

**Date: February 2, 2009**

*Date Minutes Approved: February 9, 2009*

## **BOARD OF SELECTMEN MINUTES**

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

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

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

### **OPEN FORUM**

Ms. Pixie Lampert, Chair of the Duxbury Nuclear Advisory Committee, appeared to inform the Selectmen, and the public, that Rep. Matthew Patrick of Falmouth has filed legislation to amend M.G.L. Chapter 111H, Sect. 5D, which would increase funding to allow the Mass. Dept. of Public Health (DPH) to do the appropriate surveillance monitoring of the nuclear facilities, which currently the Mass. DPH has not been able to do due to lack of funding. Ms. Lampert thanked Rep. Tom Calter, Rep. Jim Cantwell, and Rep. Marc Paccheo, who are the representatives from this area that have already indicated their willingness to co-sponsor the legislation. Other representatives have until Wednesday morning to support the legislation.

Ms. Barbara Kiley, a member of the Tarkiln Study Committee, explained that the asbestos in the basement at the Tarkiln is hindering the Committee's ability to get work done. They have obtained an estimate from a local contractor for \$4000.00 to cover the cost of removal the asbestos plus \$500.00 for a dumpster. The Committee is requesting the Selectmen approve an expenditure from the Richmond G. Wight Fund, which gives preference to the preservation of historical places and buildings.

Mr. MacDonald confirmed the asbestos in the basement is friable (i.e., in the air). Mr. Witten noted whether the Tarkiln Building is preserved or to be torn down the asbestos would have to be removed so the money would have to be expended regardless of the outcome of the CPC article on the Tarkiln. There was, however, considerable discussion as to why the asbestos removal costs were not included in the CPC funding request versus being requested from a trust fund, esp. when other projects are also requesting trust fund money. The rest of the discussion was deferred to discussion of the CPC Tarkiln article later on the agenda.

### **DISCUSSION OF TOWN MEETING ARTICLES**

*[Note: ATM refers to Annual Town Meeting. STM refers to Special Town Meeting. Please also note that this not the final numbering of the articles, but as they are numbered in the draft.]*

#### **LV: Prohibition of Public Use of Marijuana (consider for warrant)**

Mr. Witten opened this item as the first business matter and recognized Chief DeLuca to explain the article.

Chief DeLuca explained that the State ballot question which passed which decriminalized possession of less than an ounce of marijuana omitted any mention of public use of marijuana. Much as public use of alcohol is not allowed, there is significant support by Police Chiefs to pass this article. Marijuana use is still illegal, but what the ballot vote did was to change possession of less than an ounce to a civil (citation) offense from a criminal offense. The proposed article would allow law enforcement to assess a fine of \$300.00 for public use of marijuana (less than an ounce).

In response to a concern expressed by Ms. Sullivan regarding the language “enforcement by criminal indictment or complaint”, Chief DeLuca indicated it (a) goes along with the language of the cited chapter and section and (b) the Town bylaw cannot be more stringent than the State penalty.

Mr. Witten and Mr. MacDonald indicated that the language presented is being adopted by many communities across the Commonwealth.

Mr. Martecchini moved that the Board of Selectmen support Article LV (Public Use of Marijuana) by voting to amend the General Bylaws by adding the following new Section 7.5, entitled “Public Use of Marijuana or Tetrahydrocannabinol”, and renumbering the existing sections 7.5 through 7.18 accordingly. Second by Ms. Sullivan. Vote: 3:0:0.

### XIII: Reduce CPC Surcharge

Mr. Witten explained that the petitioners requested that discussion of this article be postponed so it will be on the agenda at the next Selectmen’s meeting on 02-09-09.

### PRESENTATION OF OPEN SPACE PLAN

Mr. Witten returned to the first agenda item, and recognized Mr. Joe Grady, Conservation Administrator to present it.

