

Date: November 10, 2008

Date Minutes Approved: November 17, 2008

BOARD OF SELECTMEN MINUTES

Present: Elizabeth Sullivan, Vice-Chair, and Andre Martecchini, Clerk.

Absent: Jon Witten, Chair

Staff: Richard MacDonald, Town Manager; John Madden, Finance Director; and C. Anne Murray, Department Secretary.

The meeting was called to order at 7:30 PM. Ms. Sullivan chaired the meeting as Mr. Witten was unable to attend due to a schedule conflict.

OPEN FORUM - No items were discussed.

TAX CLASSIFICATION HEARING / Mr. Dick Finnegan, Deputy Assessor

Ms. Sullivan mentioned that the Tax Classification was advertised as a public hearing.

As it was 7:31 PM, Mr. Finnegan, the Deputy Assessor, was introduced. Mr. Finnegan introduced the Board of Assessors: Ms. Linda Collari, Mr. Jamie MacNab, and Ms. June Albritton.

Mr. Finnegan explained that the Town is required each year to set tax rates for residential and commercial property. He reviewed with the Board the FY 2009 Tax Classification Hearing Fact Sheet dated November 10, 2008. [Copies were passed out and the document will be posted on the Town website on the Assessing Department page.]

Duxbury has traditionally had a residential factor of "one." This means that the commercial tax rate is identical to the residential tax rate. The figures showed that setting a dual tax classification would have minimal savings for residential taxpayers (approx. \$131. for average residential assessed values of \$654,000.), but have a substantial increase (approx. \$3,571.) for similarly assessed commercial properties. Given the disparity the recommendation of the Board of Assessors was for the Board of Selectmen to adopt a residential factor of one.

The following motion was made and seconded, but before voting Ms. Sullivan asked if anyone had any comments or questions. Hearing none the Board proceeded with the vote.

Mr. Martecchini moved that the Board of Selectmen vote to adopt a single tax rate by setting a residential factor of one. Second by Ms. Sullivan. Vote: 2:0:0.

MEETING OF WATER & SEWER COMMISSIONERS

Mr. Martecchini moved that the Board of Selectmen adjourn their meeting for the purpose of convening as Water & Sewer Commissioners, with the intention of re-convening as Selectmen immediately afterward. Second by Ms. Sullivan. Vote: 2:0:0.

Mr. Martecchini moved that as the Water & Sewer Commissioners, the Board approve and execute a tax document regarding the Water Enterprise Fund. Second by Ms. Sullivan. Vote: 2:0:0.

Mr. Martecchini moved that the Water & Sewer Commissioners adjourn their meeting, and that the Board of Selectmen re-convene their meeting. Second by Ms. Sullivan. Vote: 2:0:0.

**PUBLIC HEARING FOR USE OF TOWN GREEN: CHRISTMAS TREE LIGHTING
ON NOVEMBER 30, 2008**

Mr. Paul Brogna, President of the Duxbury Rotary Club, was present. Mr. Brogna said that, as they have done in the past, the Rotary Club is asking for permission to use the Town Green to kick off the holiday season with a tree-lighting ceremony and the arrival of Santa Claus.

Ms. Sullivan noted the request was reviewed with the appropriate Town Departments with no objections received. Notices were also sent to the abutters, and no comments were received. It was noted that a tent permit needs to be obtained, and that Mr. Buttkus has indicated that the DPW will work with the Rotary on the tree lighting as they have in the past.

Mr. Martecchini moved that the Board of Selectmen vote to grant an event permit to Mr. Paul Brogna, as a representative of the Duxbury Rotary Club for the Annual Christmas Tree Lighting, to be held on the Millennium Town Green on Sunday, November 30, 2008 from 1:00 PM to 7:00 PM, subject to obtaining a tent permit from the Department of Inspectional Services and the parking restrictions noted. Second by Ms. Sullivan. Vote: 2:0:0.

