

Date: January 25, 2010

Date Minutes Approved: February 1, 2010

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 6:30 PM.

ENTERED EXECUTIVE SESSION

Ms. Sullivan moved that the Board enter Executive Session in order to discuss matters regarding the King Caesar Fund (KCF), which are of a confidential nature, as the fund's purpose is to provide medical relief for the financially needy residents of Duxbury, in accordance with Massachusetts General Laws, Chapter 39 section 23B, and then to reconvene in Open Session. Second by Mr. Witten. Roll Call Vote: Mr. Witten — aye; Mr. Donato—aye; Ms. Sullivan—aye.

RE-CONVENED IN OPEN SESSION

The Board re-convened in Open Session at approximately 6:50 PM, but for live broadcast to the public waited until 7:00 PM before beginning the Open Session.

OPEN FORUM

Mr. Douglas Johnson of Johnson Golf Management was recognized. (*Note: Johnson Golf Management is the company that has been managing the Town-owned North Hill Golf Course.*) Mr. Johnson indicated that he had information for the Board regarding the court case. He had fairly-extensive, bound materials for the Board. The Board accepted the documents and indicated after they had a chance to review them, then if appropriate they would put this matter on a future agenda for discussion.

POLE-HEARING

At 7:01 PM the Chair opened the public hearing regarding placement of a new pole on Washington Street. Mr. Paul Begley from Verizon explained that utility companies are requesting permission to place a new pole by 237 Washington Street because currently there are wires on a pole on Washington ST, which are going over a house to service the house behind it, and placement of the new pole will allow them to serve the house directly.

The Chair asked if there was any public comment regarding this matter, but there was none. It was noted that the abutters had been notified and no comments had been received prior to the meeting.

Mr. Witten moved that the Board grant a location to VERIZON NEW ENGLAND, INC. and to NSTAR ELECTRIC COMPANY for one new pole (Pole 4/657A) on Washington Street, in the Town of Duxbury. Second by Mr. Donato. VOTE: 3:0:0.

ANNUAL TOWN MEETING ARTICLE (CITIZENS' PETITION) REGARDING WATER SERVICE

Ms. Nancy Landgren of 625 Washington ST, the main proponent of the Citizen's Petition, was recognized. She read the article which states "Water is a basic human right. The water system in Duxbury is held in public trust for the benefit and use by the residents. It should be operated by the Town of Duxbury for the greater good. The Town of Duxbury should not privatize or out-source the water---its maintenance or delivery systems." She also gave an overview of why she was bringing this forward.

The Selectmen and Town Manager discussed the article and several concerns were raised regarding the language of the article and more importantly the motion. The Town Manager indicated that this is being looked into by the Water and Sewer Advisory Board as part of his due diligence in researching efficiencies and revenues for the Town. It is not a question of selling the Town wells, but rather whether the operation of the system should be privatized for cost savings. The Town Manager indicated that he is waiting from a report from the Water and Sewer Advisory Board before making any recommendations.

A motion was made to support the article, but then withdrawn because after further discussion it was felt that Town Counsel should review the motion to determine that there is not a problem with the language, esp. in conjunction with other Town documents. It was agreed that after the legal review this matter will be re-visited at a future Selectmen's meeting.

LIQUOR LICENSE APPLICATION: BRAMBLEBUSH EATS, LTD FOR THE SUN TAVERN

Present for this item of business were:

- Atty. Gary Thomas, legal counsel to the applicant
- Mr. Lawrence "Larry" Friedman, the applicant and manager of record
- Ms. Barbara Ripley, Executive Assistant to the Town Manager, was present as she handles the liquor licensing for the Town administration.

This item of business was an advertised, public hearing regarding an application for a liquor license being requested by Bramblebush Eats, Ltd, dba The Sun Tavern at 500 Congress ST.

Mr. Witten recused himself indicating, that although he does not currently have any interest, in the past he represented a neighborhood group in a matter regarding the Sun Tavern and therefore he was recusing himself. He left the room during discussion of this business.

