

Date: September 08, 2008

Date Minutes Approved: September 15, 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; John Madden, Finance Director; and Barbara Ripley, Executive Assistant.

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

MOMENT OF SILENCE

Mr. Witten began the meeting by requesting a moment of silence for Officer Melvin Dyer, a special duty policeman who was killed while directing traffic at the Marshfield Fair in August.

OPEN FORUM

Attorney Brian Cook was present on behalf of Ms. Kerry's Dance Studio. He explained that he is a resident of St. George Street and the father of a dancer. He was accompanied by Ms. Kerry Corrigan, several dancers, and friends of the studio. Ms. Kerry's studio was previously located at the Tarkiln Community Center, but was displaced when the Center was closed to renters. Ms. Kerry has been looking for a suitable location for the studio. There is space available at Foodies plaza on Depot Street. However, he was concerned that Ms. Kerry might have to apply to the Board of Appeals in order to have the dancing studio be declared as an approved commercial use of the space. Mr. Cook said that it would cost between \$5,000.00 and \$10,000.00 to go through this process. Since Ms. Kerry only charges her students between five and six dollars per class, the costs of approval would be impossible to meet.

Mr. MacDonald said that he has researched the issue with the Director of Inspectional Services, and has learned that the dancing studio is an approved use and will not require Board of Appeals approval. Mr. Cook thanked the Town Manager and Board of Selectmen for their time.

MR. JOSEPH BIKOWSKI: REUNION OF THE USS DUXBURY BAY

Mr. Joseph Bikowski, crew member of the USS Duxbury Bay was present to describe the proposed event. There will be a reunion of the USS Duxbury Bay Crew from September 30 to October 2, 2008. The USS Duxbury Bay was a seaplane tender that served in World War II and also on numerous diplomatic missions. It was decommissioned in 1966. The ship's bell is housed on the first floor of Duxbury Town Hall. On the last day of the reunion, October 2, the organizers would like to hold a wreath-laying ceremony on the Powder Point Bridge. They would like to close the bridge to vehicular traffic during the ceremony. They would like to set up approximately 120 chairs and a podium. The chairs and podium would be set up in such a way as to allow access for emergency vehicles. Mr. Bikowski met earlier today with the Deputy Fire Chiefs William Carrico and Christopher West, Harbormaster Don Beers, Assistant Harbormaster Michael Pforr, Director of Inspectional Services Scott

Lambiase, and Police Lieutenant Chip Chubb. All departments recommend approval of the event. They will want to set some conditions for public safety.

Mr. Joseph Shea, 1296 Tremont Street, was present at the meeting. Having written several articles for the *Duxbury Clipper* about the ship, he was able to provide some interesting historical facts.

Mr. Martecchini moved that the Selectmen approve the closing of the Powder Point Bridge on Thursday, October 2, 2008 for the reunion of the USS Duxbury Bay, subject to conditions imposed by our public safety departments. Second by Ms. Sullivan. Vote: 3:0:0.

WAR MEMORIAL COMMITTEE

Mr. Joseph Shea, Chair*
Mr. Patrick Browne*
Mr. Gil MacNab*
Mr. Russ Pratt*
Ms. Pamela Campbell Smith
Ms. Katherine Pillsbury*
Ms. Holly Morris*
Ms. Beverly Johnson
*present at meeting

Mr. Shea introduced members of the committee. He explained that a monument to honor Duxbury residents who served in WWI formerly stood across from Town Hall in a spot known as "Boomer Square". However, it had been removed and its whereabouts were unknown for some time. Recently, pieces of the monument were found near the DPW barn. The committee was formed to recommend a future for the monument.

Members of the committee have unearthed documents, drawings, and photos. It was learned that the original intended location for the monument was in front of "old" Town Hall (where the Selectmen's office exists today). The committee recommends that the monument, once repaired, be erected in that spot. The Highway Safety Committee opposes its relocation at Boomer Square, because of sight-line issues.

The committee plans to request funding from the Community Preservation Committee. The committee plans to sponsor two 2009 Annual Town Meeting articles. The first will request that the Town approve the location in front of "old" Town Hall, and the second will request funding. Private donations will also be solicited. Several descendants of those whose names appear on the monument have indicated an interest in making donations.

The Selectmen thanked the committee for their work on this project.

PUBLIC HEARING: REQUEST TO AMEND CONDITIONS OF LIQUOR LICENSE FOR FOODIES DUXBURY, LLC

Present were:

Mr. Victor J. Leon, licensee
Mr. Victor G. Leon, son of licensee
Mr. Robert Allen, attorney for licensee

Ms. Sullivan recused herself from discussion and votes on the issue, and left the room. (She previously explained that the applicant had been a client of her employer. She was recusing herself to avoid a conflict of interest.) Mr. Witten noted that the public hearing was advertised in the *Duxbury Clipper* on August 13, 2008, and that direct abutters were notified of the hearing via certified mail.

