

Date: August 31, 2009

Date Minutes Approved: September 28, 2009

BOARD OF SELECTMEN MINUTES

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

Absent: No members were absent.

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

As reported by the Chair, the meeting was called to order at 6:15 PM. Attorney Robert Troy, Town Counsel, informed the Board that he prepared an opinion in response to a request from a member of the Board regarding the legal appropriateness of placing the Police Chief in the Supervisory Union. Attorney Troy indicated, as previously determined at the Labor Relations Board, Massachusetts General Law (MGL) Chapter 150E clearly states that management personnel are not allowed in a bargaining unit; nor are confidential employees. Mr. Troy gave an overview of his written opinion. In conclusion, Attorney Troy re-affirmed his opinion of July 17, 2009 that the Police Chief's position may not be included in the supervisory union.

Mr. Troy further opined that he had some concerns whether any of the positions appointed by the Town Manager should be allowed to be in a bargaining unit as the Town Manager Act supersedes any and all other provisions of the General Laws and special acts or bylaws of the Town of Duxbury.

ENTER EXECUTIVE SESSION

As reported by Ms. Sullivan, at approximately 6:30 PM, Ms. Sullivan moved that the Board enter Executive Session in order to discuss strategy with respect to litigation since an open meeting may have a detrimental effect on the town's litigating position and to reconvene in open session in accordance with Mass. General Laws Chapter 39, section 23b. Second by Mr. Donato. Roll Call Vote: Mr. Witten – aye; Mr. Donato – aye; and Ms. Sullivan—aye.

END EXECUTIVE SESSION

Shortly after 7:00 PM, the Executive Session was adjourned and the Board re-convened in Open Session. The public and Ms. Murray entered the room at that time.

Open Session was called to order at approximately 7:10 PM.

OPEN FORUM

No items were brought forward for discussion.

EVENT PERMIT: SERGEANT BRIAN JOHNSON FOR COPS FOR KIDS/ MOTORCYCLE RIDE ON OCTOBER 4, 2009

Sgt. Brian Johnson was present to discuss this event with the Board. This is the 5th annual "Cops for Kids with Cancer" motorcycle ride, which will take place on Sunday, October 4th. The ride goes from Boston to Kingston. The organizers expect about 125-175 motorcycles and to reach Duxbury around noon-time.

Sgt. Johnson was bringing the request to the Board because this year they have changed the route to go into Duxbury Beach Park via Gurnet Road and then over the Powder Point Bridge and via Powder Point Avenue to Washington ST through Hall's Corner to Bay Road and into Kingston.

In response to a concern about the impact on area residents, Sgt. Johnson indicated the ride should pass through the area within a 5-10 minute span.

There was a brief discussion with Sgt. Johnson regarding the proper permissions required, as the beach is owned by the Duxbury Beach Reservation, and the liability issues.

Mr. Witten moved that the Board of Selectmen approve the event permit regarding the fifth annual "Cops for Kids with Cancer" Motorcycle Ride to be held on October 4, 2009, at approximately noon, subject to all conditions to be worked out with the Town Manager's office. Second by Mr. Donato. Vote: 3:0:0.

EVENT PERMIT: JOHANNA KELLY FOR THE DUXBURY COMMUNITY PARTNERSHIP FOR CHILDREN / ROAD RACE ON OCTOBER 18, 2009

Ms. Kathleen Maney-Needel was present to represent the organizers. She described the event as a fun family fitness day at the Chandler School on October 18th from 8:30 AM to 1:00 PM. There will be a free health fair with demonstrations and activities for the kids and then a 5K run for adults and older children. The cost for participating in the 5K run is \$20. for adults and \$10. for children with the money to go towards the Duxbury Community Partnership for Children.

Mr. Witten moved that the Board of Selectmen grant to Johanna Kelly, as a representative of the Duxbury Community Partnership for Children, permission to hold a 5K Run and a Fitness Awareness Program at the Chandler School on October 18, 2009 from 8:30 AM to 1:00 PM, contingent on the conditions listed on the permit. Second by Mr. Donato. Vote: 3:0:0.

FEE HEARING

Ms. Sullivan indicated that the next item of business was an advertised fee hearing.

