

Date: March 2, 2009

Date Minutes Approved: March 9, 2009

BOARD OF SELECTMEN MINUTES

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

Absent: No members were absent.

Staff: Barbara Ripley, Executive Assistant. (Mr. MacDonald and Mr. Madden were absent due to illness.)

The meeting was called to order at 7:00 PM.

OPEN FORUM

No items were discussed.

DUXBURY FARMERS ARTISANS' MARKET (DFAM)

Ms. Laura Doherty and Ms. Linda Collari were present to describe a proposal for holding a farmers' market in Duxbury. Other Towns, such as Cohasset, Plymouth, and Marshfield are doing this on a weekly basis. There has been great enthusiasm for the idea from the agricultural and sustainability communities in Duxbury. The primary emphasis would be for fresh food products. However, a limited number of crafts would also be sold. Items would be sold on tables, set up behind parked vendor trucks. DFAM would like to hold the markets every Wednesday, from 2:30 PM to 6:30 PM from May 27 through October 7.

Selectmen agreed that this would be a good idea for the Town. Several potential sites were considered, including the Town Green, the Senior Center, Church parking lots, and the Tarkiln property. DFAM unanimously chose the Tarkiln property. Selectmen agreed that a weekly farmers' market would be outside the understanding the Town had with abutters of the Town Green, when the Town bought the property. Selectmen urged Ms. Doherty and Ms. Collari to contact the Recreation Department for information about use of the Tarkiln fields on Wednesday afternoons. Another potential conflict could be construction at the Tarkiln building, if Town Meeting passes an article for Tarkiln Building restoration. Mr. Witten said that he would require a sketch to show the layout of the market and parking, as a condition for approving the site. He asked that the matter be put back on the Selectmen's agenda immediately after Town Meeting.

CONFLICT OF INTEREST

Ms. Elizabeth Lewis, Chairman of the School Building Committee, was on the agenda to seek Board of Selectmen approval to remain on the School Building Committee if she recused herself from any matters where her employer might have an interest. However, Town Counsel advised the Selectmen that Ms. Lewis needs a written opinion from the State Ethics Commission. Therefore, the matter was tabled.

TOWN MEETING ARTICLES

ATM ARTICLE 7 (Personnel Bylaw): Mr. Wayne Heward, Chairman of the Personnel Board, and Ms. Jeannie Horne, Personnel Administrator were present. Mr. Heward explained that, since the 2005 Annual Town Meeting, where the Town accepted the recommendations of the Government Study Committee, the duties of the Personnel Board have been to review the Personnel Bylaw, and to assist the Town Manager with the administration of the Personnel Bylaw.

He also noted that in 2008, a large number of employees whose positions were included in the Personnel Bylaw became part of two new unions that were formed: 1) The Duxbury Professional & Supervisory Employees Union; and 2) The Duxbury Professional Support Employees Union. Contracts with these unions have not yet been developed.

Finally, Mr. Heward described the new position of Personnel Administrator, which has been filled by Ms. Jeannie Horne. He explained that the position combines some of the responsibilities of the Benefits Coordinator and Payroll Administrator, as well as offering some program development in the area of human resources.

Ms. Horne explained that Article 7 of the 2009 Annual Town Meeting provides a revised Personnel Bylaw. The biggest area of change is in compensation. A compensation study was conducted in 2007/2008. The study was enhanced by subsequent work in comparing similar positions in other Towns. It re-classifies certain positions, establishes new salary ranges for positions, and provides a method of advancement in a salary range through a combination of experience and favorable performance reviews.

After discussion, Ms. Sullivan moved that the Board support ATM Article 7 as presented. Second by Mr. Martecchini. Vote: 3:0:0.

ATM ARTICLE 39 (Open Space Definition & Lot Coverage in Neighborhood Business Districts): Mr. George Wadsworth was at the meeting to represent the Planning Board. Mr. Jackson S. Kent, a proponent of the article, was also present. Mr. Wadsworth explained that the Planning Board struggled with the issues, but could not develop a position on lot coverage. Only four members were present to vote on the article, and they were split on their opinion (2:2). There was some discussion of invoking the Mullin Rule, which would have allowed members who missed some of the presentations to listen to tapes of the meeting, and be able to participate in the vote. However, this was not done, and it was later learned that the Mullin Rule would not have applied anyway, because it only applies to adjudicatory hearings.

