

**Date: April 28, 2008**

*Date Minutes Approved: May 12, 2008*

## **BOARD OF SELECTMEN MINUTES**

**Present:** Jon Witten, Chair; Elizabeth Sullivan, Vice-Chair; and Andre Martecchini, Clerk.

**Absent:** No members were absent.

**Staff:** Richard MacDonald, Town Manager and C. Anne Murray, Department Secretary.

The meeting was called to order at 7:30 PM.

### **OPEN FORUM**

Ms. Diane Bartlett said she left packets for the Selectmen containing information on Mass Housing about the Housing Assistance Program.

**7:30 P.M. AQUACULTURE HEARINGS Charles White**

The public hearing was opened at the Board of Selectmen meeting on April 14, 2008, but was continued until tonight at 7:30 PM.

**Present were:**

Mr. Al Hoban, Chair of the Shellfish Advisory Committee (SAC)  
Mr. Ned Lawson, of the Duxbury Bay Management Committee (DBMC)  
Mr. Don Beers, Duxbury Harbormaster and Shellfish Constable  
Mr. Charles White, applicant

Mr. Hoban provided an overview of Mr. White's application: His application went through an initial review and was approved subject to review by Division of Marine Fisheries (DMF). The DMF review discovered a population of razor clams, which meant that Mr. White had to request a secondary site be considered. Both the SAC and DBMC have now reviewed the secondary site and are recommending approval, with a slight site adjustment.

Mr. White said he went through the initial process and received approval from the SAC and DBMC, conditioned on the approval of the DMF. The DMF indicated due to a population of razor clams a secondary site was required. Mr. White spent another 6 months trying to have the DMF reconsider this, but received the same decision. In seeking the secondary site Mr. White said he has done so with consultation and consideration for other aquaculturists' sites and the wild shellfisherman. DBMC requested the site be move 600' over so it is further away from anchorage. Mr. White will be keeping about 1 acre in the original site to the south on which he plans to raise juveniles in racks. The secondary site, to the North, is approx. 2 acres on which Mr. White plans to raise shellfish on the bottom without structures.

Mr. Ned Lawson explained that the DBMC only got to review this last week. He said the DBMC are recommending approval with three conditions, which he paraphrased and explained:

1. Site be moved to the east (approx. 600') as one corner is too close to anchorage in area.
2. Use of structures, bags, and racks in the grow-out area be prohibited.
3. That Mr. White be able to use one acre of the originally approved site for raising the juveniles in structures

Ned Lawson also mentioned in Nov. 2006 the DBMC recommended to the Board of Selectmen that there be an exception to the moratorium for those individuals who had applied prior to the

moratorium and then ran into problems in the process so that an amended application of a secondary site had to be reviewed. Mr. White was one of these individuals.

There was a brief discussion of concerns that a change was being made tonight to the actual siting, given in the Public Notice and that other shell fisherman might not have had adequate chance to make public comments. Both Mr. Hoban and Mr. Lawson did reassure the Board that the SAC had reviewed the whole area and they were aware of the DBMC meeting of last Thursday. There have been no reservations expressed by the other shellfisherman in the area. In addition, tonight is a public hearing where the shellfisherman could be present to comment.

Ms. Sullivan pointed out that Mr. White's grant has been an ongoing discussion. There are a number of other grants in the area, and they have been informed along the way. The shellfisherman in the area have had a number of opportunities to comment. She also pointed out to delay this further would likely mean Mr. White would miss the growing season.

A recommendation was made that in the future it might make the process smoother if the applicant would go before the DBMC first, which serves in an advisory role, and then to the SAC, which makes the final recommendation to the Board.

Ms. Sullivan moved to close the hearing for the shellfish/ aquaculture lease of Charles White. Second by Mr. Martecchini. Vote: 3:0:0.

Ms. Sullivan moved that the Board of Selectmen approved the amended application, as filed on 3/06/08, of Mr. Charles White to the secondary site in concept and location pending all federal, state and local reviews contingent upon Mr. White relinquishing the amount of acreage of the original reef as indicate within the amended application and site plan so as to conform with the Duxbury Aquaculture Rules and Regulations section 4.4.4. Second by Mr. Martecchini. Vote: 3:0:0.

