

**Date: March 9, 2009**

*Date Minutes Approved (as amended): March 23, 2009*

## **BOARD OF SELECTMEN MINUTES**

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

**Absent:** No members were absent.

**Staff:** Mr. MacDonald, Town Manager. Ms. C. Anne Murray, Dept. Secretary, was only present for the Open Session. (Mr. Madden was absent due to illness.)

The meeting was called to order at 6:15 PM.

### **ENTERED EXECUTIVE SESSION**

Upon convening, Mr. Witten moved that the Board of Selectmen go into Executive Session 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. Roll Call Vote: Mr. Witten – aye; Ms. Sullivan—aye; Mr. Martecchini—aye.

### **RECONVENED IN OPEN SESSION**

The Board re-convened in Open Session at approximately 7:00 PM, and Mr. Witten explained that the Board had been in an Executive Session with Town Counsel Robert Troy regarding litigation matters.

### **INTRODUCTION OF THOMAS BROADRICK, PLANNING DIRECTOR**

The appointment of the new Planning Director had previously been announced. Tonight Mr. MacDonald was taking the opportunity to re-introduce Mr. Broadrick. Mr. MacDonald mentioned that although Mr. Broadrick started on March 4<sup>th</sup>, he is not a newcomer to Duxbury as Mr. Broadrick previously served as the Duxbury Planning Director for a number of years. Mr. Broadrick said he was happy to be back working for the Town and appreciated the welcome.

### **OPEN FORUM**

Mr. Tag Carpenter, Chair of the Tarkiln Study Committee (TSC), explained that the TSC has been asked "How the building would be run if it were re-opened?" and felt they should be prepared to make a recommendation. The TSC reviewed 3 possible scenarios and wanted to make the Selectmen aware of their recommendation in advance of Annual Town Meeting.

The three options considered were for the Tarkiln Building to be managed and operated by: (a) Town employees; (b) Town employees with active volunteers; or (c) by a non-profit organization under Agreement with the Town. The TSC reviewed examples of similar situations in Bedford and Lexington. Mr. Carpenter said the Tarkiln Study Committee voted to recommend option (c).

### **TOWN MEETING ARTICLES**

*[Note: ATM refers to Annual Town Meeting. STM refers to Special Town Meeting.]*

Present for the discussion of Articles: Ms. Barbara Ripley, Executive Assistant to the Town Manager, and Mr. Frank Mangione, Chair of the Fiscal Advisory Committee were present to provide clarification or respond to any questions regarding the articles to be discussed.

**ATM Articles 33, 34, & 35: Continued Discussion of Public Safety Building articles  
(Previously voted)**

**Present for discussion of these articles were:**

**Mr. Neil Johnson, Chair of the Public Safety Building Feasibility Study Committee (PSBFSC)  
Police Chief Mark DeLuca and Fire Chief Kevin Nord**

**Mr. Frank Mangione, Chair of the Fiscal Advisory Committee and Member of the PSBFSC  
(Mr. Martecchini is also the Selectmen's representative on the PSBFSC.)**

**Mr. Witten gave a brief overview of Articles 33, 34, and 35 (the Public Safety Building Articles) and the Selectmen's previous votes on these articles. (See Selectmen's Minutes of 2-23-09 for additional details.)**

**Mr. Witten recognized Mr. Neil Johnson, PSBFSC –Chair, to explain why Articles 33, 34, and 35 are being reconsidered tonight. Mr. Johnson said the PSBFSC has had extensive discussions about the three Public Safety Building Articles. At a meeting on March 4, 2009, after further consideration and discussion with the Cranberry Hill neighborhood, the PSBFSC reconsidered their prior recommendations and re-voted the Articles as follows:**

**Article 33 (Combined, New Police and Fire Facility): PSBFSC voted to support Indefinite Postponement (IP). There was no change from the PSBFSC previous vote on this article.**

**Article 34 (New Police Station on Mayflower ST): PSBFSC voted to support Art. 34 for only the amount of \$435,000, which would be the design cost plus extra service fees. This represents a change as previously the PSBFSC was supporting funding of the total project cost of \$7,775,000.**

