

Town of *Dunstable* Selectboard
Meeting Minutes
March 9, 2016
Town Hall, Dunstable, MA 01827

Convened: 6:32 pm

Present: Daniel F. Devlin, acting chair, Walter F. Alterisio, member(s); Tracey Hutton, Town Administrator; Leo Tometich, chair, Stanley Norkunas, Matthew Raymond, and Robert Irzyk, ZBA members and associate members.

Selectboard Reviewed & Signed the Following:

- Warrants & Payroll

Open Forum

Mr. Devlin, acting as chair in Mr. Leva's absence, briefly explained the purpose of the public forum and went over the Board's agenda which included use of town hall requests, recommendations on zoning by-law changes, legal counsel proposals, and the awarding of the public safety building feasibility study.

Zoning Board of Appeals

The Board responded by noting some issues that have arisen recently with the ZBA including membership. One member has recently moved out of town, and another never came in to be sworn in. The Board continued that there appears to be a problem of support for ZBA and this problem appears to have started with a case that involved Massapoag Pond. The Board has attempted to support ZBA in every way possible including extending aid in finding clerical support and the aid of Town Counsel. The Board does not challenge the professionalism and deliberation of the ZBA, however, the administrative documentation side of things is lacking. A recent case decided by the ZBA did not produce the required documentation. No conditions were set forth, no record of the members that voted, and the exact deliberations of the meeting. There was then discussion of interpretation and application of MGL and town by-law in regards to ZBA. The Board is concerned about the exposure of the town to liability. To this point the town has mostly had small development, but as the town grows there will be larger developments that will come in with significant dollars behind them. With those kinds of funds, legal action is more likely. The ZBA's duties are vitally important to the town. This board is not for everyone; it requires a significant commitment of time and effort to learn the procedures and the laws involved.

There was a question about whether the town would be able to fund an administrative support position to aid the Zoning Board of Appeals. Ms. Hutton noted that her background includes planning and zoning and is perfectly willing to help the ZBA. The Board reminded that Ms. Hutton and the Board's Administrative Assistance's help would not be a permanent solution, but a temporary one until a formal clerk could be hired. There was then discussion of certification requirements. Ms. Hutton responded to this by noting that there really aren't a lot of applications in a given year, and that what is being offered is support not really a full position. The ZBA needs someone to help produce a summary of their meetings and what the conclusions and votes are taken and so forth. Not necessarily anything greater than that. But there needs to be a record. The ZBA is allowed to override some requirements of the zoning by-laws under some circumstances, but in so doing, they must articulate a record that explains their reasoning and sets out conditions and parameters. Discussion then turned back to the issue of membership. Mr. Tometich noted that one member intends not to sit another term, another has moved out of town, and a third appears to be preparing to move out of town.

The Board responded that it is the Board's authority to fill vacancies in consultation with the ZBA and takes responsibility to an extent, but again emphasizes the need to work with the ZBA to pick people who are interested and willing to do the work. Ms. Hutton turned discussion back to support noting what she is willing and able to help the ZBA and proposed a future meeting with Mr. Tometich. Mr. Tometich agreed to setting something up. The Board finished by noting that this isn't meant to be a lecture, but rather concern. The Board
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wants to see the ZBA function smoothly. There was some discussion of what could be discussed by members of the ZBA and the Board. The Board explained what it could and could not get involved in, noting the issues that could arise towards impartiality. Ms. Hutton noted that she can help the ZBA with some of that including getting them in touch with proper legal counsel. Mr. Irzyk sought clarification of the lines of communication. This included what the expectations are of the ZBA and how the decisions are to be made. It was noted by Mr. Raymond that the zoning by-laws are the relevant source material.