**PUBLIC SAFETY BUILDING FEASIBILITY STUDY COMMITTEE (PSBFSC) UPDATE /
Neil Johnson –Chair**

Mr. Johnson handed out a flow chart, an aerial view of the proposed siting area of a combined station, and cost comparison estimate sheet. He explained that at last year's Annual Town Meeting the sentiment of the meeting seemed to be that the Committee should be focusing on a combined station for economies of scale. Using the flow chart as a guide Mr. Johnson gave an overview of the Committee's review to date for both a combined station and separate (i.e., non-combined) stations.

The focus has been on a combined station, but the difficulty is that because of Fire Dept. response time requirements it would have to be within a ½ mile of the current Central Fire Station. The Committee considered several possibilities, but ultimately the property between the Senior Center and the Mayflower Cemetery was the best choice.

Mr. Johnson said that the Committee has received a letter from the Board of Cemetery Trustees clearly stating they are against using the parcel for a combined station, as the Trustees feel it should be maintained for future cemetery needs. The Committee is still talking with the Trustees to see if some arrangement could be reached if a land swap was incorporated. The Committee has done some research, but one issue that needs clarification is who ultimately has control of that property. Some documents seem to indicate the Board of Selectmen has the authority, whereas others seem to indicate the Board of Cemetery Trustees have the authority.

The discussion continued with an overview of a handful of options vetted by the Committee should the Town have to go forward with separate Fire and Police Stations. Without having complete information, such as percolation ("perk") test results and actual surveys, the first choice for the re-siting of the Police Station would be on Mayflower Street beyond the Transfer Station and before Cranberry Hill.

The area at Tarkiln has been ruled out because of traffic and site concerns. Congress Street, which was previously suggested as a site, does have access issues which would add an estimated ½ million dollars to the cost. Mr. Martecchini mentioned that moving the Police Station to an adjacent parcel would cost as much because of the cost of acquiring the property and the costs of demolishing and cleaning up the current site.

Public Safety Building Cost Comparison Sheet dated November 10, 2008:

COMPARISON OF ESTIMATED TOTAL PROJECTED COST (TPC) AND PROPOSED SQUARE FOOTAGE (Sq. Ft.) OF VARIOUS OPTIONS

LAST TOWN MEETING

FIRE HEADQUARTERS

TPC = \$8,390,000.
SQ. FT. = 20,500

POLICE STATION

TPC= \$8,105,000.
SQ. FT. = 18,775

TOTAL FIRE AND POLICE

TPC= \$16,495,00
SQ. FT. = 39,275

CURRENT PROPOSALS

- | | | |
|-----------------------------|-----------|---------------|
| 1. POLICE AND FIRE COMBINED | TPC= | \$14,275,000. |
| | SQ. FT. = | 31,000 |
| 2. FIRE HEADQUARTERS | TPC= | \$5,200,000. |
| | SQ. FT. = | 8,000* |
| 3. POLICE STATION | TPC= | \$7,750,000 |
| | SQ. FT. = | 17,320 |

*Plan D: Replace existing living quarters with new administrative and living quarters facility, including code upgrades for the existing building. This option would also include extending the existing apparatus bay to accommodate current equipment needs.

In discussing the figures Mr. Johnson pointed out that the above figures are based on current staffing levels and the square footage reduced as much as possible.

In responding to a question from the Board Mr. Greg Carell, a consulting architect said the size of the buildings is consistent with the population and the community needs. The building would have some attic space, which has to be included anyway, that would allow for some future storage needs.

It was also pointed out that having a combined facility would allow for some economies, such as a shared septic system, shared generator, and shared HVAC systems. In addition, the cost for separate facilities is driven up because of the staging of construction required.

Mr. Martecchini mentioned, that as the expected funding would be through a debt exclusion, the Committee is suggesting the total estimated project cost (est. design and construction cost) versus just the est. design cost be brought to Town Meeting vote to avoid a situation in which design money is authorized one year, but the following year the funds to do the construction are not approved. What the Committee would like a sense of is whether it be preferred that just one article be on the warrant for the final recommendation or whether separate articles be included for the possible options. Ms. Sullivan said she believes the most important thing will be that the actual proposed locations, whether combined or separate, be known.

It was agreed that the Committee would post the study which has been referred to in the process to the Town website and/or the Police and Fire Department websites. The discussion ended with the Board directing Mr. MacDonald to ask Attorney Troy, Town Counsel, for a legal

opinion concerning the parcel adjacent to the cemetery as to who ultimately has the authority over it.