#### **UPGRADE OF TOWN'S STANDARD & POOR RATING (Added Agenda Item)**

Before moving to the next agenda item Mr. MacDonald asked to be recognized. Mr. MacDonald announced that today he learned that Standard & Poor's is upgrading their current rating of the Town of Duxbury from AA+ to AAA. Mr. MacDonald further explained that he, Ms. Conway, and Mr. Madden were interviewed by Standard and Poor's last week. Only about 20 other Massachusetts communities have attained the AAA rating. Mr. MacDonald recognized that this is thanks to the Finance Team including: Mr. John Madden, Finance Director; Ms. Beth Conway, Town Treasurer; Ms. Claudette Coutu, Town Accountant; and Mr. Dick Finnegan, Deputy Assessor.

Ms. Conway, Town Treasurer, mentioned that when people go to the market to purchase our bonds they want to make sure what they are buying is secure. The Town will be going to market to borrow \$3.1 million and the difference in rating from where Duxbury was (AA+) to the new rating of AAA will mean one-tenth of 1 %, which would be, at current rates, a savings of about \$31,000.

Mr. Martecchini commented that as difficult as it was to do putting money in the stabilization account certainly helped.

The entire Board extended its congratulations to Mr. MacDonald and the Finance Team for this extremely good news.

#### **BOND REFINANCING / BETH CONWAY**

Ms. Conway, Town Treasurer, was present to address the Board on this matter. Ms. Conway explained that in preparation for Town borrowing for the Damon Wells and 3A Water Main projects she asked the Town's financial advisors to review older bonds to determine if they

might be candidates for refunding, which is the municipal bond equivalent of refinancing. The financial advisors have determined some of older bonds might be worth refunding and the savings was projected to be about \$50,000. depending on the market. Some of the older bonds are at 5%, whereas the current rates are closer to 3%. Ms. Conway said she is asking the Board merely to authorize her to go to market to refund some bonds, if on the day it makes financial sense to do so. Completion of any transaction would require her to come back before the Board and she expects to do so at the Selectmen's Meeting on May 19, 2008.

In response to a inquiry regarding the refund procedure, Ms. Conway explained that the bonds are recalled and bondholders are paid off with proceeds from the new sale.

Mr. Martecchini moved that, in order to reduce interest costs, the Treasurer is authorized to provide for the sale and issuance of bonds under G.L. c. 44 §21A to refund all or any portion of the remaining principal of and redemption premium and interest on the Town's Municipal Purpose Loan of 1997 Bonds dated December 15, 1997; and that for this purpose the Treasurer is authorized to provide for the preparation and distribution of a Preliminary Official Statement; provided, however, that no bonds shall be issued under this vote unless and until the final interest rates and other terms of the refunding bonds are approved by this Board. Second by Ms. Sullivan. Vote: 3:0:0.

**APPOINTMENT OF AFFORDABLE HOUSING TRUST - Postponed until later in the meeting.** Chair said the Board would be taking up the Millbrook Crossing Proposal as soon as the Planning Board entered the room. In the interim, Board took care of some standard business matters.

#### **MINUTES**

Ms. Sullivan moved that the Board of Selectmen approve the Minutes of April 14, 2008, as presented. Second by Mr. Martecchini. Vote: 3:0:0.

#### **BONUS SHELLFISH SEASON FOR MAY**

Ms. Sullivan moved that the Board declare the following temporary Bonus Shellfish Seasons:

- 1) for the commercial harvesting of softshell clams for the month of May. Regulations as attached. (Please see Attachment B & C)
- 2) for the commercial harvesting of quahog clams for the month of May. Regulations as attached. (Please see Attachment A & C)

Second by Mr. Martecchini Vote: 3:0:0.