There was then further elaboration on the process by the Board and Mr. Tometich. Mr. Tometich noted that usually when a case comes to the ZBA it is because someone wants to do something that doesn't conform to the zoning by-laws. When an authority denies that person, that person has the right to appeal to the ZBA. The ZBA then looks to the zoning by-laws and then produce a result on any variance. The area that the ZBA appears to be currently weak on, he noted, is the documentation part. Once the ZBA has rendered its decision, there is a period of time where the decision may be challenged. From there discussion revolved further around how the process works and the issues and challenges of both by-law and MGL. Generally the by-laws spell out what may be done and the ZBA has the authority to interpret and render a decision and may in some circumstances allow variance. Because these decisions may be challenged, it is very important that documentation of proceedings and acts be done. Ms. Hutton noted that there are standards for what applications should look like. That is the starting point for all of this process. The two boards finished with some discussion regarding the application process, the time frames that are required, and how applications should appear and how they are filed. If applications are incorrect, the clock doesn't start.

Recommendations on Zoning & Other By-Laws

There are several by-laws that will be proposed at the Annual Town Meeting. First the delivery of town reports to every household. The next being the general by-law that pertains to delinquent license and fees, then the town will consider the Capital Planning by-law. Further by-laws include the marijuana dispensary by-law and the zoning by-laws which include such topics as stormwater and erosion control. The Board discussed the change for town reports. Currently reports must be delivered by by-law. In the past the Boy Scouts have delivered the reports. Given recent changes for the Scouts and the town, it makes sense to change this in the future. To mail the reports would cost between \$500 and \$2,000 Ms. Hutton reported. The proposed change would make it so that a post card would be sent out, as is done for special town meetings, informing voters of where they can pick up town reports (Library and Town Hall). The postcard would also include the time and date of the meeting. The Scouts are willing to help one last time as long as there isn't any last minute stuffing and confusion. There have been previous attempts to change the by-law in question, which have failed, but Ms. Hutton feels confident that this time around the change should be possible to make.

There were some proposed changes to the delinquent license and fees by-law. There was discussion of modifying the number of Personnel Board members to reduce the board to a smaller size. Town Counsel supports this. The Board then turned discussion to Capital Planning. This included highlighting the Boards intention to have the town become more proactive rather than reactive. Ms. Hutton agreed noting the benefits of the Capital Planning Committee. They then turned to the Stormwater zoning by-law. Ms. Hutton elaborated on this by-law change noting that she has worked closely with the Town Engineer and Stormwater Consultant. Ms. Hutton noted that she also worked with Town Counsel who helped her to make the by-law clearer. There was further discussion of how the process would work and what boards and committees would be involved in applying the by-law. The Board noted that this is an issue that is being compelled by state and federal law and represents an unfunded mandate. Ms. Hutton then turned discussion to the marijuana dispensary by-law. This by-law is being requested by Planning Board. The Board noted that this matter is not currently on the radar for Dunstable, but it is something the town needs to have on the books. Ms. Hutton noted that Planning Board has worked closely with Town Counsel to draft this by-law. The Board determined they could support it.

A motion was made by Mr. Alterisio to support the town meeting elections and records by-law change as proposed. The motion was seconded by Mr. Devlin and passed unanimously.

A motion was made by Mr. Alterisio to support the delinquent license and fees by-law with the proposed changes. The motion was seconded by Mr. Devlin and passed unanimously.

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A motion was made by Mr. Devlin to support the Capital Planning by-law. The motion was seconded by Mr. Alterisio and passed unanimously.

A motion was made by Mr. Alterisio to support the stormwater management and erosion control by-law. The motion was seconded by Mr. Devlin and passed unanimously.

A motion was made by Mr. Alterisio to support the marijuana dispensary by-law as drafted by Planning Board. The motion was seconded by Mr. Devlin and passed unanimously.

Legal Counsel Proposals

Ms. Hutton started off by noting that she's spoken with Town Counsel about this. Town Counsel supports the decision to becoming Special Town Counsel. Two firms are under consideration for his replacement: Mirick O'Connell and Kopelman & Page. There is \$8,000 for Special Counsel, and General Legal is \$30,000. The Board was concerned with what the cost will be. Clearly the town must be protected with competent counsel. Ms. Hutton responded that current Town Counsel recommends the town budget a little bit more for counsel going forward. The hourly rates of both firms are comparable, and are higher than the current Town Counsel. Currently the town pays \$120 per hour and uses about 250 hours a year. If the town chooses Mirick O'Connell, where the town's Labor Counsel Marc Terry works, Mr. Terry will remain in his position. What the firm will do is assign an attorney who will serve essentially as the town's general counsel.

