

**Date: November 16, 2009**

*Date Minutes Approved: November 23, 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.

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

**OPEN FORUM** - No items discussed.

### **AQUACULTURE HEARING / Duxbury Oyster Company, LLC (McCluskey)**

Ms. Sullivan opened the advertised public hearing regarding renewal of the aquaculture license issued to Duxbury Oyster Company, LLC., Mr. John E. McCluskey, Manager. The license for this grant (#NAE-2006-1163) was issued for a three-year term (10/23/06-10/23/09).

Mr. McCluskey was present and indicated he is requesting of the Board two things:

- 1) renewal of the lease regarding this grant for the maximum allowable term of ten years.
- 2) Consolidation of the licenses of his two grants so that they will run on the same schedule. He indicated that this would streamline the process to allow for better tracking of the paperwork.

Mr. Alan Hoban, Chair of the Shellfish Advisory Committee (SAC), said his committee had reviewed the matter in regard to the ten-year renewal and they are recommending favorable action. With regard to the second request this is a matter the SAC has not discussed, but will be at upcoming meetings. He cited for the benefit of the Board the chapters and sections of the Massachusetts General Law (Chap. 130 Section 57 and Chap. 130 Section 58). He remarked that there is a cost to the Public Hearings and that he could see economies by combining the licenses.

Mr. Don Beers, Harbormaster and Shellfish Constable, opined that he felt that this would be legally acceptable. He did point out, however, that the individual license numbers should be referenced and remain as assigned, since those are numbers assigned elsewhere.

In concept there was general agreement that a consolidation made good sense, but there was discussion about the appropriate way to implement it.

Mr. Witten moved that the Board of Selectmen accept Duxbury Oyster Company, LLC's offer to waive any existing rights it has to the current lease 9732-2 and to vote to approve two new leases; one to be # 9732-2 and the other to be #NAE2006-1163, both for a period of ten (10) years to expire on November 16, 2019. Second by Mr. Donato. Vote: 3:0:0.

Before moving onto other agenda items, Ms. Sullivan displayed a picture taken during her recent trip to Hong Kong. In the picture Ms. Sullivan is pointing to Island Creek Oysters!

## **TAX CLASSIFICATION HEARING**

Ms. Sullivan mentioned that the Tax Classification was advertised as a public hearing.

Mr. Finnegan, the Deputy Assessor, was introduced. Mr. Finnegan introduced two members of the Board of Assessors: Ms. Linda Collari and Ms. June Albritton. Mr. Jamie MacNab, the third member, was not able to attend this evening.

Mr. Finnegan explained that the Town is required each year to set tax rates for residential and commercial property. As been his tradition, he reviewed with the Board a memo he prepared (Tax Classification Hearing (FY'10) Memo dated November 16, 2009. [Copies were passed out and the document will be posted on the Town website: [www.town.duxbury.ma.us](http://www.town.duxbury.ma.us) on the Assessing Department page.]

Duxbury has traditionally had a residential factor of "one." This means that the commercial tax rate is identical to the residential tax rate. The figures showed that setting a dual tax classification would have minimal savings for residential taxpayers (approx. \$135. for average residential assessed values of \$611,400.), but have a substantial increase (approx. \$3613.) for similarly assessed commercial properties. Given the disparity the recommendation of the Board of Assessors was for the Board of Selectmen to adopt a residential factor of one.

Mr. Witten moved that the Board of Selectmen vote to adopt a single tax rate by setting a residential factor of one. Second by Mr. Donato. Vote: 3:0:0.

Mr. Witten asked at what point a dual rate might make sense. Mr. Finnegan said typically when the commercial class is at 25%. Duxbury's is currently only 3.6%. In discussion it was suggested that consideration should also be given to the municipal services used by commercial classes when determining the rate in the future.

## **7:10 P.M. MEETING OF WATER & SEWER COMMISSIONERS: COMMITMENT OF CHARGES FOR WATER, SEWER, & SERVICE**

Mr. Donato moved that the Board of Selectmen adjourn the meeting as Selectmen in order to meet as the Water & Sewer Commissioners, with the intent of re-convening as Selectmen afterward. Second by Mr. Witten. Vote: 3:0:0.

