

Date: June 15, 2009

Date Minutes Approved: June 29, 2009

BOARD OF SELECTMEN MINUTES

Present: Elizabeth Sullivan, Chair; Christopher Donato, Vice-Chair, and Jon Witten, Clerk.

Absent: No members were absent.

Staff: Richard MacDonald, Town Manager; and Barbara Ripley, Executive Assistant.

Also Present: Attorney Robert S. Troy, Duxbury Town Counsel

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

OPEN FORUM

Lieutenant Susan James of the Duxbury Police Department read a letter to the Selectmen about the Duxbury Police Chief, Mark DeLuca. She is opposed to the Town Manager's decision not to renew the Chief's contract when it expires in November 2009. She introduced police chiefs and personnel from other towns that came to the meeting in support of Mark DeLuca.

Several other attendees asked to speak about the topic. Ms. Sullivan said that the issue is on the agenda for later in the meeting. Comments would be heard at that time.

BOND ANTICIPATION NOTE FOR THE CHANDLER SCHOOL ROOF

Mr. Thomas Connolly, Town Treasurer, was present. He explained that Annual Town Meeting 2009 Article 37, and Question Six on the March 28, 2009 ballot, authorized this borrowing. The note is dated June 24, 2009, and will be due December 1, 2009. Eastern Bank won the bid on this note with a rate of 1.45 percent. Ms. Sullivan commented on how favorable this rate is for the Town.

Mr. Witten moved that the Board of Selectmen sign the Bond Anticipation Note for the Chandler School Roof project. Second by Mr. Donato. Vote: 3:0:0.

YEAR-END TRANSFERS

In his absence, the Finance Director provided a packet to the Selectmen, proposing a series of year-end transfers of departmental funds, allowed under Chapter 77, Section 1, Acts of 2006. Mr. Buttкус was present to answer any questions about DPW department transfers.

Mr. Witten moved that the Board approve the following departmental transfers:

Amount	Sources	Uses
\$11,232.00	Treasurer/Collector Salaries Transfer Station Expenses	Central Building Expenses
\$ 8,000.00	Treasurer/Collector Salaries	Buildings & Grounds Expenses
\$33,000.00	Transfer Station Expenses Lands & Natural Resources Salaries Animal Control Expenses DPW Administration Expenses	Transfer Station Salaries
\$ 70.77	Selectmen Expenses	Public Celebrations--Expenses
\$ 1,200.00	Planning Expenses	Planning Salaries
\$10,323.78	Health Insurance Expenses	Snow & Ice Salaries
\$39,676.22	Liability Insurance Expenses	Snow & Ice Expenses

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

AQUACULTURE HEARING: ROBERT F. KNECHT / RENEWAL LICENSE APPLICATION

Present were:

Mr. Donald Beers, Duxbury Harbormaster

Mr. Al Hoban, Duxbury Shellfish Advisory Committee (SAC) Chairperson

Mr. Robert F. Knecht, applicant

Mr. Hoban confirmed that the SAC voted to recommend approval of this renewal. He said that the SAC also conferred with the Duxbury Bay Management Commission. The applicant said that his operation is proceeding favorably. There were no comments from the public.

Mr. Witten moved that the Board conclude the public hearing for the aquaculture license renewal application of Mr. Robert Knecht. Second by Mr. Donato. Vote: 3:0:0.

Mr. Witten moved that the Board approve the application for Mr. Robert Knecht for a renewal of his aquaculture license for ten years, with the condition of no structures on the license area. Second by Mr. Donato. Vote: 3:0:0.

CONSERVATION RESTRICTION: DINGLEYDELL ESTATES

Ms. Pat Loring was present to represent the Wildlands Trust. She explained that this is a private Conservation Restriction between the landowner and the Wildlands Trust. While the Town is not a party to the restriction, the State requires the signature of the Selectmen. The Planning Board conditioned their approval of the development of Dingley Dell Lane on the granting of this restriction. The property is surrounded by Pembroke and Duxbury conservation land.