Ms. Hutton highlighted the fact that she has already established a working relationship with the person the firm would likely assign to fill that position. The Board was supportive, but noted that there will need to be introductions to the various boards, committees, and commissions so as to avoid confusion. Ms. Hutton noted that while both firms are able to provide counsel for town meeting, it makes sense to still include the current Town Counsel Mr. Larkin. The Board agreed, noting that the town doesn't want to lose the institutional knowledge that Mr. Larkin has of the town. There was then discussion of what has led to this situation and why the town needs to make this decision. Moving forward Ms. Hutton will serve as a gatekeeper for legal counsel. Both firms are similar in their billing and what they provide. What the firms offer is a flat rate no matter who works for the town, regardless of whether it's a partner or associate. The flat fee will be higher than Mr. Larkin's, but again it will be flat. The Board determined to hire Mirick O'Connell. There was some light discussion of what legal matters are unresolved and should be addressed. Ms. Hutton assured the Board that she has kept track and nothing has been dropped.

A motion was made by Mr. Devlin to select Mirick O'Connell to be Town Counsel. The motion was seconded by Mr. Alterisio and passed unanimously.

Administrator Evaluation Format

Ms. Hutton requests that the evaluation for her be done next month before the outgoing chair retires from the Board. She presented the Board with several alternatives of how that evaluation would look and function. This evaluation is a starting point and usually discussion heavy. The Board agreed this does need to be done, but noted that most of the goals and objectives will be things moving forward. Comments would be most likely critiques of how things have been approached and dealt with, mostly concerning methodology and what results have been. None of this is a one way street, if there are some things that need to be done or done differently, it will include adjustment by the Board as well as Ms. Hutton. There was then some discussion about whether this will be under an open meeting or under a closed session. Ms. Hutton noted that to her knowledge this would be Executive Session. There was some additional discussion regarding whether the actual evaluation once completed in record would be public. Ms. Hutton responded that she would investigate this, noting that personnel records usually aren't. The Board decided to abstain from any decision on the process at this meeting out of deference to Mr. Leva's absence.

Public Safety Complex Feasibility Study

The committee that was created to consider this matter recommends Dore & Whitter. Ms. Hutton elaborated on some of their reasons as to why they feel Dore & Whitter is the right choice. She then asked the Board which

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bidder they would like to choose. There were some questions regarding the cost, the process, and future negotiations. Ms. Hutton responded by elaborating on the process. The Board noted that this project makes sense, because one building means one heating bill, one maintenance project, etc. This led to the question of whether Highway could be combined into this building. The answer is no, because it is a public safety complex. Ms. Hutton noted that to build a complex that can include public safety and highway would be substantially larger and more expensive to construct. Discussion then turned to location and the feasibility of multiple locations within the town. The Board then turned to discussion of the materials presented by both bidders. There was some thought of scraping this process and going to the Annual Town Meeting to make this a bigger project. Ms. Hutton recommended to the Board that if they want to do something different they not spend the money here and now. The Board expressed some reservation as to making a decision without Mr. Leva's input. Ms. Hutton agreed to contact the bidders to explain the Board's decision.