Mr. Grady said that the Town has received notification that the Duxbury Open Space & Recreation Plan has been formally accepted by the State. This makes Duxbury eligible for grants through 2013. The Plan contains a wealth of information, including inventory lists of town landings and lands, and maps. They are available for review at the Town Clerk’s Office, the Reference Desk at the Duxbury Free Library, at the Conservation Office, and on the Town website on the Conservation web pages. Electronic versions, in DVD format, are also available.

Mr. Witten commended the Open Space and Recreation Committee and all who worked on the document.

### DISCUSSION OF TOWN MEETING ARTICLES (CONTINUED)

#### Present for discussion of the articles were:

Ms. Ripley, Executive Assistant to the Town Manager  
Ms. Holly Morris, Chair – Community Preservation Committee  
Dr. Lynne Devnew, Historic Commission and Historic Comm. Rep. to CPC  
Mr. Joe Grady, Conservation Administrator  
Mr. Tag Carpenter and Ms. Barbara Kiley, Chair and member of Tarkiln Study Committee  
Mr. Joe Shea, Chair of War Memorial Committee  
Mr. Joe Lewis (Chair), Mr. John Taft and Ms. Nancy Johnson, Side Walk & Bike Path Committee  
Ms. Diane Bartlett, Chair of Local Housing Partnership (LHP)

### XXII: CPC Operating Fund

Mr. Madden gave an overview of the status of the CPC accounts. The basis of the of the CPC fund is the surcharge. He said that there is currently \$1,177,000.00 in the fund. Due to more communities becoming involved and a decrease in home sales and refinancing, the State Dept. of Revenue has advised Towns to expect a 35% match and for Duxbury this would be \$386,107.00. The CPC’s recommendation for the Operating Fund is for the amount of \$78,000.00. Any funds remaining in the Operating Fund go back into the CPC General Fund at the end of the year.

**XXIII: CPC Allocations**

The regulations indicate allocations should be made in three areas: Historic Preservation, Affordable Housing, and Open Space. The recommended dollar allocation is \$156,000.00 for each of the 3 categories.

Ms. Sullivan moved that the Board of Selectmen support Articles XXII: CPC Operating Fund and XXIII: CPC Allocations as presented. Second by Mr. Martecchini. Vote: 3:0:0.

**XXIV: CPC Tarkiln Building**

Ms. Morris said that the Tarkiln Study Committee is requesting \$435,720.00 for the restoration of the Tarkiln Building, and the CPC voted unanimously to support this request to be funded from the CPC Historical Account. She said the Tarkiln Committee have dramatically reduced the expense to a bare bones restoration. They should also be commended for the outpouring of volunteers who have come forward to paint the exterior of the building and for obtaining other donations, such as a furnace.

There was further discussion regarding using trust funds for the asbestos removal versus having that expense included in the CPC request. Tarkiln Study Committee felt the asbestos removal was a small expense but necessary to move forward. They thought that there were trust monies available. After considerable discussion Ms. Morris said she would re-visit the recommended dollar amount with the CPC, but in the interim the Selectmen would vote on the current recommendation.

Mr. Witten moved that the Board of Selectmen support Article XXIV: CPC Tarkiln Building in the amount of \$435,720.00 as recommended by the CPC. Second by Ms. Sullivan. Vote: 3:0:0.

**XXV: CPC Historic Properties Survey**

Ms. Morris indicated that the CPC recommends supporting this article in the amount of \$9000.00. Dr. Lynne Devnew explained that this request is for funding for an ongoing project to survey buildings and sites in Duxbury for inclusion in the Massachusetts Historical Commission database.

Ms. Sullivan moved that the Board of Selectmen support Article XXV: CPC Historic Properties Survey in the amount of \$9,000.00 as presented. Second by Mr. Martecchini. Vote: 3:0:0.

**XXVI: CPC Conservation Fund**

Ms. Morris said the CPC reviewed this article and unanimously supported funding \$77,450.00 from the Open Space CPC allocation to bring the level of the Conservation Fund back to \$100,000.00. The Conservation Fund is primarily for land acquisition of small parcels, but funds in the past have also been used for preparation of the Open Space & Recreation Plan.