Mr. Kent explained that the current zoning bylaw only allows for 50% of total lot coverage in Neighborhood Business Districts. In the past, in order to have adequate parking, business owners would use gravel surfaces, and it would not count as coverage. However, it is now generally agreed that gravel is as impervious as asphalt. If gravel is counted toward lot coverage, it is impossible to have enough square footage to function with the intention of the building and have enough off-street parking for the customers and employees to park. Mr. Kent is proposing that the ratio be increased to 80%.

Mr. Kent and some other interested citizens did a survey of 71 commercial sites in Duxbury. If gravel is counted as lot coverage, only two buildings meet the 50% criteria. 16 of the sites exceed 80% coverage.

Mr. Kent emphasized that the proposal does not really increase current lot coverage. Instead, it allows coverage to be paved. He said that the Conservation Commission agrees that controlling storm run-off with paved parking is more environmentally friendly, because the run-off is pretreated before entering the ground water.

Mr. Martecchini said that he is in favor of this change, because he agrees that gravel is impervious. Ms. Sullivan noted that the Economic Advisory Committee, of which she is a member, is also in favor of this. She said that it has become impossible to open or change a business without going through the cumbersome and expensive special permit process.

Mr. Witten expressed a concern that the 80% number was chosen without a thorough study. He said that ad hoc changes to the zoning bylaws can be dangerous.

Mr. Paul Brogna, a Duxbury resident and engineer, who was present for another matter, commented that pervious asphalt and concrete may someday be available.

Mr. John Murdock, Otter Rock Road, said that consideration of abutting properties is crucial when considering commercial development issues, especially with regard to storm water run-off issues.

Ms. Sullivan moved that the Board of Selectmen endorse Annual Town Meeting Article 39 as presented. Second by Mr. Martecchini. Vote: 3:0:0.

ATM ARTICLE 40 (Parking Regulations): Mr. Wadsworth explained that this article was developed to assist developers in calculating their parking needs. The Planning Board voted in favor of this article. It was discussed in conjunction with Article 39 (above).

After discussion, Ms. Sullivan moved that the Board endorse Annual Town Meeting Article 40 as presented. Second by Mr. Martecchini. Vote: 3:0:0.

ATM ARTICLE 42 (Revise Zoning Map): Mr. Wadsworth explained that this article allows a revision of the Zoning Map for the Town of Duxbury to accommodate a change made at the 2007 Annual Town Meeting regarding Bonggi's Turkey Farm. Mr. Martecchini moved that the Board endorse Annual Town Meeting Article 42 as presented. Second by Ms. Sullivan. Vote: 3:0:0.

ATM ARTICLE 43 (Wireless Communications Bylaw): Mr. Wadsworth says that the effect of this article is to reduce the setback for wireless towers from 800 feet to 400 feet. 800 feet is generally considered unenforceable. After discussion, Ms. Sullivan moved that the Board endorse Annual Town Meeting Article 43 as presented. Second by Mr. Martecchini. Vote: 3:0:0.

ATM ARTICLE 46 (Amend Zoning Bylaw to Add Wind Facilities Regulations): Three members of the Alternative Energy Committee (AEC) were present: Mr. Frank Duggan, Chair, Mr. John Murdock, and Mr. Andre Martecchini. Mr. Duggan explained that the Wind Facilities Bylaw provides a roadmap for permitting authorities in Duxbury. Article proposals were due in December. Since then, the AEC has suggested amendments to be consistent with the new Green Facilities Act. In addition, some amendments have been proposed to respond to comments at the public hearing.

Mr. Wadsworth said that the Planning Board has closed the public hearing on this matter, but has not yet taken a vote. There appears to be some fear amongst members that this bylaw could lead to a "wind turbine on every corner".

Mr. Witten expressed concern that the setback may be reduced by the Board of Appeals, at their discretion. He felt that this would be unfair to abutters. Mr. Martecchini explained that this provision was designed for situations like the Transfer Station, where turbines could be closer to those lot lines without adversely affecting residents. However, Mr. Witten said that the provision could end up having a negative effect on abutters.

Mr. Witten and Ms. Sullivan said that many of the ideas in the proposed bylaw are excellent, but that it is not quite ready to go forward. Ms. Sullivan moved that the Board endorse Annual Town Meeting Article 46 as presented. Second by Mr. Martecchini. Vote: 1:2:0. (Mr. Witten and Ms. Sullivan against.)

ANNUAL TOWN MEETING ARTICLE 47 (Re-Zoning for First Baptist Church): Ms. Ripley reported that a representative of the Church called to say that they would like to withdraw the re-zoning petition. The Planning Board and Finance Committee voted against the petition, and the Church is not optimistic about the result at Town Meeting. Mr. Witten asked Ms. Ripley to put the item on the agenda for next week, in hopes that the Church will put the withdrawal in writing.