Atty. Gary Thomas spoke as the legal counsel to Mr. Lawrence "Larry" Friedman d/b/a Bramblebush Eats, Ltd. He explained that initially an application was being submitted for a transfer of an All-Alcoholic Common Victualler License, but there was a problem with transferring the license as the previous holder did not renew in a timely basis. Upon review they determined that it was easier to just go forward and apply for the license as a new application.

Ms. Ripley, Executive Asst., confirmed that the application materials were all in order. She mentioned that the abutter notices were sent out and only one positive telephone call was received.

There was a brief discussion of the hours allowed. It was explained that the hours are in line with other Duxbury establishments holding similar licenses and the ABCC regulations. Although the license would allow the later hours, Mr. Friedman indicated that, at this time, the kitchen will be closing at 10 PM.

The hearing was opened to public comments, but there were none.

Mr. Donato moved that the Board of Selectmen, acting as the Licensing Authority, grant an All-Alcoholic Common Victualler License to Bramblebush Eats, Ltd., dba The Sun Tavern, Lawrence P. Friedman, Manager, such premises located at 500 Congress Street, and such license subject to:

- **Satisfactory Completion of a Criminal Background Check (CORI)**
- **Signed Workers' Compensation Affidavit**
- **Provision of Proof of Workers' Compensation Insurance**
- **Proof of General and Liquor Liability Coverage**
- **Payment of Annual Fee (currently \$2,000.00 for All-Alcohol Restaurant License)**
- **Certificate of Inspection and Certificate of Occupancy from the Inspectional Services Department**
- **Food Establishment Permit from the Board of Health**
- **Server Training Certificate for the Manager and Bartenders**
- **Provision of signed R.E.A.P. form (Payment of State Taxes)**
- **Hours of Sale of Alcoholic Beverages: Monday – Saturday: 8:00 AM- 1:00 AM; Sundays and Holidays: Noon to 1:00 AM**

Second by Ms. Sullivan. VOTE: 2:0:0. (Mr. Witten recused himself.)

ENTERTAINMENT & COMMON VICTUALLER LICENSES: SUN TAVERN

It was determined that these licenses did not need to be taken up as they were previously dealt with contingent upon appropriate paperwork being received.

SEASONAL WINE & MALT LICENSE APPLICATION: DANA V. BATTISTA FOR DUXBURY BEACH PARK 2

Present for this item of business were:

- **Mr. Dana Battista and Ms. Missy Battista, operators of Duxbury Beach Park2, i.e the pavilion at 435 Gurnet Road.**
- **Ms. Barbara Ripley, Executive Assistant to the Town Manager, was present as she handles the liquor licensing for the Town administration.**
- **Interim Police Chief Stephen Doherty and Harbormaster Don Beers were present as public safety officials of the Town.**
- **Ms. Margaret Kearney and Mr. Shawn Dahlen, President and Vice President respectively of the Duxbury Beach Reservation, Inc. (DBRI), were present as the DBRI are owners of the property.**

This item of business was an advertised, public hearing regarding an application for a Seasonal Wine and Malt Common Victualler License being requested by Mr. Dana Battista, manager of record of Duxbury Beach Park 2, Ltd, i.e., the pavilion known as "Blakeman's" at 435 Gurnet Road.

Mr. Dana Battista indicated that he is seeking a Seasonal Wine and Malt License for Thursday – Sunday nights for patrons who are having dinner in the screened in porch area at Blakemen's. He and his wife have managed it since 2001 and added dinners a number of years ago. Dinners are served between 5 PM – 8 PM. There is no bar in the facility, and he stressed that alcohol would only be served to individuals eating dinner.

Ms. Ripley was given the return receipt cards indicating abutters were notified and confirmed that all necessary items have been received for the application to be submitted to the ABCC.