#### **COMMITTEE APPOINTMENT / RE-APPOINTMENTS**

##### *Fourth of July Committee Appointments*

Ms. Sullivan moved that the following individuals be appointed and/or re-appointed to the 4th of July Committee: Janet Ritch, Margaret Kearney, William Kearney, Connie S. (Siegel-) Dennis, Don Reed, Nancy Reed, Linda Robinson, Dave Robinson, Bob Dente, Jamie MacNab, Rich Potash, Amy Hill, Brian Hill, Katy Gaenicke, Joan Edgar, Sue Lawrence, Terry Reiber, Jeff Goldman, and Barbara Munsey, with all appointments to expire in 2009 [April 30th]. Second by Mr. Martecchini. Vote: 3:0:0.

## ARBOR DAY PROCLAMATION

Mr. Witten mentioned that the Board had received a communication from The National Arbor Day Foundation that for the 17<sup>th</sup> year Duxbury has been named a Tree City USA community. Mr. Witten read a Proclamation in which the Board of Selectmen proclaimed May 2, 2008 as Arbor Day in the Town of Duxbury with ceremonies to be held at the Chandler School at 2:30 PM. The Proclamation will be executed at the end of the meeting.

## MILLBROOK CROSSING PROPOSAL

Present for this item was Attorney Gareth Orsmond, who represents the developers, Ron and Floyd Silvia of Silvia and Silvia. The Duxbury Planning Board was also present.

Mr. Witten said the Board of Selectmen had invited the applicants for the Millbrook Crossing to attend because the process requires the Board to comment on an application for project eligibility and although the project eligibility letter has not formally been received it is anticipated the Board will receive it shortly. He made it clear that the Board of Selectmen is not the permitting authority. The Board of Appeals is the permitting authority, but the Board of Selectmen does comment regarding the project eligibility.

Mr. Witten asked Atty. Orsmond to address the following questions in his presentation:

1. There is a deed dated 11/22/06 to your clients from the Goodrich and Muncy Trust for \$100? Mr. Witten could find no other purchase price for the property. Does that deed reflect the purchase price of the property?
2. The application to Mass housing partnership refers to the 6 acres as "blighted" and Mr. Witten asked how Atty. Orsmond defines "blighted."
3. By Mr. Witten's calculations 46 units is almost 10,000 gallons a day, without any commercial component. Mr. Witten asked Mr. Orsmond to address the waste water/septic issues.

Before proceeding, Ms. Sullivan stated she conducts business on the South Shore. Mr. Sylvia is known to her as he is a client of the Bank she works. She does not conduct business directly with Mr. Sylvia. Ms. Sullivan stated she does not have the need to recuse herself regarding this matter, but she did want to make that statement for the record.

Atty. Orsmond has filed an application for project eligibility with Mass Housing Partnership (MHP), for 100% affordable housing project – rental at 60% or less of median income and 5 one-bedroom units being available for rental at 30% or less median income. After the developers filed that application the developers asked MHP to hold back on sending notice of eligibility letter so we can seek some feedback without the clock on the 30-day timeframe beginning. Project would consist of 10\* one-bedroom units; 32 two-bedroom units, and 4 three-bedroom units. [\*Note: Atty. Orsmond stated 11 one-bedroom but the materials showed 10 one-bedroom and that would correctly make the total of 46.] In coming up with the proposal they looked at the affordable housing plan filed by the Town with DHCD and sited some of the statistics from that plan. What his clients are proposing is to access the low income tax credit development, which is heavily subsidized by tax credits. He also mentioned that the Millbrook neighborhood area was one of the areas where you might create a "Village neighborhood district"; an overlay district. The proposal is not just residential project also a commercial project to include about 7000 sq ft. Some tenants that they would like to keep on, such as the market.

One building is planned on Railroad Avenue where the old lumber yard store is located. The old lumber yard store would be torn down and a two-story building of rental units built.

The other two buildings would be along the corner of St. George and Railroad Ave. These buildings would be renovated with some rental units put on top of commercial (market) space.

Septic calculations have been done and they are under 10,000 gal per day, which is the threshold for requiring more extensive treatment options.

Atty. Orsmond said his clients are seeking comments from the Board and the public regarding the proposal before the finalized project is brought forward.