Present for this item of business:

Mr. Frank Mangione, Fiscal Advisory Committee Chair

Mr. Peter Buttkus, Director of Public Works

Chief Kevin Nord, Duxbury Fire Department

Ms. Patricia Pappas, Cemetery Director

Ms. Joanne Moore, Duxbury Council on Aging

Mr. Madden, Finance Director, said that department heads were asked to review their department fees and recommendations for increases and/or new fees were then reviewed with the Fiscal Advisory Committee. The department heads will explain the fee changes but basically they are intended to cover increased costs. He said the Board of Selectmen is being asked to approve the recommended fee increases / changes and to approve the overall fee schedule, which has been updated.

After some discussion it was decided go to through each department request and to set the effective date for each separately.

Transfer Station:

Proposal is for establishing new fees for couches and large upholstered furniture items, box springs and mattresses. Reason: Other area towns are charging and with disposal costs increasing the fee will defray some of the cost and discourage disposal of items that might not be from Duxbury.

Mr. Witten moved that the Board of Selectmen amend the Transfer Station fees to include new fees for (the disposal of) couches, upholstered furniture, box springs, and mattresses effective September 16, 2009 for a fee of ten dollars (\$10.00) per piece. Second by Mr. Donato. Vote: 3:0:0.

Mr. Buttkus indicated that only checks or charges will be accepted; no cash. Mr. Witten requested that notices be posted so the public could be informed of that.

Fire Department:

Chief Nord explained the proposed fees for three categories as follows:

Residential Fire Alarm Systems Inspections are basically resale compliance, i.e., it is now required by law that any time someone sells or refinances a property they are required to have smoke detectors and now carbon monoxide detectors installed and inspected. Due to the addition of the carbon monoxide detectors, there is increased time involved, and likewise the increase to the fee is warranted.

Commercial Fire Alarm System Inspections: Commercial fire alarm systems can be quite complex and sometimes require several visits so it was felt the time involved warranted the increased fee.

Residential (Initial & Final) Inspection Permit: In the new building code laws the fire department is now required to do plan review, which was not previously required for residential properties. So the added time involved does warrant an increase.

The following chart shows the proposed fee changes:

	Current Fee	Proposed Fee
Residential Fire Alarm System Inspections	25.00	35.00
Commercial Fire Alarm System Inspections	50.00	100.00
Residential (Initial & Final) Inspection Permit	25.00	50.00

Mr. Witten moved that the Board amend the Fee Schedule of the Town of Duxbury Fire Department effective September 16, 2009 to raise the fees for Residential Fire Alarm Systems Inspections to \$35.00, for Commercial Fire Alarm System Inspections to \$100.00, and for Residential (both the Initial & Final) Inspection Permit to \$50.00. Second by Mr. Donato. Vote: 3:0:0.

Inspectional Services:

Mr. MacDonald explained that the trench permit was a new regulation passed at Town Meeting but the fee had not been set at the time. The Farmers' Market Food Vendor Permit is to be paid by vendors who prepare foodstuffs elsewhere but then their products must be inspected by the Duxbury Board of Health to assure safety. Since the Farmers' Market is new to Duxbury this is a new fee, and it was agreed that it would be effective for next year's vendors.

Mr. Witten moved that the Board of Selectmen amend the Fee Schedule of the Town of Duxbury, to include the following new fees for the Inspectional Services Dept.:

Trench Permit:	\$35.00, effective September 16, 2009.
Farmers' Market Food Vendor Permit:	\$55.00, effective January 1, 2010.

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

Cemetery:

Ms. Pappas explained that the increase is being requested due to the cost of materials for cremations. She requested an October 1, 2009 effective date to allow time to notify local vendors.

Mr. Witten moved that the Board of Selectmen amend the Fee Schedule of the Town of Duxbury, to increase the cost of cremations from \$230.00 to \$250.00, effective October 1, 2009. Second by Mr. Donato. Vote: 3:0:0.

Council-On-Aging:

Ms. Moore gave an overview of the changes, which are shown on the following chart. She explained the increases are proposed due to increases in food costs and preparation. They are not raising the fees for the cost of meals delivered to shut-ins under the Meals On Wheels program as they are the individuals most in need.