Ms. Sullivan indicated that a memo was received from Ms. Sue Rourke, Chair of the Duxbury Beach Committee, in which the Committee voted in favor of supporting the application. The memo was prepared following a meeting between the Committee and the Battistas. Ms. Sullivan gave an overview of the comments made in the memo.

Ms. Margaret Kearney, President of the Duxbury Beach Reservation, Inc., indicated that the DBRI met with the Battistas to discuss this matter, and the Trustees voted in support of the Battista's application. She mentioned the Battista's history in running the business and the DBRI wish that they continue to operate it. Ms. Kearney said that weather directly impacted the business last year and in part the DBRI felt that the Seasonal Wine & Malt License might help offset some of the weather impacts. She also indicated that the DBRI has an annual contract with the Battistas so that should any issues come up they could be addressed relatively quickly.

Ms. Sullivan mentioned at a DBRI meeting it was also pointed out that the issuing of a license would bring with it liability insurance, which would offer protection to the DBRI and the Town should an incident occur.

The discussion was then opened up to public comments.

Mr. John Mann, 241 Gurnet Road, spoke in opposition. He acknowledged that facility has been well-run during the Battista's tenure, but expressed his concerns with alcohol being introduced into a family recreational area. His main concerns were with increased traffic and speeding issues and overall safety because of those concerns. In addition, he mentioned increased sewerage charges he and his neighbors would bear in anticipation of increased patronage and therefore increased water usage. He also mentioned the Board of the Duxbury Beach Residents Association was polled and they had questions and therefore were not in favor.

A Marginal Road resident asked if the gate would still be closed at 8 PM? Mr. Battista said "yes" and elaborated that there is no plan to change how they have used parking attendants.

A lengthy discussion of the reasons why the license should be granted and the concerns of the neighborhood followed. There seemed to be an overall consensus that two separate issues were being discussed: (1) the Seasonal Wine and Malt License and (2) the traffic / speeding issues in the neighborhood. In an effort to mitigate some of the concerns it was recommended by the Police Chief Doherty that a police detail be instituted on weekends during the first month of operation should the liquor license be granted. The Chief explained this would (a) set the tone for the clientele and (b) allow for monitoring and review. In addition, the Police Chief assured the residents and the Board that the Police would handle any traffic issues, as they usually would, and in response to complaints do an analysis of the situation and recommend and/or institute appropriate measures as allowed by staffing.

Mrs. Danielle Mann, 241 Gurnet Road, asked if a change in the hours for the service of liquor would have to come back before the Board of Selectmen? Ms. Sullivan answered in the affirmative. It was also noted that the DBRI would be reviewing their contract with the Battistas on an annual basis.

Mr. Donato moved that the Board of Selectmen, acting as the Licensing Authority, grant a Seasonal Wine & Malt Common Victualler License to Dana V. Battista, dba Duxbury Beach Park 2, at 435 Gurnet Road, such license subject to:

- Satisfactory Completion of a Criminal Background Check (CORI)
- Signed Workers' Compensation Affidavit
- Provision of Proof of Workers' Compensation Insurance
- Proof of General and Liquor Liability Coverage
- Payment of Annual Fee (amount to be determined at Fee Hearing of 02-22-10)

- **Certificate of Inspection and Certificate of Occupancy from the Inspectional Services Department**
- **Food Establishment Permit from the Board of Health**
- **Server Training Certificate for the Manager and Bartenders**
- **Provision of signed R.E.A.P. form (Payment of State Taxes)**
- **Hours of Wine & Malt Sales: Thursday through Sunday from 5:00 PM to 9:00 PM**
- **A paid police detail on week-ends during the first month of business to monitor liquor operations, and a review of the need for any police details to be conducted after the first 30 days**
- **Adherence of Contract conditions imposed by Duxbury Beach Reservation, Inc.**
- **Alcohol may be served to dining patrons only within the (screened in) dining area**

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

TOWN MEETING ARTICLES

Prohibit Solicitations by Town Personnel

Mr. John Bear, a resident who brought this issue to the Selectmen, was present to speak to the rationale behind it.