**Article 35 (Fire Station: New Administrative and crews quarters' wing with the building brought up to code and repair): PSBFSC voted to support Art. 35 for a repair only in the amount of \$1,000,000, which would be to fund only a short-term solution for the most urgent repairs. The PSBFSC last vote on this article was to recommend the new Administrative and crews quarters' wing with the building brought up to code and repair for a total projected cost of \$5,200,000, which represents the long-term repairs and overall needs of the Fire Department.**

**A considerable amount of time was spent discussing the rationale for the PSBFSC's changed votes. Mr. Johnson indicated that the PSBFSC does believe that funding the full amount on both Articles 34 and 35 would be more economical. The concern of the PSBFSC was whether the requests would pass both at Town Meeting and on the ballot.**

**With respect to Article 34 (Police Station) Mr. Johnson explained the PSBFSC felt that the design and bidding would take approximately a year. By proceeding with a phased project, the PSBFSC would be in a better position to respond to questions raised by the Cranberry Hill neighborhood and to present a more concrete project for the construction funding at the 2010 ATM. The PSBFSC also felt that phasing the project could reasonably be done and would not be too detrimental as far as cost.**

**With respect to Article 35, the PSBFSC believes that it would be more economical to fund the entire project, but given the financial times are concerned whether it would pass both at Town Meeting and on the ballot. With the Fire Station the need is more urgent as there are critical repairs that cannot be delayed, such as a non-working boiler, leaking roof, etc.**

**The Selectmen felt that the PSBFSC should make their recommendation only on the basis of what they believe is the most economical and best course of action for the Town given the public safety needs, and not try to second guess the Town Meeting or voters.**

**Mr. Martecchini moved that the Board of Selectmen endorse Article 34 (new Police Station) in the amount of \$435,000 for design fees only. Second by Ms. Sullivan. Vote: 3:0:0.**

**The Selectmen previously voted to support Article 35 in the amount of \$5,200,000 and that vote stands.**

**ATM Article 12: Fourth of July Parade**

**Ms. Maggie Kearney, Co-Chair of the Fourth of July Committee, was present for this item.**

**Mr. MacDonald said that he recognizes the importance of the parade to the community and has managed to budget \$10,000 in the FY'10 budget towards the Fourth of July celebration. Mr. MacDonald did warn that the FY'11 budget is going to be even more difficult and the Town might not be able to continue this level of funding in the future.**

**As an aside, Mr. MacDonald mentioned that the budget does also contain funds for street lighting. Street lighting was another item that had been considered for cutting from the FY'10 budget. In the interim Mr. MacDonald learned NStar would charge \$100 To \$200 per street light to turn street lights off. In response to an inquiry from Ms. Sullivan, the Town Manager agreed to explore LED lighting for the street lights, but cautioned that there is an initial conversion expense.**

**Ms. Sullivan moved that we endorse Article 12 (Fourth of July Parade) as presented. Second by Mr. Martecchini. Vote: 3:0:0.**

**Ms. Kearney assured the Board the Fourth of July Committee is aware of the financial constraints and is working now to save towards the future expenses.**

**ATM Article 22: Housing Acquisition Program (Previously voted)**

**As this was previously voted and there are no changes it was not discussed.**

**ATM Article 23: House Recycling Program (Previously voted)**

**As this was previously voted and there are no changes it was not discussed.**

**ATM Article 24: Affordable Housing Lots**

**Ms. Diane Bartlett, Chair of the Local Housing Partnership (LHP) was present to discuss the housing articles with the Board.**

**Mr. Witten said that from the previous discussions there was still an issue regarding the build-ability of the potential lots, which is why a vote had not been taken on this article.**

**Ms. Bartlett explained that in the absence of a Town Planner and due to their inability to complete a percolation test, the question of whether the lots are buildable will not be answered before the Annual Town Meeting.**

**Ms. Sullivan pointed out that what this article serves to do is to make two Town-owned, vacant lots available so if an affordable house could be moved to them or built on them and added to affordable housing stock in Town the Selectmen would be able to transfer the lots to the Affordable Housing Trust.**

**Ms. Ripley explained to the Board that language has been included in the motion so that a lot could only be acquired "on terms and conditions deemed by the Board of Selectmen to be in the best interest of the Town." With the above-referenced language in the motion the**

Selectmen felt confident enough to proceed with a vote with the understanding that if the motion changes based on pending opinions from Town Counsel or the Moderator then the Board would reconsider the vote.