Mr. Allen explained that the Wine and Malt Retail license for Foodies Duxbury, LLC was issued with ten conditions. Three of the conditions (not allowing exterior advertising, not allowing wine tastings, and limiting the area within the store for sale of wine and malt) have proven to be a tremendous hardship on Mr. Leon's ability to operate. At the time the conditions were set, Mr. Leon and his attorney felt that these three conditions were not within the purview of the Selectmen. However, they decided not to appeal them with the Alcohol Beverage Control Commission (ABCC), because they did not want to start the business under the cloud of appeal. He said that advertising is allowed by law, so long as certain restrictions are followed. He said that wine-tastings are also allowed by law, and are tremendously popular in the industry. His client should not be deprived of the ability to hold them. Limiting the display of wine and beer to one small area of the store prevents the pairing of recommended beverages with food items, eliminating the opportunity for cross-promotion.

Public Comments:

Ms. Carol Carroll (co-owner, Duxbury Wine & Spirits): Ms. Carroll stated that this is not the time to "rock the boat". Business at Duxbury Wine & Spirits is down. Also, she stated that within weeks of the Foodies Liquor License approval, all three conditions were violated anyway. She said that this was not a good way for Foodies to become a part of the fabric of the Town.

Mr. Joseph Carroll (co-owner, Duxbury Wine & Spirits): Commented that business is down. This could be related to Foodies, or it could just be reflection of the economy. He said that it should be noted that he had gathered 650 signatures in opposition to the granting of the Foodies liquor license to begin with. Mr. Carroll requested a continuance of the hearing, in order for the competing liquor businesses to seek legal advice.

Ms. Mandy Fariello (41 Chestnut Street): Complained that Foodies has not been a good neighbor. She is bothered by noise from commercial fans, and smells from the dumpster.

Mr. Robert Casey (co-owner, Casey's Fine Wines & Spirits): Mr. Casey said that he and his wife purchased the business on Depot Street after the Foodies license was approved. They felt comfortable knowing what the conditions were. A relaxation of the rules will hurt Casey's Fine Wine & Spirits, he said. He feels it would be unfair to change the conditions now.

Ms. Phyllis Meisel (31 Josselyn Avenue): Ms. Meisel said that she is in favor of granting the applicant's request. She said that Foodies has added great benefits to the Town. They have helped numerous organizations with donations. They provide outstanding service to their customers.

Mr. John Bear (9 Old Mill Lane): Mr. Bear stated that he is a former member of the Economic Advisory Committee, and a member of the Planning Board. However, he was speaking for himself this evening. He said that the Town should not be controlling who succeeds in business. He is therefore in favor of removing the three conditions.

Mr. Joe Carroll rebutted Mr. Bear's statement. He said that liquor businesses are not in a free market. They are in a licensed market which behaves very differently.

Response to public comments by applicant:

Mr. Leon said that he loves to provide food to people as a business. This is his primary goal. However, the profit margin on food items is very low. Also, he said that he competes with "giants" such as Stop & Shop and Hannaford's. He made a conscious decision not to sell cigarettes or lottery tickets. However, he needs the alcohol sales as part of his business plan. The area allotted for alcohol sales is only 2% of the 21,000 square foot store.

He commented that he has tried his best to be a good neighbor to Mrs. Fariello. The requirement for commercial fans was newly created after the closing of the former store. He has no choice but to run the fans. He will try again to alleviate the dumpster situation.

Comments from the Board:

Mr. Witten said that he would like more specifics on exactly what the applicant would like. How many wine-tastings? How many signs? How many wine displays, and in what locations? In addition, Mr. Witten requested that the Town Manager obtain a letter from Town Counsel outlining the areas of control for the Selectmen.

Mr. Martecchini commented that it was very hard to fill the space now occupied by Foodies. He is inclined to help them to be successful. He also noted that the ABCC has said that the Town may not impose conditions designed to limit competition.

Mr. Witten suggested that the hearing remain open until a more specific list of requests is obtained from the applicant, and until we have an opinion from Town Counsel. This will also give Mr. Carroll an opportunity to seek counsel if he wishes.

Mr. Martecchini moved that the Board continue the hearing on the request to amend the Foodies Wine and Malt retail license to Monday, September 29 at 7:45 PM. Second by Mr. Witten. Vote: 2:0:0.

TARKILN STUDY COMMITTEE

Mr. Terry Vose*
Mr. R. Tag Carpenter*
Ms. Barbara Kiley
Mr. Emmett Cronin
Ms. Myrna Walsh
Ms. Susanna Sheehan*
Mr. Jon Witten*

**present at the meeting*

Mr. Vose announced that there are two volunteer weekends planned for painting the Tarkiln Building exterior: September 13/14 & September 20/21. The purpose of the weekends is to improve the appearance of the building, and to increase public awareness of the project. Interested persons should send an e-mail to: tarkiln2009@comcast.net

MASSACHUSETTS HIGHWAY DEPARTMENT: Request to Use Congress Street as a Detour During Bridge Repair

Mr. MacDonald explained that there was an over-height vehicle accident in March 2006 which severely damaged one of the beams of the North Street overpass for Route 3. As part of the replacement procedure, Route 3 Southbound will have to be shut down for approximately ten nights, not necessarily consecutively. The proposed detour for the closures includes a section of Route 14, Congress Street, between Route 53 and Route 3 at Exit 11. Since this piece of the roadway is owned by the Town, the Town's approval is required.