Ms. Sullivan explained that the Commissioners have before them a commitment for charges for water, sewer, and service as follows:

Water	\$579,385.52
Sewer	\$ 88,255.00
<u>Service</u>	<u>\$ 1,475.92</u>
TOTAL	\$669,116.44

Mr. Witten moved that the Board of Water & Sewer Commissions instruct the Treasurer to collect the amount of \$669,116.44 for water, sewer, and service in the amounts shown . Second by Mr. Donato. Vote: 3:0:0.

## **PUBLIC HEARING: USE OF TOWN GREEN FOR ANNUAL TREE-LIGHTING**

Ms. Sullivan announced that as they have done in the past the Duxbury Rotary Club is asking for permission to use the Town Green to kick off the holiday season with a tree-lighting ceremony. She noted the request was reviewed with the appropriate Town Departments with no objections received. As this event involves use of the Town Green, notices were also sent to the abutters, and no comments were received. Ms. Sullivan read the conditions indicated on the permit.

Mr. Witten moved that the Board of Selectmen vote to grant an event permit to Mr. Paul Brogna, as a representative of the Duxbury Rotary Club for the Annual Christmas Tree Lighting, to be held on

the Millennium Town Green on Sunday, November 29, 2008 from 1:00 PM to 7:00 PM, subject the conditions in the permit. Second by Mr. Donato. Vote: 3:0:0.

**COMMON VICTUALLER'S LICENSE: Jackie O'Toole, for ONE, LLC**

Ms. Jackie O'Toole appeared before the Board regarding her application for a Common Victualler's license regarding new business she is establishing in Duxbury. The space currently occupied by D'Orazio's in the Duxbury Marketplace has been renovated, and One will be on the right side. The shop, One, will be part gift shop and part café. Ms. O'Toole's concept is for a shop which will offer eco-friendly, organic and/or fair trade products. In addition to gift items and penny candy, there will be a café upstairs where organic coffees, teas, and food items will be served.

Mr. Witten moved Board of Selectmen approve a Common Victualler's License for ONE, Jacqueline O'Toole, Manager, contingent upon the following:

- Provision of Workers' Compensation Affidavit
- Proof of Worker's Compensation Coverage
- Adherence to all Board of Health, Fire, and Inspectional Service Department Regulations
- Payment of License Fee (\$25.00)
- R.E.A.P. Certification---Payment of Taxes
- Provision of all emergency business contact information and premises security data to the Duxbury Police Department
- Satisfactory completion of a criminal record check

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

**TREASURER RE: BOND ANTICIPATION NOTE**

Mr. Thomas Connolly, Town Treasurer, presented to the Board a Bond Anticipation Note, which was negotiated at a rate of 1.15% from Eastern Bank for the term from December 1, 2009 to March 15, 2010. This short-term borrowing is for several items, including the Pool and the Chandler School roof projects. It is necessitated because the total amount, which will ultimately be bonded is not known at this time in part because the Town has not been notified of the reimbursement amount of the Chandler School roof.

Mr. Witten moved the Board execute the note in the amount of \$3,181,853.00 from Eastern Bank with a rate of 1.15% and the expiration date of March 15, 2010.

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

**POLICE CHIEF MATTER**

Prior or to continuing the meeting Town Counsel Robert Troy was recognized. Atty. Troy explained that he was present because Atty. Gerard ("Gerry") McAuliffe had requested time before the Board to ask the Board to reconsider their rescission of the Agreement which was offered to Police Chief Mark DeLuca. As Atty. Troy had another commitment, he was requesting the Board take the matter up now versus at the end of the meeting. In addition, there was discussion of whether this needed to be in an Executive Session or in Open Session.

The Board agreed to suspend its agenda to hear Mr. McAuliffe in order that Town Counsel could be present, but it was decided the discussion would take place in Open Session.