Administrators Report

Ms. Hutton started off by reporting on a request from the Police Chief involving Lt. Dow who was in a car accident with his personal car, which was totaled. The Chief would like to allow the Lt. to use an unmarked cruiser. Ms. Hutton has some concerns about this, and she noted, so does the Town Accountant. The Board expressed some concern about whether this sort of "perk" could open the town to future obligations. The Board wants to make sure that they support the Police Department and Lt. Dow, but the Board does not want to expose the town to issues of ethics or other legalities. Lt. Dow doesn't have a take home cruiser assigned to him currently, and use of this vehicle for personal use is something that could be problematic. The Board determined that the best course of action would be to abstain. Ms. Hutton then reported on the health insurance rates. The rates have been set by the insurance trust. The recommendation is a lower budget this year. The town is set to have \$10,000 less this year than what is currently appropriated. Even if an extra family plan were added, the cost would still be \$10,000 less than last year. The increase this year was 7.4 percent, which wasn't too bad since the rate could have increased as much as 12 percent. Ms. Hutton then pivoted to the rising issue of postings. She elaborated on some issues regarding postings and the policies of the Town Clerk in regards to this matter.

From there she updated the Board on a memorandum of agreement that she signed with the Town of Pepperell. The agreement was signed by the Town Administrators in the area, principally Pepperell for a grant relating to the opiate issue. She then gave the Board very good news; the town is one of 3 finalists for a Doppler radar tower that would go on town property on Skytop. This tower will aid the Fire Dept. by helping with a tower position for a radio repeater. The tower will be built by a major news network for weather. She then turned a suggestion by Advisory to propose a plan with Groton to close Dunstable's transfer station and have trash be joint with Groton. Dunstable residents would go to Groton to dispose of trash. This would save both towns considerable money. Groton is in early stages of considering the matter, but appears to be favorable to it. Currently the transfer station in town is only used by a small portion of the population. Ms. Hutton then inquired with the Board regarding a request for bow hunting on the MUD. The Board noted that this would fall under the same requirements of hunting on any town owned property. Ms. Hutton then discussed with the Board the proposal of Ron Mikol to complete the AC work. Mr. Mikol has proposed receiving no labor compensation, would be covered by that owns insurance as a volunteer, and would only do it at cost. She also noted that before any work is done, approval will need to be procured by the towns Historical Commission and the Massachusetts Historical Commission. In regards to the Historical Commission, she intends to ask for their support to request CPA funds from CPC for a building evaluation.

The evaluation falls under the capital plan currently, but would qualify for CPA historical funds. She then updated on the Personnel Board and where they are on wages. Ms. Hutton then updated the Board on the upcoming meeting between the Police Chief and the Advisory Board regarding the Police budget, particularly in regards to a new server for the station. The Board inquired about whether the Police Dept.'s needs for technology would fall under regional dispatch. Ms. Hutton replied that it would not in this instance. She then updated on the Library architecture needs. The results of the architect's proposals are expensive. Advisory and the Library Trustees will be considering the matter further. From there she turned to discussion of the budget and some debt exclusion proposals that Advisory would like to bring before the Annual Town Meeting. The Board expressed some thoughts about the budget process and the financial requests made by the school district this year. There was also some discussion of how the Master Plan will impact things moving forward. Ms.

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Hutton finished by discussing with the Board the preliminary draft of the Annual Town Meeting warrant. The Board determined that the warrant should be reviewed by Town Counsel and declined to review it beforehand.

Building Use Requests

The Dunstable Democratic Town Committee requests use of the Grange Hall on April 7th, 2016 for a meeting and the 2nd Mass Regiment requests use of the Town Hall on April 3rd, 2016.

A motion to approve the application for the 2nd Mass Regiment was made by Mr. Alterisio. The motion was seconded by Mr. Devlin and passed unanimously.

A motion to approve the application for the Democratic Town Committee was made by Mr. Alterisio. The motion was seconded by Mr. Devlin and passed unanimously.

Minutes

The Board considered the minutes from February 4th, 10th, and 24th. The Board was comfortable with all the minutes.

A motion was made by Mr. Alterisio to accept the minutes of February 4th, 10th, and 24th. The motion was seconded by Mr. Devlin and passed without objection.

Treasurer Warrants & Mail

The Board reviewed the vender and payroll warrants and went through their mail.

A motion to adjourn was made by Mr. Alterisio at 8:22 pm. The motion was seconded by Mr. Devlin and passed unanimously.

Respectfully submitted by



Jakob K. Hamm
Admin. Assistant to the Selectboard & Town Administrator

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