Mr. Witten moved that the Board sign the Conservation Restriction for Dingley Dell Estates, consisting of approximately 16.2 acres. Second by Mr. Donato. Vote: 3:0:0.

ONE-DAY LIQUOR LICENSE

Mr. Witten moved that the Board approve a One-Day Wine and Malt license for Mr. Patrick Browne, as a representative of the Duxbury Rural & Historical Society, to hold a members' cocktail party at the King Caesar House on June 27, 2009 from 5:00PM to 7:00PM, subject to the conditions listed on the license. Second by Mr. Donato. Vote: 3:0:0.

VENDORS' LICENSE

Ms. Linda Collari was present. She explained that this is the last step in getting all the approvals and licenses needed for the Duxbury Farmers & Artisans Market. The first day will be July 1, 2009.

Mr. Witten moved that the Board of Selectmen approve a Vendors' License for the Duxbury Farmers & Artisans' Market, Inc., contingent upon payment of the license fee of \$20.00. Second by Mr. Donato. Vote: 3:0:0.

MEMORANDUM RE: POLICE DEPARTMENT MANUAL

Lieutenant James explained that this memorandum is needed as part of the accreditation process for the Police Department. It gives the authority to the Police Chief to create, maintain, and update a Police Department Manual, with the approval of the Town Manager and Board of Selectmen.

Mr. Witten moved that the Board approve a memorandum dated May 28, 2009 pertaining to a Police Department Manual. Second by Mr. Donato. Vote: 3:0:0.

POLICE DEPARTMENT MATTERS: POLICE CHIEF CONTRACT

Present were:

Mr. Mark DeLuca, Duxbury Police Chief
Mr. Robert Troy, Duxbury Town Counsel
Mr. Gerald McAuliffe, Mr. DeLuca's attorney

Mr. Donato explained that he requested that this item be put on the agenda. He said that, on June 4, 2009, the Police Chief received a letter from the Town Manager, informing him that the Chief's employment contract would not be renewed when it expires in November of 2009. Mr. Donato said that the Town Manager Act states that all appointments and removals by the Town Manager shall be subject to ratification by the Board of Selectmen. Failure to act within fifteen days of the appointment or removal constitutes agreement with the Town Manager's action.

Mr. Donato explained that, through his attorney, Chief DeLuca requested an Executive Session with the Selectmen to discuss the issue. Town Counsel responded that the issues currently before the Board are matters for Open Session.

Mr. Donato said that the two issues before the Board are:

- 1) Does a decision to "not renew" constitute a "removal"?
- 2) If so, should the Board ratify this decision?

Ms. Sullivan asked Mr. Donato to explain a potential conflict of interest that pertains to this issue. Mr. Donato explained that his wife was employed as the Administrative Assistant to the Police Chief. He explained that Ms. Sullivan requested that Town Counsel provide an opinion as to whether Mr. Donato could be involved in Police Department matters while his wife was employed in that position. After receiving the opinion, Mr. and Mrs. Donato

decided that, in order for Mr. Donato to participate in the matters at hand, that she should resign. Mrs. Donato resigned her position, effective June 10, 2009.

Mr. Troy confirmed that Mr. Donato has filed a copy of the Conflict of Interest opinion with the Town Clerk, and has disclosed the facts relating to his involvement. Mr. Troy said that he is satisfied with those actions.

Mr. Troy said that the issues are:

- 1) On June 4, 2009, the Town Manager gave notice that he did not intend to renew the Police Chief's contract.
- 2) This decision was appealed by the Chief's attorney.
- 3) The Board must decide if the letter is tantamount to a removal.
- 4) If it is a removal, does the Board want to ratify the removal, overturn the removal, or take no action?
- 5) The Board cannot renew the contract. Only the Town Manager can execute a contract with an employee.

Mr. Witten asked whether these matters should be discussed in Executive Session. Mr. McAuliffe, Mr. DeLuca's attorney, stated that he approves an Open Session, so long as the validity of the letter is not discussed.