	<u>Current</u> Fee	<u>Proposed</u> Fee
Congregate Meals - Seniors	4.00	5.00
Congregate Meals - Non-Seniors	5.00	6.00
Congregate Meals - Non-Residents	5.00	6.00

Mr. Witten moved that the Board of Selectmen amend the Fee Schedule of the Town of Duxbury, to include the following change for the Council-on-Aging, effective October 1, 2009: The Congregate Meals for Seniors from \$4.00 to \$5.00; the Congregate Meals for Non-Seniors from \$5.00 to \$6.00; and the Congregate Meals for Non-residents from \$5.00 to \$6.00. Second by Mr. Donato. Vote: 3:0:0.

Ms. Moore noted that individuals are asked to sign up 24-hours in advance to reserve a meal.

Police Department:

Mr. Mangione indicated that this was a statutory change by the Commonwealth of Massachusetts so the proposed fee is just to be in line with the State requirements.

Mr. Witten moved that the Board amend the Fee Schedule of the Town of Duxbury (Police Department), to reflect changes by the Commonwealth of Massachusetts increasing the fee for Gun Licenses from \$25.00 to \$100.00, and eliminating the fee for Gun License Photographs, effective pursuant to statute. Second by Mr. Donato. Vote: 3:0:0.

Updated Fee Book:

Ms. Ripley explained that the updated Fee Schedule book includes fee changes from last year's fee hearing and clarified several items where misunderstandings existed between departmental understandings of what had been approved and what was actually approved. In addition, it was an attempt to improve the format of the presentation and to put it in one document. The intention would be to annually update it. Tonight's changes will be incorporated before copies are made available.

Mr. Witten moved that the Board of Selectmen accept the Fee Schedule dated July 29, 2009 as the Fee Schedule for the Town of Duxbury, updated to reflect the votes of this evening. Second by Mr. Donato. Vote: 3:0:0.

A couple of general topics relating to fees were also discussed. General comments made were the following:

Mr. Witten raised a concern that the macro fees charged by primarily the land use boards for larger projects are proportionally less than the residential fees charged. He suggested those fees should be reviewed for changes.

Mr. MacDonald explained that the Town now has a process. The process involves the departmental review of fees on annual basis and a review of the proposed fees by the Fiscal Advisory Committee. This is something we have been working toward so that there is a process instead of numerous changes at anytime throughout the year. Mr. MacDonald also acknowledged Ms. Ripley's efforts in compiling the information and updating the Fee Schedule.

AQUACULTURE HEARINGS

Ms. Sullivan indicated that the next items of business are two publically-advertised aquaculture hearings and recognized Mr. Beers, Duxbury Harbormaster and Shellfish Constable.

Mr. Don Beers was present to speak on behalf of Mr. Al Hoban, Chair of the Shellfish Advisory Committee (SAC) and Mr. Ned Lawson, of the Duxbury Bay Management Commission (DBMC), who could not attend this evening.

Mr. Beers indicated that the Shellfish Advisory Committee held hearings in which both applicants presented their proposals and public input and comment was received. Regarding Mr. Knecht's proposal the SAC voted 5 to 1 to recommend approval to the Selectmen. Regarding Mr. McCormick's proposal the SAC voted unanimously to recommend approval to the Selectmen.

Mr. Beers also reported that the DBMC reviewed both applications at its meeting on August 13, 2009. At that time additional information was requested and after its review the DBMC is recommending approved but with no use of hard structures in the respective grow out areas. Suggested motions were prepared and given to the Selectmen, which incorporated the recommended conditions.

AQUACULTURE HEARING: ROBERT KNECHT

Mr. Robert Knecht indicated he currently has a grant of 1.5 acres on Goose Flat. This application is for an additional .25 acres at Hunt's Flat for off-bottom cultivation and an additional 1.25 acres for a grow-out area, which would bring his total grant to the maximum 3.0 acres allowed.

Before taking the vote the Chair solicited public comment but there was none.

Mr. Witten moved that the Board of Selectmen approve the aquaculture grant application of Mr. Robert Knecht, dated June 8, 2009, as approved by the Shellfish Advisory Committee and the Duxbury Bay Management Commission, which adds approximately 1.75 acres to the area farmed by Mr. Knecht, under the conditions that the total acreage granted to Mr. Knecht for aquaculture proposed does not exceed 3.0 acres, and that there is no use of hard structures, such as cages, on the Goose Flat grow out area. Second by Mr. Donato. Vote: 3:0:0.

AQUACULTURE HEARING: WILL McCORMICK

Mr. Will McCormick indicated he currently has a grant of .947 acres West of Goose Flat. This application is for an additional acreage a portion of which, .25 acres at Hunt's Flat, would be for off-bottom cultivation and the rest as a grow-out area, which would bring his total grant to the maximum 3.0 acres allowed.