Mr. Witten opined that he is hesitant to comment on something that is only a hypothetical proposal at this point. When a proposal is brought forth, then in his opinion that is when it is appropriate for the Town to comment.

Mr. Martecchini disagreed. He stated that in his opinion feels that this is a great opportunity to comment, given that there is going to be a project there, to help shape it. He stated his personal opinion:

- 46 rental units is too many and would prefer to see less rental units with more commercial space
- likes the idea of mixed projects, i.e., commercial with some residential

Ms. Sullivan agreed with Mr. Martecchini. She pointed out that Duxbury has spent a great deal of money in protection of open space. What we don't have the ability to acquire is commercial space, and there is a limited amount of commercial space in Duxbury. Ms. Sullivan stated that the Board needs to be advocates for the commercial space the Town has. She agreed with Mr. Martecchini's position that there should be a more equitable balance of the commercial space to the residential space.

Ms. MacNab asked Atty. Orsmond to comment on 2 items:

1. To address the question raised by Mr. Witten at the beginning regarding the use of the term "blighted" in the description of the area.
2. To address whether there had been a re-configuration of the lots so that 5 separate parcels are now viewed as one large lot within a perimeter plan.

Atty. Orsmond:

He can only address what he has knowledge of at this point. Reason it was called "blighted" is given the condition of the lumber yard building and a past history of a contaminant cleanup that was done on the site. Whether the whole area was taken into consideration when that term was applied he does not know as that description was originally prepared by someone else.

As to the 5 parcels vs. a perimeter plan, he said that no work has been done since his involvement, but he has not studied earlier documents and therefore cannot answer that. Further discussion did not clarify whether it is 5 parcels or 1 lot encompassing all 5 parcels.

There was a brief general discussion of the 40B process.

Atty. Orsmond was asked again about the wastewater disposal system. He responded that he doesn't see a way to do it without a mounded system, but that still needs to be determined.

Mrs. Jeanne Clark, 88 Surplus ST, provided some background regarding a past proposal and the wetlands on the site.

Ms. Kay Foster, 134 Surplus ST, also spoke about the past proposals and the soils in the area. Atty. Orsmond only commented that the wetlands have been delineated and that delineation is good for a number of years.

Ed McGlinchey, 20 Forge Way, asked if a market analysis been done? Ans. Yes, with several different configurations.

Mr. Witten requested that the Board be given a plan which would depict the proposed location of the waste water system.

Question about the purchase price of the property was raised again. Atty. Orsmond just indicated he was not prepared to comment on that without further review.

## **APPOINTMENT OF AFFORDABLE HOUSING TRUST**

Mr. Witten mentioned that the Board sought and received a number Talent Bank Forms from individuals interested in appointment as Trustees. So far the following have indicated interest: Martha Himes, Brendan Keohan, Dennis Murphy, Charles Rouke, Laura Shaeffer, George Wadsworth, and Matthew Walsh. Diane Bartlett, as Chair of the Local Housing Partnership, would be appointed as an *ex officio*.

The individuals who have responded are known to Mr. Martecchini and Ms. Sullivan. Mr. Witten requested that he be given some additional time to acquaint himself with some of the individuals he is being asked to appoint.

As a compromise, it was agreed to postpone most of the appointments to May 12th, but to make the appointments tonight of the Selectmen's representative and of the LHP Chair (Ms. Bartlett) so they could begin to organize an initial meeting.

After a brief discussion, Mr. Martecchini moved that the Board of Selectmen appoint Ms. Sullivan as the Board of Selectmen's representative to the Affordable Housing Trust for a two-year term. Second by Mr. Witten. Vote: 3:0:0.

Mr. Martecchini moved that the Board of Selectmen appoint Ms. Diane Bartlett, Chair of the Local Housing Partnership, as an *ex-officio* member of the Affordable Housing Trust for a term of two years. Second by Ms. Sullivan. Vote: 3:0:0.