It was noted that by setting aside monies in the Conservation Fund it does not require Town Meeting action when parcels become available. Mr. Grady gave some examples of this.

Ms. Sullivan moved that the Board of Selectmen support Article XXVI: CPC Conservation Fund as presented. Second by Mr. Martecchini. Vote: 3:0:0.

**XXVII: CPC War Monument**

Ms. Morris began by acknowledging the efforts of Mr. Joe Shea in locating the pieces of the monument and his committee in obtaining additional information and estimates. She said the request from the War Memorial Committee was originally for \$100,000.00 to restore the WWI Monument; based on estimates received. The CPC, on a split vote, is recommending \$75,000.00.

When asked for explanation of this Ms. Morris said that some of the members feel philosophically that projects like this should have a community outreach for donations and involvement and not be funded in full. She cited the Bluefish River Firehouse and the O'Neill Farm as prior examples where donations were solicited.

Mr. Joe Shea, Chair of the War Memorial Committee, pointed out to the Selectmen that when the Committee was formed it was instructed not to get into fundraising. Mr. MacDonald explained that since the Committee was appointed by the Town Manager as such is a "Town Government" committee which is not allowed to raise funds.

Mr. Shea mentioned the Committee has requested the differential be covered with monies from several of the Town's trust funds.

After discussion, it was agreed Ms. Morris would re-visit the recommended dollar with the CPC, but in the interim the Selectmen would vote on the current recommendation.

Mr. Martecchini moved that the Board of Selectmen support Article XXVII: CPC War Monument in the amount of \$75,000.00. Second by Ms. Sullivan. Vote: 3:0:0.

Mr. Witten suggested he would put a further discussion of the War Memorial Committee's request for trust funds on next week's agenda pending the outcome of the CPC Meeting.

#### **XXVIII: CPC Bike Path**

Ms. Morris said the CPC voted unanimously to support the request for \$56,000.00 to come from the CPC General Fund for plans and specs for the design of a bike path.

Mr. Jeff Lewis, Chair of the Side Walk & Bike Path Committee, said it is for an approx. ½ mile, off-road bike path along Tremont Street between Chestnut ST and Depot ST. The intent is to get the design so that construction funds could be obtained through grants or other sources.

There was considerable discussion about the following:

- what the \$56,000.00 would or would not cover
- concerns about the issues regarding laying it out on both the East side and the West side of Tremont ST
- lack of legal funds and the anticipated significant legal costs to work out easement issues
- concerns about obtaining funding for the actual construction

Ms. Morris said that the CPC in reviewing this felt that funding of the design was needed in order for the Bike Path Committee to take the next step and move the project forward.

Ms. Sullivan moved that the Board of Selectmen support Article XXVIII: CPC Bike Path as presented. Second by Mr. Martecchini. Vote: 1:2:0 (Mr. Witten voted "aye". Mr. Martecchini and Ms. Sullivan voted "nay".)

#### **XIX: Conservation Commission: Transfer Parcels to Town-Owned Land**

Mr. Joe Grady, Conservation Administrator, said the Conservation Commission is requesting the transfer of twelve parcels of salt marsh located north of the Powder Point Bridge from the care and custody of the Board of Selectmen to the care and custody of the Conservation Commission.