Ms. Sullivan moved that the Board of Selectmen endorse Article 24 (Affordable Housing Lots) as presented. Second by Mr. Martecchini. Vote: 3:0:0.

**STM Article 3: Fund Collective Bargaining Agreements**

This article was included in case there was a collective Bargaining Agreement that needed to be funded within the current fiscal year, but there are none.

Ms. Sullivan moved that the Board of Selectmen Indefinitely Postpone (IP) STM Article 3 (Fund Collective Bargaining Agreements). Second by Mr. Martecchini. Vote: 3:0:0.

**ATM Article 1: Appointment of Officers**

This is a housekeeping article.

Mr. Martecchini moved that the Board of Selectmen support ATM Article 1 (Appointment of Officers) as presented. Second by Ms. Sullivan. Vote: 3:0:0.

**ATM Article 2: Report of Officers & Committees**

The Selectmen were not aware of any reports to be made by any officers or committees.

Ms. Sullivan moved that the Board of Selectmen Indefinitely Postpone (IP) ATM Article 2 (Report of Officers & Committees). Second by Mr. Martecchini. Vote: 3:0:0.

**ATM Article 8: Collective Bargaining Agreements**

This article was included in case there was a collective Bargaining Agreement ready to be signed. Negotiations are in progress.

Mr. Martecchini moved that the Board of Selectmen Indefinitely Postpone (IP) ATM Article 8 (Collective Bargaining Agreements). Second by Ms. Sullivan. Vote: 3:0:0.

**ATM Article 32: Bog Management**

Mr. MacDonald explained that this is an article which would allow the Town through its Conservation Commission to enter into 10-year lease agreements regarding two Town-owned bogs. For an agreement of that length you need Town Meeting approval.

Mr. Martecchini moved that the Board of Selectmen support ATM Article 32 (Bog Management) regarding the Duxbury Bog and the Cherry Lane Bog. Second by Ms. Sullivan. Vote: 3:0:0.

**ATM Article 47: Re-Zone First Baptist Church**

Ms. Ripley advised that the proponents have verbally notified the Town that they want to withdraw the article, but the written request has not been received yet. In discussion it was pointed out that no plan explaining the rationale for requesting the zoning change had ever been submitted.

Mr. Martecchini moved that the Board of Selectmen Indefinitely Postpone (IP) ATM Article 47 (Re-Zone First Baptist Church). Second by Ms. Sullivan. Vote: 3:0:0.

**ATM Article 50: Stabilization Fund**

Ms. Sullivan moved that the Board of Selectmen Indefinitely Postpone (IP) ATM Article 50 (Stabilization Fund). Second by Mr. Martecchini. Vote: 3:0:0.

**ATM Article 40: Parking Regulations (Previously voted)**

During the discussion it was pointed out that this article intent is to update the Town's parking bylaw. The updated language requires that parking areas in NB1 and NB2 be paved with bituminous concrete or cement concrete. The Planning Board has approved an amendment to this that would allow for "alternative technology which would provide equal or better treatment of water runoff than such concrete surfaces" to accommodate any future technologically advanced materials to be used as well.

Mr. Martecchini moved that the Board of Selectmen support ATM Article 40 (Parking Regulations) as amended by the language in Section 603.4 at the Planning Board public hearing on February 2, 2009. Second by Ms. Sullivan. Vote: 3:0:0.

**ATM Article 48: Re-Zoning for Island Creek (Previously voted)---addition to agenda**

Mr. Dennis Murphy, Chair of the Zoning Board of Appeals (ZBA), presented this item. This was a continuation of the discussion at the March 2, 2009 Board of Selectmen's meeting where it was suggested that this matter be reviewed with respect to the Comprehensive Plan. Ms. Judi Barrett, a professional Town Planner and member of the Duxbury Zoning Board of Appeals, has reviewed the Comprehensive Plan and provided comments regarding her review to the Selectmen. Mr. Murphy gave a summary of Ms. Barrett's review, which reviewed not just at the Comprehensive Plan but also the Land Use Guide Plan (hereafter "LUGP"). The LUGP is the proposed future land use map. The following points were noted:

- Island Creek in the Comprehensive Plan does not contain any commercial codes
- On the LUGP, the Island Creek property is coded for higher-density planned development, including the undeveloped portion that is in front of the ZBA now.
- There is no definition of "planned development" and therefore, one must look at earlier documents for guidance. The 1999 Zoning Bylaw uses in PD-2 and PD-3 "...only in conjunction with and accessory to the required residential uses approved...."
- "Accessory" or "ancillary" is not dependent upon a function of floor space but upon whether the accessory use can stand on its own or is fundamentally dependent on the principal use.

