they had to draft and adopt a decision. She said they could table the adoption of the written decision, and she could create a draft and give it to them on April 9 (she would be returning to the Town for another matter); she could also prepare a draft so they could have it for the Board of Selectman meeting on Thursday, April 2.

Chairman Henderson clarified with the Town Attorney that Mr. Boyce would be eligible to obtain a shellfish license "tonight" (a commercial resident license). She said that, since the Board had made its decision, the adoption of the written decision was a formality.

Chairman Henderson moved that the Board direct the Legal Counsel to draft a written decision for the Board and that they entertain adoption of the written decision at their forthcoming meeting on Thursday, April 2, 2009. The motion was seconded, and accepted unanimously. The Board agreed that it would need the draft of the written decision for the administrative portion of their proceedings on April 2.

Chairman Henderson adjourned the meeting at 2:47 PM.

Respectfully submitted,

Melissa Moretti
Recording Secretary