Atty. McAuliffe made an impassioned plea for his client citing Chief DeLuca's years of service and by giving the Board some of his understanding of Chief's DeLuca's perspective. He also cited as part of the Chief's delay in signing the Agreement, the Chief's desire to consult with another Attorney for legal and /or financial retirement advice and the difficulty getting an appointment to do so. Atty. McAuliffe also noted that a clear deadline for returned the signed Agreement was not

given. Atty. McAuliffe did make it clear that he had the Agreement signed by Chief DeLuca if the Board is willing to reconsider their prior position.

In discussing this matter with the Chief's Attorney, the Board indicated that it was their understanding a verbal Agreement was reached during the October 5, 2009 Executive Session. Preparation of the Agreement was expedited, and the Board executed it on October 9, 2009. In spite of numerous contacts by Town Counsel to Attorney McAuliffe, the Agreement remained unsigned by the Chief; nor was any indication given that it would be signed. Members of the Board indicated they felt an offer had been tendered, but there was no acceptance of it, and therefore it was reasonable for them to rescind the offer on October 30, 2009. The Chair asked if any of the Board wished to make a motion for reconsideration. Hearing none the Agreement is no longer valid.

## **BUSINESS**

### **Town Manager's Brief**

- 1) **H1N1 Status:** Mr. MacDonald indicated he met with Ms. Tracy Mayo, Health Agent, today. He was informed that the Town has ordered 4000 doses of H1N1 vaccine. A small shipment of about 300 doses have been received which will allow the first H1N1 clinic to happen.

In a brief discussion that followed Mr. MacDonald indicated that the Firefighters/EMT had been vaccinated through an outside association.

To follow up on that Ms. Sullivan skipped to the Announcements.

### **Announcements**

**H1N1 Flu Clinic:** There will be a H1N1 Flu Clinic at the Duxbury Senior Center on Friday, November 20, 2009 at 1:00 p.m. **TARGET GROUPS:** The target groups for this clinic are pregnant women and children four years of age or older. **First Come, First Serve.** Additional Flu Clinics will be scheduled when vaccine becomes available.

[Please see the announcement which will be posted on the Town website.]

**Plymouth County Advisory Board:** Ms. Sullivan indicated Duxbury will be hosting the next meeting of the Plymouth County Advisory Board on Thursday, November 19, 2009 at 7:00 PM at the Duxbury Senior Center.

**The Next Board of Selectmen's Meeting** will be on: Monday, November 23, 2009.

### **Town Manager's Brief (Continued)**

2. **Senior Police Academy:** Mr. MacDonald mentioned he attended the completion ceremony of the Senior Police Academy. Also in attendance at that event were District Attorney Timothy Cruz, State Representatives Thomas Calter and Daniel Webster, and Police Chief Stephen Doherty. Mr. MacDonald stated that the Senior Police Academy is a program that has been set up and run by Lt. Susan James and Sgt. Kristen Golden. He commented on how impressed he was by some of the activities they incorporate into the Senior Police Academy.

**3. 4<sup>th</sup> of July Parade Donation & Challenge: Mr. MacDonald was please to announce that an anonymous benefactor has donated \$5,000. to the 4<sup>th</sup> of July Parade and has issued a challenge to the community in the hope that the other \$5000. can be raised by donations. The anonymous benefactor has indicated that if the full \$5000. cannot be raised through donations he/she will extend a further donation to cover the shortfall so that the full \$10,000. can be contributed to keep the tradition alive.**

**4. Birch Street Water Tank: Mr. MacDonald reported he has been told that starting on Thursday they will slowly begin to bring the water tank online. He will give a further report at the next meeting.**

#### **Minutes**

**Mr. Witten moved that the Board approve the minutes of November 2, 2009, as written. Second by Mr. Donato. Vote: 3:0:0.**

#### **Committee Appointments/Re-appointments**

**Ms. Sullivan moved to appoint Ms. Patricia C. Fahey to the Sidewalk & Bike Path Committee to fill an unexpired seat due to expire on June 30, 2010. Second by Mr. Donato. Vote: 3:0:0.**

**At 9:00 PM Mr. Witten moved that the Board of Selectmen adjourn the meeting. Second by Mr. Donato. Vote: 3:0:0.**