## **DISCUSSION OF LOCAL RULES FOR COMPREHENSIVE PERMIT PROCESS**

Mr. Witten introduced this discussion. When the Soule Ave project was brought forward as a Local Initiative Project (LIP) last year, the suggestion was made that the Selectmen should develop some rules for the process. The Selectmen are the authority for LIPs in terms of endorsing the subsidy for approval. The LIP project comes to the Board of Selectmen for endorsement, then the Department of Housing and Community Development (DHCD) approves the endorsement or not, and that then becomes the subsidy. Then the next step is the standard application to the Board of Appeals, which is the permitting authority.

The Selectmen have the opportunity to establish a set of guidelines regarding the LIP process, which would be independent of the Board of Appeals' procedures. The guidelines should outline what the Board of Selectmen would require for their endorsement and how the LIP review process by the Board of Selectmen should proceed.

Mr. Martecchini stated that last year the Board charged the Local Housing Partnership (LHP) to come up with a set of rules and the LHP have done so. A draft of "Comprehensive Permit Rules for Endorsement of Local Initiative Projects by the Duxbury Board of Selectmen" dated November 9, 2007 was in the Selectmen's packets. Mr. Martecchini summarized the LHP draft by giving an overview of each section and some of the thought process that went into the sections.

Also in the Selectmen's packet were two drafts prepared by Mr. Witten. The first was a one-page document dated April 11, 2008, entitled, "Procedures for Filing a Comprehensive Permit Application. The second document was a draft of "Comprehensive Permit Rules of the Duxbury Zoning Board of Appeals."

An extensive discussion of the all the drafts followed in which each member of the Board expressed his/her overall opinion and then commented on some specific items in the drafts. Four major points of discussion:

1. Mr. Witten advocated that for a LIP to be endorsed by the Board of Selectmen the developers must agree not to file an appeal should the project be denied by the (Zoning) Board of Appeals. Mr. Martecchini and Ms. Sullivan disagreed.
2. The timeframes and some of the specific requirements were questioned.
3. The suggested fees incorporated into the Witten draft of the Comprehensive Permit Rules of the Duxbury Zoning Board of Appeals were discussed.
4. The initial steps regarding who should be contacted and which board should vet the project before it goes before the Board of Selectmen as a LIP were discussed.

Ultimately the Board decided that further discussion is needed and they would like the input of the four land use Boards, i.e., the Conservation Commission, the Board of Health, the Planning Board, and the (Zoning) Board of Appeals. Instructions were given for the staff to circulate the draft dated November 9, 2007 to the land use boards with a request for feedback. It was agreed that the input could then be discussed at a future Board of Selectmen meeting and/or at a land board forum in late May or June.

## **BUSINESS**

### **Town Manager's Brief**

1. **Open Space and Recreation Plan:** The draft of the Open Space and Recreation Plan has been completed. The Committee will present the draft to the Selectmen for comment next month.
2. **Hall's corner –Bay Road Project:** The Town received a grant in the amount of \$119,000. and those monies in addition to the \$300,000. budgeted will go towards the costs. The design work is complete and the project will be put out to bid shortly. The contract completion date has been pushed up to September 30, 2008. Mr. MacDonald will make sure this does not impact the 4<sup>th</sup> of July parade plans.
3. **Fish ladder:** The fish ladder was completed last year, but then the State did not have the funds to stock it. This year 1500 herring will be introduced as stock.
4. **Berry Brook and Camp Wing:** Both 21E (hazardous waste) site reviews and percolation tests have been completed and both sites have passed. Town Counsel working on review of the titles and the work is on track to be completed by the June 30, 2008 deadline. Approval Not Required (ANR) plans are being drawn to give the Town 1000' of frontage from the school on the Berry Brook property.
5. **Hazardous Waste Day for Duxbury / Kingston Residents**  
  
Date & Time: Saturday, May 3 from 9am to 1:00pm  
Location: at the Duxbury Middle School on St. George Street.  
For More Info: see the Town website which will have a list of the items which will be accepted.
6. **GIS Improvements:** We received a small grant to add the zoning layers to the GIS system on the Town website. That will be completed later this week.
7. **COA TAX PREPARATION:** Mr. John Madden (not the Finance Director) was recognized last year for volunteering to provide tax preparation help to Duxbury seniors. This year he had a 22% increase and did 124 filings. Mr. MacDonald commends him and thanks him for providing this valuable service.