REQUEST FOR BUSINESS PERMIT: Laurie Wagner/Professional Pet Services

Present for this item of business were Ms. Laurie Wagner, Owner of Professional Pet Services, Mr. Joe Grady, Town of Duxbury Conservation Administrator, and Mr. Eddy Ramos, Town of Duxbury Animal Control Officer, as well as a number of Duxbury residents and clients of Professional Pet Services.

Ms. Sullivan said the Board has received a request for a business permit from Ms. Laurie Wagner, owner of Professional Pet Services, for permission from the Board of Selectmen to operate a business on Town property.

Ms. Wagner was introduced and spent a few minutes giving an overview of her business. She mentioned the following:

- The business has been operating for 4 years on the South Shore. It started about 8 years ago and previously operated in Salem
- Her business is based in Pembroke, but has clients in a number of the area towns, including Duxbury.
- Professional Pet Services is a dog care, pet sitting, and training business. It is somewhat unique in that her business involves allowing the dogs to socialize in off-leash playgroups.
- The business currently has 12 employees, including 5 Duxbury residents.
- It services about 50 dogs per day.
- The business has no dog bite or dog fight history.
- The dogs are taken in groups of 4-5 dogs at a time to various properties in Duxbury, Kingston, Pembroke, and Plymouth, and allowed off leash only after a training process.
- The business operates 365 days a year to accommodate clients' needs, but primarily on Mondays –Fridays.
- In Duxbury she typically has 4-6 groups consisting of 4-5 dogs or about 20-30 dogs a day at the Bay Farm property.
- The business does have workers compensation and liability insurance.
- The request for the business permit is being made at this time as Ms. Wagner was unaware that she needed a business permit as she has a license in Pembroke where her business is based.

Ms. Ripley clarified that Ms. Wagner needed a DBA (Doing Business As) Certificate regardless of whether a business permit is issued tonight. The DBA Certificate is required in order to operate a business in Duxbury.

Ms. Sullivan asked if Ms. Wagner has a business permit in any of the other towns where she operates. After a brief discussion, Ms. Sullivan summarized it by explaining Ms. Wagner is now registered as operating as a business in Pembroke and Duxbury, but does not have a business permit to go on town-owned land in any of the towns.

Ms. Sullivan gave an overview of how and why this is coming up after Ms. Wagner had been operating for several years. She mentioned the following:

- A letter dated 10/14/08 from Mr. Lambiase, Director of Inspectional Services, was sent to Ms. Wagner indicating that his department was recently made aware of her business. The letter points out that it is unlawful to operate the pet business on town property without first obtaining permit from the Board of Selectmen and a Special Permit from the Board of Appeals.
- A letter dated 10/23/08 from Mr. Grady, Conservation Administrator, providing Ms. Wagner with the Rules and Regulations for the use of Town of Duxbury Conservation Lands. The Rules require that the business owner obtain permission from the

Conservation Commission. To date that permission has not been obtained by Ms. Wagner.

- **To be clear, even if the Selectmen authorize a permit tonight Ms. Wagner will still need to get a Special Permit from the Board of Appeals and permission from the Conservation Commission.**

Mr. Grady provided some additional background information. He said the Bay Farm property was purchased in 1971 and purposefully in consideration of future uses the control was left with the Board of Selectmen. In 1989 a Memorandum of Understanding was executed between the Board of Selectmen and the Town of Kingston and the Department of Land Management (a State agency), which are the other owners of the property. The Memorandum does required that the land be under the day-to-day management of the Conservation Department, but the control of the property still rests with the Board of Selectmen.

As the Conservation Administrator, Mr. Grady indicated he has received a number of complaints regarding Ms. Wagner's use of the property. He has observed groups of 6-10 dogs unleashed and has seen that they have frightened others trying to use the property.