ANNUAL TOWN MEETING ARTICLE 48 (Re-Zoning for Island Creek): Present were: Mr. John Keith, Property Owner; Mr. Paul Brogna, Engineer for owner; and Mr. Ed Marchant, Development Consultant. Also present were two members of the Board of Appeals: Mr. Dennis Murphy, Chair, and Ms. Judi Barrett. Mr. Marchant explained that this re-zoning petition is related to the applicant's proposal to expand the Island Creek Comprehensive Permit. Current regulations allow a limited commercial component to comprehensive permit projects, even if the underlying zoning is residential. However, if a Board of Appeals denies a commercial component for a residentially-zoned area, the applicant cannot appeal that decision.

Mr. Wadsworth said that the Planning Board voted against the re-zoning petition unanimously (4:0). The Planning Board was concerned that the petition applies to a portion of two parcels, and it is hard to discern the limits of this. Second, commercial development that is approved through a comprehensive permit process does not go through Special Permit review with the Planning Board. The Planning Board believes that the community wants to have the protections accorded by this Special Permit review.

Mr. Murphy said that, if the re-zoning petition is passed, that the Town loses control to the State, for an application that the Zoning Board of Appeals has been working on for five months so far. This is because the applicant will now be able to appeal any conditions put on the commercial component.

Ms. Barrett said that the Planning Board is charged with holding a public hearing and making a recommendation on proposed zoning changes. In her opinion, no other boards should have an opinion on the issue.

Mr. Witten commented that he expects that the new regulations which allow commercial zoning in comprehensive permit projects will eventually be overturned, because it can be seen as inconsistent with the law.

Mr. Martecchini said that he is in favor of the re-zoning petition, because the property in question was zoned commercial since 1976. In 2003, it was zoned residential to "clean up" the zoning map.

Mr. Witten said that he is opposed to making zoning changes in reaction to a particular development application.

Ms. Sullivan said that none of the arguments against the proposal imply that commercial zoning for this area would be a bad thing.

After continued discussion, Ms. Sullivan moved that the Board endorse Annual Town Meeting Article 48. Second by Mr. Martecchini. Vote: 2:1:0. (Mr. Witten voted against.)

ANNUAL TOWN MEETING ARTICLES 22, 23, & 24 (House Recycling Program, Housing Acquisition Program, and Affordable Housing Lots): These items were postponed to March 9, 2009, at the request of the proponents.

ANNUAL TOWN MEETING ARTICLE 3 (Compensation of Elected Officials): Mr. Witten noted that compensation for elected officials is being proposed at the same level as last year. Mr. Martecchini moved that the Board endorse Annual Town Meeting Article 3 as presented. Second by Mr. Witten. Vote: 2:0:0. (Ms. Sullivan briefly left the room, so did not vote.)

ONE-DAY LIQUOR LICENSE: MS. LAURA SULLIVAN FOR FRIENDS OF THE DUXBURY LIBRARY / FUNDRAISING EVENT ON MARCH 28, 2009

Mr. Martecchini moved that the Board of Selectmen grant a One-Day All-Alcohol License for a fundraising party to be held at the Duxbury Free Library on March 28, 2009, subject to all of the conditions listed on the license. Second by Ms. Sullivan. Vote: 3:0:0.

MINUTES

Mr. Martecchini moved that the Board of Selectmen minutes for January 12, 2009 be amended to show a unanimous vote to close the Street Acceptance Haring for Amado Way and Hillside Lane at 7:03 PM. Second by Ms. Sullivan. Vote: 3:0:0.

Ms. Sullivan moved that the Board accept the minutes of February 23, 2009 as presented. Second by Mr. Martecchini. Vote: 3:0:0.

Ms. Sullivan moved that the Board accept the minutes of the Executive Session of February 23, 2009 as presented, with the contents to remain sealed until the need for confidentiality has passed. Second by Mr. Martecchini. Vote: 3:0:0.

BONUS SHELLFISH SEASON

Mr. Martecchini moved that the Board declare a temporary Bonus Shellfish Season for the commercial harvesting of soft-shell clams for the month of March; a temporary Bonus Shellfish Season for the commercial harvesting of quahog clams for the month of March; and a temporary Bonus Shellfish season for the recreational harvesting of soft-shelled clams for the month of March, all as per the regulations contained in the Harbormaster's memorandum of February 23, 2009. Second by Ms. Sullivan. Vote: 3:0:0.

ADJOURNMENT

Ms. Sullivan moved to adjourn the meeting at 9:45 PM. Second by Mr. Martecchini. Vote: 3:0:0.