Before taking the vote the Chair solicited public comment but there was none.

Mr. Witten moved that the Board of Selectmen approve the aquaculture grant application of Mr. William McCormick, dated August 6, 2009, as recommended by the Shellfish Advisory Committee and the Duxbury Bay Management Commission, which adds approximately 2.0 acres to the area farmed by Mr. McCormick, under the conditions that the total acreage granted to Mr. McCormick for aquaculture purposes does not exceed 3.0 acres, and that there shall be no use of hard structures, such as cages, on the Goose Flat grow out area. Second by Mr. Donato. Vote: 3:0:0.

VENDOR PERMIT APPLICATION: OSPREY SEAFOOD / Mr. Jeffrey Bolster

Mr. Bolster was present to discuss his proposal with the Board. He explained that he is currently selling lobsters at the Duxbury Farmers' and Artisans' Market on Wednesday afternoons. He is hoping to expand on that to sell lobsters out of the small building on the cranberry bog property owned by Mr. Stan Merry near the intersection of Church ST and Temple ST. He noted that Mr. Merry has given his permission. Mr. Bolster also indicated that there is a pull off in front of the building so people can safely park. He is proposing selling lobsters at that location on Friday and Saturdays from 3:00 PM to 6:00 PM until mid-October.

In discussing this with the Board he said business at the Farmers' Market is good but he feels it would be better if it was held on a day closer to the weekend and with later hours.

Mr. MacDonald said that some zoning questions were just brought to his attention and he had tried to contact the Massachusetts Farm Bureau for clarification as this is a Chap. 40a Sect. 3 property. The questions revolve around allow uses for a property with this zoning and agricultural uses. Unfortunately he was not able to get an answer and is just concerned by the precedent that might be set. Therefore, he suggested the Board postpone making a decision or vote it conditioned upon the answers obtained clarifying the legality.

In general the Board was not opposed but had concerns for the legality and the precedent it might set without having zoning clarification. On the other hand the Board did not want to delay this if it was an appropriate use.

Mr. Witten moved that the Board of Selectmen approve the request from Mr. Bolster subject to an opinion from Town Counsel for compliance with Town of Duxbury Zoning bylaws and the State zoning; plus, if Town Counsel approves the use, that Mr. Bolster complies with the Hawkers and Peddlers' permit requirements for the Town of Duxbury, whatever requirements are required by the Board of Health, and the conditions listed on the suggested motion*. Second by Mr. Donato. Vote: 3:0:0.

*For the record the conditions listed were:

- 1) Compliance with the conditions of Mr. Bolster's retail seafood truck dealer license from the Department of Marine Fisheries;
- 2) Receipt of a DBA certificate from the Duxbury Town Clerk;
- 3) Payment of License Fee (\$20.00).
- 4) Signed Workers Compensation Affidavit stating that either Workers Compensation I insurance is provided, or that Mr. Bolster is a sole proprietor with no employees; and
- 5) Signed R.E.A.P. form (certification of State tax compliance)

BUSINESS

ONE-DAY LIQUOR LICENSES

John Hamilton for Council-on-Aging/ Reception on 9-10-09

Mr. Witten moved that the Board of Selectmen grant to Mr. John A. Hamilton, as a representative of the Friends of the Duxbury Council on Aging, a One-Day Wine & Malt License to hold a Lifelong Learning reception at the Duxbury Senior Center on September 10, 2009 from 5:00 PM to 7:00 PM, subject to the conditions listed on the license. Second by Mr. Donato. Vote: 3:0:0.

John Hamilton for Council-on-Aging / Jazz Concert on 10-01-09

Mr. Witten moved that the Board of Selectmen grant to Mr. John A. Hamilton, as a representative of the Friends of the Duxbury Council on Aging, a One-Day Wine & Malt License to hold a Jazz Concert at the Duxbury Senior Center on October 1, 2009 from 5:30 PM to 8:30 PM, subject to the conditions listed on the license. Second by Mr. Donato.
Vote: 3:0:0.