***Mr. Chris Linsky (Duxbury resident /client): Asked if Duxbury has a leash law? Ms. Sullivan answered that Duxbury does have a leash law, as well as a waste disposal ordinance.**

Mr. Eddy Ramos, Duxbury Animal Control Officer said he has received several complaints about the dogs jumping up on people. And there have been some complains about the dog waste in the areas. He noted that there about are about 15 dog walkers in Duxbury, but Ms. Wagner's business is somewhat unique in that she does doggie playgroups.

Mr. Grady commented that the number of the dogs and consistent use is what is causing an issue. He also stated that he has observed that some of the dogs get ahead of the group and in his opinion there is a control issue. He said it is his job to try to allow as much use as possible from various interests (dog enthusiasts, hikers, horseback riders, etc.) but he has to balance that between the various groups

Mr. Martecchini expressed his concern about liability to the Town. He pointed out, that even if the business owner has liability insurance, were there a problem it is likely the Town would be sued. He also mentioned that in the past there was an issue with someone, as a business, giving tennis lessons on a consistent basis on Town courts. The Board ruled that as they were public courts, the business use was not allowed.

Ms. Wagner in addressing the concerns over the number of dogs at Bay Farm did say that on occasion a couple of her groups showed up at the same time. To try to prevent this they instituted a more scheduled use. She added that sometimes individuals bring their dogs at the same time to join her groups.

There was a brief discussion about the interpretation of what the language "under the direct control" means. Mr. Martecchini said the Board has had issues in the past with the interpretation of "under the direct control." The bottom line is the Board has to balance that for as many dog lovers as there may be; there are some people who just do not feel the same way.

Ms. Sullivan reiterated that the issue tonight is not how competent Ms. Wagner is and how well run her business is. The issue is the use of town-owned land for a business use and how appropriate that is. The Board must consider this in terms of the enjoyment of the public, i.e. the people who support the land versus the enjoyment of the dogs. She added she does not know what complaints or comments the other owners (Kingston and the State) might have received or how they would view this.

***Mr. Doug Sexton (Duxbury resident /client):** Mr. Sexton made the following comments:
(1) Sometime a couple of groups of (Professional Pet Service) dogs end up at Bay Farm at the same time, which is why the group seems larger than 4-5 dogs. (2) Sometime private owners show up with their own dogs knowing a group will be there, and that is why a larger number of dogs are gathered. (3) In his opinion, off leash dogs are less aggressive. (4) Any dogs that are questionable as to their off-leash behavior are leashed or they have electronic collars. (5) At Bay Farm the signage indicates dogs must be under control of the owner or the handler. The exact wording was not known, but the point being the dogs are not required to be leashed.

Ms. Sullivan said the interpretation of the language “under direct control” could be debated, but emphasized that the property was purchased for the peaceful enjoyment of people.

Rebecca (employee of Prof. Pets Services): What about owners that own several dogs?
Ms. Sullivan again said that what is at issue is a business using town-owned property; not private citizens.

Ms. Wagner suggested that other towns have designated specific areas where you can allow your dog off leash (i.e., “dog parks”). She asked if Duxbury would consider designating such an area?

Mr. Martecchini said Mr. Lambiase, Director of Inspectional Services, has suggested to the Board that no action be taken tonight until we can develop a policy including a list of rules, regulations and procedures regarding the use of town-owned. Mr. Martecchini did mention there have been a few occasions (such as the hot dog cart on the town pier) where businesses have been allowed on town-owned property, but there is a need to develop more of a policy.

Ms. Sullivan suggested the Board needed to give Ms. Wagner some guidance tonight.
Mr. Martecchini responded that it is clear that Ms. Wagner has not received permission from the Conservation Commission and the Board of Appeals so right now cannot be conducting business at the properties.

Ms. Wagner expressed her concern that it is unsafe to walk a dog in Duxbury as there are limited sidewalks. That is in part why she started to go to the town-owned properties.

***Ms. Bonnie Papajohn (Duxbury resident and client):** Ms. Papajohn said for the record she had issue with the characterization that the dogs in Ms. Wagner’s care are not under control. They are under control and respond to whistle command.

***Ms. Chris Knapp (Duxbury resident and client):** Ms. Knapp said she understands the Board’s position and both sides, but would hope that some compromise could be reached. Mentioned that as a working professional Ms. Wagner’s service makes it possible for her to own a dog, and she would not be able to do so without it.