8. **New Town Hall Hours:** A reminder that Town Hall hours change effective May 5: Mondays---8am to 7pm; Tuesdays-Thursdays---8am to 4pm; and Fridays---8am to 12:30 PM.

10. SAYT – Things have been going smoothly

### Announcements

1. 2008 Commercial Shellfish License Applications:

**REMINDER:** Application for a Commercial Shellfish License may only be made during the month of APRIL. The 2008 Commercial Shellfish License Applications are available in the Board of Selectmen's Office during Town Hall business hours (currently 8 AM – 4 PM Monday – Friday).

2. Employee & Retiree Annual Health & Benefits Fair:

**Date & Time:** Thursday, May 1, 2008 from 11:30 AM to 1:30 PM

**Location:** Town Hall in the Mural Room

Employees and retirees who have questions about the health insurance options should attend. Representatives from Blue Cross Blue Shield, as well as the other benefit vendors, will be available to answer questions at that time.

Open Enrollment is from May 1, 2008 to May 23, 2008. This is the period during which employees / retirees may change from one plan to another or enroll in an insurance plan you do not presently have.

### **Committee Appointments/Re-appointments**

*(Zoning) Board of Appeals Appointments (ZBA) AND Resignations*

Ms. Sullivan mentioned that resignation letters were received from Ms. Elizabeth Lewis and Mr. Tom Heneghan, both members of the Board of Appeals. Ms. Lewis indicated that she has been asked to serve on the School Building Committee. Ms. Lewis did agree to stay on as an Alternate until the cases she is seated on are decided. Mr. Heneghan's letter indicated that he and his family are moving out of state.

The Board briefly discussed whether to proceed with appointments to fill some of the openings on the Board of Appeals this evening versus postpone it to the next meeting. It was pointed out that with the recent resignations there are three vacancies. The Board had been provided information regarding potential candidates, and Mr. MacDonald mentioned his conversations with the Alternates. Mr. Martecchini and Ms. Sullivan felt, given the importance of this Board and the number of vacancies, at least two of the positions should be filled tonight. Mr. Witten preferred to delay the appointments as he is not familiar with the potential candidates, if a motion is made he will abstain for that reason.

Before moving to make the appointments Ms. Sullivan mentioned Mr. Joe Maher, previously served on the ZBA for a number of years. Mr. David Marsocci, is currently an alternate member. Both are attorneys. Mr. Marsocci is very experienced in real estate, and Mr. Maher in the area of compliance.

Ms. Sullivan moved that the Board of Selectmen appoint Mr. Joseph Maher as a member of the Board of Appeals to fill an unexpired term due to expire as of June 30, 2011. Second by Mr. Martecchini. VOTE: 2:0:1. (Mr. Witten abstained.)

Ms. Sullivan moved that the Board of Selectmen appoint Mr. David Marsocci as a member of the Board of Appeals to fill an unexpired term due to expire as of June 30, 2009. Second by Mr. Martecchini. VOTE: 2:0:1. (Mr. Witten abstained.)



**Mr. Martecchini moved that the Board of Selectmen accept the resignation of Ms. Elizabeth Lewis as a member of the Board of Appeals effective May 5, 2008 and appoint her as an alternate member of the Board of Appeals for a term of one year. Second by Ms. Sullivan. VOTE: 3:0:0**

**Mr. Martecchini moved that the Board of Selectmen accept the resignation of Mr. Thomas Henegan as a member of the Board of Appeals effective May 5, 2008 with our thanks for his service. Second by Ms. Sullivan. VOTE: 3:0:0**

#### **ADJOURNMENT**

**Mr. Martecchini moved for adjournment at 10:05 PM. Second by Ms. Sullivan. Vote in favor of the motion was 3:0:0. Meeting Adjourned.**