**Mr. Martecchini moved that the Board of Selectmen support Article XIX: Conservation Commission: Transfer Parcels to Town-Owned Land from Board of Selectmen control to the Conservation Commission's control as presented. Second by Ms. Sullivan. Vote: 3:0:0.**

**XX: Conservation Commission: Non-Criminal Penalties for Conservation Violations**

**Per Mr. Grady, the Conservation Commission formally adopted rules and regulation for the use of conservation lands and in the process included a penalty provision, but those were not specified. They are now prepared to ask that the enforcement aspects be approved. Enforcement would be by Police, Conservation Commission members or the Conservation Staff.**

**Ms. Sullivan moved that the Board of Selectmen support Article XX: Conservation Commission: Non-Criminal Penalties for Conservation Violations as presented. Second by Mr. Martecchini. Vote: 3:0:0.**

**XXI: CONSERVATION COMMISSION: Cherry Lane Bog Mgt.**

**Per Mr. Grady, in Dec 2009 the lease agreement on the Cherry Lane Bog will expire. This article is seeking authorization to extend the agreements for a 10-year period versus the 5-year agreements offered in the past. Since bog management is a long-term proposition, the Conservation Commission supports a longer-term agreement.**

**Mr. Martecchini moved that the Board of Selectmen support Article XXI: Conservation Commission: Cherry Lane Bog Mgt. as written. Second by Ms. Sullivan. Vote: 3:0:0.**

**XXX: CPC/LHP House Recycling**

**Mrs. Bartlett, Chair of the LHP, said that this article was previously discussed, but it was felt clarification of the procedural steps needed to be outlined. The intention of the article is to have funds available so that should a property be gifted then there would be funds available to move it so it could be used for affordable housing. The Historical Commission is supportive as it may prevent the demolition of older houses. Ms. Bartlett gave an overview of the procedural steps, which have been developed.**

**Ms. Morris said the CPC voted unanimously to fund this project in the amount of \$100,000.00 from the CPC Affordable Housing Fund.**

**Members of the Selectmen felt that there should be some assessment of programs like this one so that the funds could be released from their dedicated purpose to go back into the CPC General Fund if they are not being used as intended.**

**Ms. Sullivan moved that the Board of Selectmen vote to support Article XXX: CPC/LHP House Recycling as presented. Second by Mr. Martecchini. Vote: 3:0:0.**

**XXXI: CPC/LHP Housing Acquisition Program**

**Ms. Bartlett said that the intent of this article would be to provide funds should an appropriate property for affordable housing be available for purchase. This would enable affordable houses to be purchased on a more timely basis. She added that there are two potential properties currently under consideration.**

**Ms. Morris said that the CPC voted to support this article in the amount of \$300,000.00**

**Ms. Sullivan reported that the Affordable Housing Trustees have not discussed the housing articles. The Trustees will be meeting tomorrow and will discuss the housing articles.**

**Mr. Martecchini moved that we support XXXI: CPC/LHP Housing Acquisition Program as presented. Second by Ms. Sullivan. Vote: 3:0:0.**

**Ms. Sullivan added she would like to see a designation in the motion on Town Meeting floor indicating where the funds go and how the funds get accessed. In addition, questions regarding who would then own the property and who would be liable were raised and need clarification be the Town Meeting vote.**

#### **XXXIV: LHP Lakeshore Drive & Summer Street Affordable Housing**

**Ms. Bartlett indicated that these two lots are being looked at as potential locations for a house to be moved to or built on.**

**After considerable discussion it was decided further research regarding the lots needed to be done to determine if they would be suitable regarding perc tests, zoning regulations, and wetlands regulations. This article was postponed to a future Selectmen's agenda to allow time for the research.**

#### **ORDERING OF STM/ATM ARTICLES FOR WARRANT**

**The Board discussed the order that the articles should appear on both the STM and the ATM Warrants and agreed to a final ordering of the warrants.**

#### **EXECUTION OF PURCHASE & SALE AGREEMENT FOR GOODRICH PROPERTY**

**Ms. Ripley indicated that the Board had previously voted to buy the parcel, but might want to make a motion regarding the Purchase and Sale Agreement to be executed.**

**Mr. Martecchini moved that the Board of Selectmen execute the purchase and sale agreement to purchase 3.6 acres of land off South River Lane West from Natalie S. Goodrich and Peter N. Muncey, Jr. , as Trustees of the Benjamin F. Goodrich, Jr. Realty Trust. Second by Ms. Sullivan. Vote: 3:0:0.**