Mr. Witten said that he is in favor of Duxbury's strong Town Manager Act. He said that the Selectmen, as part-time political employees, are not qualified to run the day-to-day operations of the Town. He wishes that the Selectmen would not be called upon to address issues such as this. However, the Town Manager Act essentially requires the Selectmen to get involved when there is an appeal. There is an appeal in this case.

Although Mr. Witten is not happy to be called upon for his opinion, he said that he has been, and so he is forced to give it. He said that, given the wording of the Town's contract with Chief DeLuca, the failure to renew constitutes a removal in his opinion. He also said that it is a "slippery slope" to remove someone without cause. The Chief's contract says that he can only be removed for "cause". Mr. Witten said that he wants Duxbury to be a good place to work. He does not want future employees to fear that they can be removed without cause.

Mr. Troy said that the appeal only asks that the Board of Selectmen not ratify the Town Manager's letter of June 4, 2009. He said that what will happen on November 20, 2009 when the contract expires is unclear.

Ms. Sullivan invited comments from the public:

Mr. Francis McTernan, President of the Duxbury Police Union, commented that it would be a mistake to release Chief DeLuca. He said that the department has flourished under his leadership.

Mr. James Murphy, former Selectmen, and resident of Barnswallow Lane, urged the Selectmen to support the Town Manager's decision. He said that if the Selectmen fail to support their hired manager, it will be hard to attract another one.

Ms. Debbie Jewell, resident of King Caesar Road, spoke in favor of the Police Chief. She said that he has done a tremendous amount for the kids in Town, especially in terms of the Police Athletic League (P.A.L.) and the Duxbury Student Union.

Mr. Steve Antonellis, resident of Washington Street, said that he supports a strong Town Manager Act as the best way to run the Town.

Ms. Selden Tearse, resident of Bay Road, asked questions about the differences between a "non-renewal" and a "removal".

Mr. William Keefe, resident of Myles View Drive, asked about the ultimate outcome with a ratification or non-ratification of the action by the Town Manager.

Mr. Donato responded to Mr. Keefe that he feared a possible lawsuit if the Board of Selectmen ratify the Town Manager's action.

Mr. Robert Doyle, resident of Old Cove Road, said that he is a good friend of the Chief and of the Town Manager. However, he said that it is important to support the Town Manager.

Mr. Bob Hayden, retired police superintendent of the MBTA, commented that he is not a Duxbury resident. However, his daughter was the victim of a crime in Duxbury. He said that Chief DeLuca left his home to find the perpetrator. Mr. Hayden also said that he was part of the team that selected Mark DeLuca as Duxbury's Police Chief. He said that Mr. DeLuca was chosen for his honesty, integrity, and courage.

Mr. Dan Somes, resident of Brick Hill Lane, used a baseball analogy. He said that when the players and management did not have a contract, that baseball stopped. He said that likewise, when Chief DeLuca's contract runs out, that he will not be an employee of the Town.

Mr. Ed Perry, resident of Bolas Road and owner of WATD radio station, said that as a journalist, it is hard to find things wrong in Duxbury. However, this issue could polarize the Town, he said. He requested that the doors be kept open for negotiation.

Ms. Margaret Kearney, resident of Church Street, and former Selectman, said that she supports the right of the Town Manager to select his management team. She said that it is crucial to preserve the Town Manager Act. She presented a letter, signed by six former Selectmen, expressing their support for the right of the Town Manager to make a decision not to renew the Police Chief's employment contract.

Mr. Bill Thomas, President of the Duxbury Police Dispatchers' Association, spoke in support of renewing the Police Chief's contract. He presented a letter to the Board of Selectmen from the Dispatchers' Association.

Mrs. Dyer, wife of fallen police officer Melvin Dyer, read a letter to the Selectmen. She described how Chief DeLuca supported her family throughout the ordeal of losing her husband in the line of duty last summer.

Mr. Jim Hussey, Cohasset Police Chief, said that he has known Chief DeLuca for twenty-five years. He said that Chief DeLuca works closely and cooperatively with other chiefs, and is an asset to the Town of Duxbury.