Karen Matthews for Duxbury Education Foundation / Divots for Duxbury 9-21-09

Mr. Witten moved that the Board grant to Ms. Karen Gallagher Matthews, as a representative of the Duxbury Education Foundation, a One-Day Wine & Malt license to hold a fundraiser on September 21, 2009 from 6:00 PM until 9:00 PM at the Art Complex and Museum at 189 Alden Street, subject to the conditions listed on the license. Second by Mr. Donato. Vote: 3:0:0.

EVENT PERMIT

Thomas O'Regan for Powder Point Avenue Block Party/ September 13, 2009

Mr. Witten moved that the Board of Selectmen grant to Mr. Thomas O'Regan, as a representative of the Powder Point Neighborhood Association, permission to hold a block party on Sunday, September 13, 2009 from 3:00 PM until 6:00 PM, with a rain date of September 20, 2009, contingent on the event being conducted as described in the letter by Mr. O'Regan, received in the Town Manager's office on August 25, 2009. Second by Mr. Donato. Vote: 3:0:0.

TOWN MANAGER'S BRIEF

- Certificate of Achievement in Excellence in Financial Reporting:** Mr. MacDonald announced that the Town of Duxbury received the Certificate of Achievement in Excellence in Financial Reporting. He read the award and explained it is not easily achieved and he congratulates the Finance staff.
- Patriot Ledger's Answer Book:** Mr. MacDonald mentioned that the Patriot Ledger annually publishes The Answer Book, which contains information about the South Shore communities. In the past the Town has been contacted and asked to provide updated information. This year the Town was not contacted and the Patriot Ledger made an editorial decision and left Duxbury out.
- Dep. Chief William Carrico** in Duxbury soon to be Chief Carrico in Halifax. A luncheon was held today to congratulate him and wish him well as he assumes his new position.
- LIP Regulations:** To follow up on a question as by the Board at a past meeting Mr. MacDonald advised the Board the LIP Regulations were approved.

ANNOUNCEMENTS

1. **200th Anniversary of King Caesar House Mini-Documentary:** Ms. Sullivan said she attended the celebration honoring the 200th Anniversary of the King Caesar House, and on behalf of the Board of Selectmen presented a Proclamation. A mini-documentary produced by Mr. Bryan Felty of Good Bone Productions giving an overview of the historical use of the property was shown. Thanks to Mr. Gary Marshall, our Comcast Community Access Coordinator, the mini-documentary was shown on the Duxbury Channel (#15) prior to tonight's meeting. Mr. Marshall said he would make every effort to add it to the beginning of Selectmen's Meeting tape so that the mini-documentary can be viewed again when the Selectmen's meeting is replayed for those who missed it. Watch Channel 15 for updates.
2. **Reminder that Monday, September 7, 2009 is the Labor Day holiday and the Town Hall will be closed.**
3. **Duxbury Schools are back in session on Wednesday. Please drive carefully.**

MINUTES

Executive Session 8-17-09

Mr. Witten moved to approve the Executive Session Minutes of August 17, 2009, to remain sealed due to medical confidentiality. Second by Mr. Donato. Vote: 3:0:0.

Open Session 8-17-09

Mr. Witten moved to approve the (Open Session) Minutes of August 17, 2009 as presented. Second by Mr. Donato. Vote: 3:0:0.

BONUS SHELLFISH SEASON

Mr. Donato moved that the Board of Selectmen declare a temporary Bonus Shellfish Season:

1. **for the commercial harvesting of softshell clams for the month of September, in accordance with Attachment B & C of the posted regulations. and**
2. **for the commercial harvesting of quahog clams for the month of September, in accordance with Attachment A & C of the posted regulations.**

Second by Mr. Witten. VOTE: 3:0:0.

COMMITTEE APPOINTMENTS / RE-APPOINTMENTS

Highway Safety Committee

Ms. Sullivan moved that the Board of Selectmen appoint Dep. Chief Chris West to the Highway Safety Committee as the Fire Dept. representative as an *ex officio* for a term to expire on June 30, 2012. Second by Mr. Donato. Vote: 3:0:0.

Alternative Energy Committee

Mr. Donato moved that the Board of Selectmen appoint Mr. Josh Cutler and Ms. Leslie Lawrence to the Alternative Energy Committee for terms to expire on June 30, 2010. Second by Mr. Witten. Vote: 3:0:0.

Ms. Sullivan read a list of Boards that have open seats.

ADJOURMENT

Mr. Witten moved to adjourn at 8:35 PM. Second by Mr. Donato. Vote: 3:0:0.