#### **SITE ELIGIBILITY COMMENTS FOR MILLBROOK CROSSING**

**Mr. Witten mentioned that the Board had been working on preparing a letter to provide project eligibility comments to the Massachusetts Housing Partnership (MHP). He said on Wednesday the Board received an email indicating the MHP is not in a position to move forward with the request because they concluded that the commercial use must be ancillary to the residential use in accordance with the regulations.**

**Mr. Witten ask his colleagues whether they would agree to send a letter to MHP admonishing the MHP for wasting the Selectmen's time, the staff's time, and because it was inexcusable that it went this far.**

**It was agreed that Mr. Witten would draft the letter and Mr. MacDonald will review it before bringing it to the Board.**

#### **DISCUSSION OF ISLAND CREEK SUBMISSION TO MEPA**

**Mr. Witten asked the Selectmen whether they would like to comment on the Island Creek Village project regarding the Environmental Notification Form. What the Board would be commenting on is whether they would want to see an Environmental Impact Report (EIR) regarding this project and if so what specifically they feel it should focus on.**

Mr. Martecchini agreed to draft a letter to be discussed at the next meeting since comments are due on February 10, 2009.

## **BUSINESS**

### **TOWN MANAGER'S BRIEF:**

Mr. MacDonald mentioned the following:

1. **Construction Costs for January 2009** were \$548,000.00 and noted this was a significant decrease.
2. **FY'09 State Budget Cuts**: The State has cut local aid to Duxbury \$107,000.00 for FY'09. As a conservative budget approach was taken Mr. MacDonald said that for FY'09 adjustments will be made, which should enable us to absorb the difference for this fiscal year.
3. **FY'10 State Budget Cuts**: FY'10 House I (the Governor's Budget) has Duxbury receiving a gross amount of \$621,000.00 less State local aid. Of that amount the net is \$500,000.00, but they are accounting for an additional \$100,000.00 in meals and room taxes.

Mr. Madden also explained that \$400,000.00 was due to a reduction in Chapter 70 (Education Funds). He explained that the State realized that it had short-changed some communities for a number of years so there had been a catch-up provision in effect where those communities were receiving additional amounts for five years. The catch-up provision was to be in effect through FY'10. Mr. Madden never expected that the State would renege on the final year of that catch-up and by level-funding Chap. 70 fund the State wiped out the amount that was expected for FY'10.

### **MINUTES**

Ms. Sullivan moved that the Board accept the Minutes of January 20, 2009 as written. Second by Mr. Martecchini. Vote: 3:0:0.

Ms. Sullivan moved that the Board accept the Minutes of January 26, 2009 as written. Second by Mr. Martecchini. Vote: 3:0:0.

### **APPOINTMENTS**

Ms. Sullivan announced after twenty-five years as Town Historian Mrs. Katherine Pillsbury has indicated that she feels it is time to step back. She noted Mrs. Pillsbury has very graciously agreed to assist the new Town Historian, and even went so far as to find a very capable successor, Mr. Tony Kelso. The Board extended its thanks to Mrs. Pillsbury.

Ms. Sullivan moved to appoint:

Mr. Tony Kelso as Town Historian to fill an unexpired term due to expire on June 30, 2011 and Ms. Katherine Pillsbury as Town Historian Emerita.

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

Mr. Witten then gave Mr. Kelso his first assignment as Town Historian. A letter was recently received 90-year-old gentleman from Tasmania, Australia seeking information on Captain Amasa Delano. "He was a captain of a sealing ship in the early 19th century, and the story "Benito Cereno," by Herman Melville, your great writer ("Moby Dick") was base upon Captain Delano's narrative."

**NEXT MEETING**

The next Board of Selectmen meeting will be held on Monday, February 9, 2009, at 7:00 PM.

**ADJOURNMENT**

At 9:55 PM, Mr. Martecchini moved to adjourn the meeting. Second by Ms. Sullivan. Vote: 3:0:0.