Mr. MacDonald said that he would like to get input from the police and fire departments before giving final approval. Mr. Martecchini suggested voting approval contingent upon their requirements. He also suggested the use of our rapid-dialing notification system to alert residents to the detour.

Mr. Martecchini moved that the Board of Selectmen approve, subject to recommendations of Duxbury public safety departments, the temporary use of Route 14, Congress Street, as part of the temporary detour used for nighttime closures required during bridge work on North Street over Route 3. It is understood that there will be approximately ten such closures and that the time periods shall be between the hours of 10 PM and 5 AM. It is further anticipated that these closures will commence during the week of September 21st and that there will be advance signing indicating when these closures will occur. Second by Ms. Sullivan. Vote: 3:0:0.

ONE-DAY LIQUOR LICENSE REQUEST: PATRICK BROWNE FOR DUXBURY RURAL & HISTORICAL SOCIETY/ NEWCOMER'S PARTY ON 9-27-08

Mr. Martecchini moved that the Board approve a One-Day Wine & Malt License for Mr. Patrick Browne, as a representative of the Duxbury Rural & Historical Society, in order to hold a private party at the Nathaniel Winsor, Jr. House on September 27, 2008 from 7:00 PM to 11:00 PM, subject to the conditions listed on the license. Second by Ms. Sullivan. Vote: 3:0:0.

JAKE'S HOT DOGS

Ms. Ripley explained that Jake Genereux was issued a license to occupy a hot dog stand at the Town Pier only. He has been asked to sell hot dogs from his cart at the O'Neil Farm on Farm Day (September 20, 2008). The Harbormaster gave a very positive report about Jake's operation at the Town Pier. The Fire Department, Inspectional Services, and Board of Health have no objections.

Mr. Martecchini moved that the Board amend the vendor license for "Jake's Dogs" to allow for operation of the hot dog cart at the O'Neil Farm on Saturday, September 20, 2008 from 10:00 AM to 4:00 PM. Second by Ms. Sullivan. Vote: 3:0:0.

TOWN MANAGER BRIEF

Percy Walker Pool: We are close to signing a contract with the architectural firm of Graham/Meus from Boston for the design work for the refurbishment of the Percy Walker Pool.

North Hill Country Club: We are close to issuing a Request for Proposals for the management of the North Hill Country Club for the period of January 1, 2009 through December 31, 2013.

Crematory: We are developing a Request for Proposals for the design of a new crematory.

Construction: The Town approved two million dollars worth of construction in August 2008.

Budget Planning: The FY10 Budget Task Force will meet again on September 19, 2008.

Hurricane Hanna: The Harbormaster and DPW are to be commended for excellent storm preparations for this weekend's storm.

ANNOUNCEMENTS

Farm Day: Mr. Martecchini invited the public to attend the Farm Day on Saturday, September 20 at the O'Neil Farm, from Noon until 4:00 PM. It will be a great opportunity to see a working dairy farm, and to see the results of farm preservation.

Rapid-Dialing System: Ms. Sullivan requested that a discussion of best practices for the rapid-dialing phone system be put on a future agenda. She would like to be sure that calls are made in the most appropriate manner possible.

MINUTES

Ms. Sullivan moved that the Board approve the minutes of August 25, 2008 as presented. Second by Mr. Martecchini. Vote: 3:0:0.

ECONOMIC ADVISORY COMMITTEE

Ms. Sullivan moved the following slate of candidates for the Economic Advisory Committee:

NAME	AFFILIATION	TERM EXPIRATION DATE
Mr. John Bear*	Planning Board	6-30-09
Mr. Joseph Maher	Board of Appeals	6-30-11
Ms. Anne Antonellis	Business Representative	6-30-11
Mr. Philip Markella	Business Representative	6-30-10
Mr. Jackson S. Kent, Jr.	Business Representative	6-30-09
Mr. Thomas H. Tucker	At-Large	6-30-11
Ms. Georgia Cosgrove	At-Large	6-30-10
Ms. Elizabeth Sullivan	Selectmen	6-30-09

**Mr. Bear had already been appointed to the Committee, and wishes to continue.*

Second by Mr. Martecchini. Vote: 3:0:0. Ms. Sullivan noted that there is still one vacancy on the committee.

ADJOURNMENT

Mr. Martecchini moved for adjournment at 9:25 PM. Second by Ms. Sullivan. Vote: 3:0:0.