Mr. Martecchini responded by pointing out that the Board has to consider not just Ms. Wagner’s business, but also the precedent it might set for owners and other businesses. It was at this time he opined that he liked the idea of exploring a dedicated area for unleashed dogs, but added there would be significant logistics to work out without expending Town funds.

Mr. Arthur Jones (observer / non-resident) said the discussion just focused on the dog business, but he wondered if other businesses / vendors were allowed on Town-owned property. Mr. Martecchini said on a very limited basis; a hot dog vendor at Town pier and vendors at the Duxbury 4th of July parade.

Ms. Sullivan reiterated the issue is the running of a business on Town-owned, public land and by issuing a business permit the concern is that opens up the Town to liability issues.

***Ms. Carol Polcari (Duxbury resident /client):** Mentioned that many years ago an individual ran a lacrosse program on Town land. She asked “How could he do it?” Ms. Sullivan acknowledged

she recalled that, but the particulars are not known at this time, and stated the Board must deal with the current issue based on current guidelines.

Mr. Doug Sexton spoke again and asked if Ms. Wagner or her employees can walk a dog on a leash on a street in Duxbury? Ms. Sullivan said "yes, that dog walking on a leash on a public street is allowed."

**For the record, the asterisk designates individuals who submitted letters in support of the business permit.*

That ended this item of business.

BUSINESS

TOWN MANAGER'S BRIEF

Pilgrim Nuclear Station 2008 Siren Test: Mr. MacDonald announced there will be a test of the emergency sirens in all five towns within the emergency zone of Pilgrim Nuclear Station at 3:45 PM on Wednesday, November 12, 2008. The test will be a 3-minute siren tone. This is only a test, and people should not be alarmed by it.

ANNOUNCEMENTS

Ms. Sullivan made the following announcements

- 1. FUEL ASSISTANCE:** With colder temperatures approaching, Ms. Sullivan encouraged residents to contact the Outreach Department at the Senior Center if they are concerned about their neighbor's well being, especially the elderly, and want someone else to approach the individuals.
- 2. FLU CLINIC:** The Board of Health will hold another public Flu Clinic at the Duxbury Senior Center, 10 Mayflower ST, on Thursday, November 13, 2008 from 5:00 to 7:00 PM.
- 3. SHELLFISHING OPENING:** Bluefish River, South area.
The Division of Marine Fisheries has OPENED to shellfishing the Bluefish River, South area (CCB46.1) from November 1 (2008) to April 1 (2009), and will automatically revert to CLOSED to shellfishing on May 1, 2009. The notice is posted on the Town Hall bulletin boards.

The open area is described as "The waters and flats of the Bluefish River in the Town of Duxbury, northwesterly of a line drawn from Long Point to Maxfield Point and southerly of a line drawn from Thompson's Pier to Long Point."

- 4. VETERANS' DAY:** The annual Veterans' Day services will be held at 11:00 AM at Duxbury Post 223 American Legion, 5 West ST in honor of our veterans. Reminder the Town Hall offices will be closed tomorrow (Nov. 11) in observance of Veterans' Day.

MINUTES

Mr. Martecchini moved that the Board of Selectmen approve the Minutes of November 3, 2008 as written. Second by Ms. Sullivan. Vote: 2:0:0.

Mr. MacDonald did mention that the FY'10 Budget Group has been meeting weekly, and a budget presentation is tentatively scheduled for December 15, 2008.

Ms. Sullivan mentioned that she recently attended the Open House for the Group Home on Cordwood Path. She said a family member spoke with her after the ceremony and pointed out that there was a gravel strip at the end of the driveway which prevented their son, who is a resident and wheelchair bound from leaving the property. The family member requested something be done to make the area wheelchair accessible. Ms. Sullivan wanted to publicly thank Mr. Peter Buttkus, DPW Director, for making that happen within days of the request.

COMMITTEE APPOINTMENTS/RE-APPOINTMENTS - NONE

ADJOURNMENT

Mr. Martecchini moved to adjourn the meeting at 9:42 P.M. Second by Ms. Sullivan. Vote: 2:0:0.