Mr. Dennis Symmonds, Duxbury Police Officer, said that the Town could not ask for a better police chief.

Mr. Ryan Cavicchi, Vice-President of the Duxbury Police Union, presented a letter to the Selectmen in support of the Police Chief.

Selectmen discussion and votes:

Ms. Sullivan said that she has had a long history of experience with the Town, having been a School Committee Member for nine years and a Selectman for seven years. In addition, she served on the Government Study Committee. She said that she has seen the importance of the Town Manager Act. Ms. Sullivan said that the position of Police Chief is not a political appointment. The Town has given the task of appointing a Police Chief to the

Town Manager. She said that she cannot support taking the Town Manager Act apart for the sake of convenience.

Mr. Donato made the following motion:

Pursuant to the Town Counsel's opinion dated June 10, 2009, I hereby move that the Board find that the Town Manager's notice to the Police Chief that his contract will not be renewed is in fact a Notice of Removal, as contemplated under Section 3, paragraph C (4) of Appendix B attached to the General Bylaws of the Town of Duxbury. Second by Mr. Witten.

Mr. Witten suggested that the motion be amended to reference the Town Manager Act and the Police Chief's employment contract. Attorney Troy stated that it would not be appropriate to reference these documents in the motion.

Vote: Mr. Witten and Mr. Donato in favor, Ms. Sullivan opposed.

Mr. Donato made the following subsequent motion:

In accordance with Section 3, paragraph C (4) of Appendix B attached to the General Bylaws of the Town of Duxbury, I hereby move that the Board not ratify the action of the Town Manager by correspondence dated June 4, 2009, regarding Police Chief Mark DeLuca. Second by Mr. Witten.

Under discussion of the motion, Mr. Witten said that if he thought that this motion was in opposition to the Town Manager Act, that he would vote against it. However, the Town Manager Act gives the Selectmen the responsibility to ratify the Town Manager's actions in certain circumstances.

Vote: Mr. Witten and Mr. Donato in favor, Ms. Sullivan opposed.

Mr. Donato suggested that the Board assign a Selectman to work with the Town Manager and the Police Chief on this issue. Ms. Sullivan said that this would fly in the face of the Town Manager Act, which keeps the Selectmen out of the day-to-day operations of the Town.

Attorney Troy suggested that the Board meet in Executive Session in order to discuss Police Chief contract options. Attorney McAuliffe said that he would not be opposed to this, so long as the police chief's performance was not a subject of the session. Ms. Sullivan suggested that the remaining Open Session business be completed first, so that the Board could adjourn after the Executive Session.

TOWN MANAGER'S BRIEF

Mr. MacDonald noted that the Town's Veteran's Agent, Mr. Rob Lyons, will be retiring soon. The Town is exploring options for regionalization of this service.

MINUTES

Mr. Donato moved that the Executive Session minutes of June 1, 2009 be accepted as written, with their contents to be sealed permanently since they deal with the King Caesar Fund which serves the medical and financial issues of needy citizens. Second by Ms. Sullivan. **Vote:** 2:0:1. (Mr. Witten abstained.)

COMMITTEE APPOINTMENTS

The following committee appointments were made. All votes were unanimous:

<u>Board</u>	<u>Name</u>	<u>Appt or Re-appt.</u>	<u>Term Expiration</u>	<u>Motion</u>	<u>Second</u>
Board of Health	David Brumley, MD	Re-appt.	6/30/12	Ms. Sullivan	Mr. Witten
Board of Health	Karen Tepper	Re-appt.	6/30/12	Ms. Sullivan	Mr. Witten
Council-on-Aging	Henry O. Milliken	Re-appt.	6/30/12	Ms. Sullivan	Mr. Donato
Council-on-Aging	Richard D. Sigrist, Jr.	Re-appt.	6/30/12	Ms. Sullivan	Mr. Donato
Council-on-Aging	John R. Madden	Re-appt.	6/30/12	Ms. Sullivan	Mr. Donato
Council-on-Aging	Hamilton Bowman	Appt.	6/30/12	Ms. Sullivan	Mr. Donato
Council-on-Aging	Anne Antonellis	Appt. to fill unexpired term	6/30/10	Ms. Sullivan	Mr. Donato
Design Review Bd.-- Alternate	Susan Bourget	Appt.	6/30/10	Mr. Donato	Mr. Witten
Duxbury Cultural Council	Rebecca Chin	Re-appt.	6/30/12	Ms. Sullivan	Mr. Witten
Duxbury Cultural Council	Barbara Kiley	Re-appt.	6/30/12	Ms. Sullivan	Mr. Witten
Duxbury Cultural Council	Mary Beth MacQuarrie	Re-appt.	6/30/12	Ms. Sullivan	Mr. Witten
Economic Adv. Council	Elizabeth Sullivan	Re-appt.	6/30/12	Ms. Sullivan	Mr. Donato
Economic Adv. Council	John Bear	Re-appt.	6/30/12	Ms. Sullivan	Mr. Donato
Historical Commission	Lynne E. Devnew	Re-appt.	6/30/12	Ms. Sullivan	Mr. Donato
King Caesar Adv. Comm.	Carol Langford, MD	Re-appt.	6/30/12	Ms. Sullivan	Mr. Witten
Local Housing Partnership	Diane Bartlett	Re-appt.	6/30/12	Mr. Donato	Mr. Witten
Local Housing Partnership		Re-appt.	6/30/12	Mr. Donato	Mr. Witten

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<u>Board</u>	<u>Name</u>	<u>Appt or Re-appt.</u>	<u>Term Expiration</u>	<u>Motion</u>	<u>Second</u>
Local Housing Partnership	John J. Todd	Re-appt.	6/30/12	Mr. Donato	Mr. Witten
Local Housing Partnership	Barbara Kelley	Re-appt.	6/30/12	Mr. Donato	Mr. Witten
Municipal Comm. on Disabilities (MCAD)	Joe Shea	Re-appt.	6/30/12	Ms. Sullivan	Mr. Witten
MCAD	Reino A. Kock	Re-appt.	6/30/12	Ms. Sullivan	Mr. Witten
Plymouth County Adv. Bd.	Elizabeth Sullivan	Re-appt.	6/30/10	Mr. Witten	Mr. Donato
Recreational Activities Committee	Stuart McEntee	Re-appt.	6/30/12	Ms. Sullivan	Mr. Donato
Recreational Activities Committee	Colleen Madigan	Re-appt.	6/30/12	Ms. Sullivan	Mr. Donato
Shellfish Adv. Comm	Dan Baker	Re-appt.	6/30/12	Mr. Donato	Mr. Witten
Shellfish Adv. Comm	John Brawley	Re-appt.	6/30/12	Mr. Donato	Mr. Witten
Shellfish Adv. Comm	Robert Loring	Re-appt.	6/30/12	Mr. Donato	Mr. Witten
Shellfish Adv. Comm	Gregory Morris	Appt.	6/30/11	Mr. Donato	Mr. Witten

VOTE TO ENTER EXECUTIVE SESSION

At 9:43 PM, Ms. Sullivan moved that the Board enter Executive Session in order to discuss contract negotiations with non-union personnel, and to re-convene in Open Session immediately afterward for the purposes of adjournment only. Second by Mr. Witten. Roll Call Vote: Mr. Witten—aye; Mr. Donato---aye; and Ms. Sullivan---aye.

END EXECUTIVE SESSION

At 10:45 PM, Ms. Sullivan moved that the Board end the Executive Session and re-convene in Open Session. Second by Mr. Witten. Vote: Mr. Witten---aye; Mr. Donato---aye; and Ms. Sullivan---aye.

ADJOURNMENT

At 10:46 PM, Mr. Witten moved to adjourn the meeting. Second by Mr. Donato. Vote: 3:0:0.