A lengthy discussion followed during which a number of questions were asked and answered to clarify whether or not a change in zoning would be required to allow for any commercial uses at Island Creek. At least some members of the Board of Selectmen would not be opposed to some commercial development in the Island Creek expansion. However, the Board does not want to be put in a position where this project will become a precedent-setting case for expanding the powers of 40B.

Both Mr. Martecchini and Ms. Sullivan were under the impression after last week's discussion that no commercial uses would be allowed at Island Creek unless the zoning was changed to a commercial zone. Based on tonight's discussion it appears that was a misunderstanding. Tonight's discussion indicated accessory commercial use may be incorporated with the zoning remaining as is, but the commercial aspects would be subject to a special permit and that does allow for the review of the ZBA, which may impose conditions.

Prior to a vote, Ms. Ripley, Executive Assistant to the Town Manager, did mention that this item was a last minute addition to the agenda. Unfortunately there was inadequate time to notify the developers of the Island Creek project.

The Board asked Mr. Murphy to answer the question: "Do you believe that the Zoning Board of Appeals can authorize commercial use in this project without changing the zoning?" Mr. Murphy's answer was "Yes." Mr. Murphy did expound on that briefly and offered some caveats. Mr. Murphy indicated that the Zoning Board of Appeals will entertain the commercial aspects of this project on their own merits.

After the Board agreed to reconsider their previous vote, the following motion was made:

Mr. Martecchini moved that the Board of Selectmen support ATM Article 48 the Island Creek re-zoning. Second by Ms. Sullivan. Vote: 0:3:0. (The motion did not pass.)

## **BUSINESS**

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

Mr. MacDonald mentioned the following items:

1. **COA GRANTS:** Mr. MacDonald said that through the efforts of Joanne Moore, COA Director and others, the Council on Aging (COA) received three grants totaling \$18,350.
2. **CONSTRUCTION COSTS:** Mr. MacDonald indicated he was concerned because the construction cost figures for February were only \$245,000. He commented that this is the lowest he can recall ever seeing in his tenure with the Town.
3. **DEPT. OF TELECOMMUNICATIONS WAIVER:** Mr. MacDonald announced that he received word that the Dept. of Telecommunications signed a waiver so the Town can begin negotiating with Verizon to bring Verizon FIOS to Duxbury. He also mentioned that negotiations with Comcast are continuing.

## **ANNOUNCEMENTS**

Mr. Witten made the following announcements:

1. **TOWN MEETING:** Reminder to Duxbury residents that the Duxbury Town Meeting will begin on Saturday, March 14, 2009 at 9:00 AM at the Performing Arts Center (PAC), 73 Alden ST.
2. **WARRANTS:**  
A survey was done last year and based on the results it was decided NOT to mail the Town Meeting warrants this year.

Copies of the warrant can be picked up at the following locations prior to the meeting:

at Town Hall (at the Town Clerk's Office or the Board of Selectmen Office),  
at the Duxbury Senior Center, or  
at the Reference Desk at the Duxbury Free Library

Copies of the warrant will also be available at Town Meeting.

The entire warrant appeared in the March 4th Duxbury Clipper as Section C.

**3. HOMESTEAD DECLARATION SCAM (SEE ATTACHED):**

The Council on Aging was recently alerted that some companies are scamming people by charging \$15.00 for the Homestead Declaration form. What people need to know is there is NO CHARGE for the form, which can be obtained at the Registry of Deeds or downloaded from the Registry websites. It does typically cost about \$35.00 for filing the form with a Registry of Deeds.

**MINUTES**

Ms. Sullivan moved that the Board accept the minutes of March 2, 2009 as presented. Second by Mr. Martecchini. Vote: 3:0:0.

**COMMITTEE APPOINTMENTS/RE-APPOINTMENTS -NONE**

**ADJOURNMENT**

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