Mr. Bear said he felt that town personnel should not be allowed to solicit contributions using the name of the Town. He pointed out that some people feel intimidated by it feeling that if they don't contribute it might be held against them when they place a call for service.

Town Counsel Robert Troy warned that while good in theory many bylaw changes are fraught with problems causing other legal issues because as they might run contrary to union contractual issues or other Town documents. Atty. Troy recommended that language be drafted to accomplish the same thing, but to do it as an administrative policy. Mr. Bear concurred.

Mr. Witten moved to instruct the Town Manager to prepare a draft policy with respect to solicitation by town personnel for review by the Board of Selectmen. Second by Mr. Donato. VOTE: 3:0:0.

Dissolve Youth Commission (re-visited)

Ms. Sullivan explained that at a recent Selectmen's meeting this Article was removed from the warrant as the Selectmen had been inclined to let the Youth Commission exist in a dormant state until it is needed again. Subsequently, it was pointed out to the Selectmen that the Town bylaws do contain provisions for disbanding committees.

Town Counsel Robert Troy explained it was appropriate to leave the article off the warrant because in this particular case when the Youth Commission was formed it also involved the acceptance of a statute under Massachusetts General Law and therefore the Town Meeting doesn't have the authority to disband it. Disbanding it would involve petitioning the Massachusetts Legislature, and the Selectmen decided against doing that at this time and to leave it as is.

MEETING OF THE WATER & SEWER COMMISSIONERS: SHARED SEPTIC SYSTEM/BAY ROAD

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.

Mr. MacDonald explained that there is an issue with a property at 9 Landing Road regarding the number of bedrooms, and he asked Atty. Troy, Duxbury Town Counsel, to explain it further.

Mr. Troy explained that when arrangements were made for this shared septic system the flow allocation for each property was based on a determination of the number of bedrooms that existed at the properties at that time. While it was determined that the property at 9 Landing Road had one bedroom, a discrepancy has been brought forward and the owner is contending two bedrooms have existed and the property's septic allocation should be adjusted accordingly. Renovations that were done at the 9 Landing Road property were the likely source of the discrepancy that only recently came to light. Mr. Troy gave the Board several options regarding actions they could take.

Mr. Brian Daley, a local realtor, was asked to speak on behalf of the property owner of 9 Landing Road. Mr. Daley presented as evidence of the discrepancy the Town's Assessor's filed card of August 17, 1999, which does show the property as having two bedrooms.

Ms. Katherine Goulart asked if there was a policy that would allow a homeowner (in this shared septic system) to add another bedroom? In responding for the Board, Ms. Sullivan said she would not recommend buying a home in this area thinking you could do so.

During the discussion, it was noted that there is limited capacity left in this shared septic system and there needs to be some reserve. Based on the information provided the Commissioners were inclined to treat this situation as an exception and to grant the extra capacity in this particular case in light of the discrepancy.

Mr. Witten moved that the property at 9 Landing Road be granted an additional allocation of 110 gallons / day, which would be equivalent to an additional bedroom, due to the Town of Duxbury's discrepancy on the Assessor's card and that the owner of 9 Landing Road be responsible should there be any additional recording charges. Second by Mr. Donato. VOTE: 3:0:0.

Mr. Witten moved to ask the Town Manager to draft a policy regarding the remaining allocation regarding the Bay Road Area Shared Wastewater Collection and Treatment System. Second by Mr. Donato. VOTE: 3:0:0.

Mr. Donato moved that the Board adjourn their meeting as Water & Sewer Commissioners and re-convene as Selectmen. Second by Mr. Witten. VOTE: 3:0:0.

PROPOSED NEW ARTICLE K FOR STM WARRANT---Seawalls

Mr. MacDonald requested this article be added. He explained that at the 2007 Special Town Meeting an article was passed that called for a local petition to be filed with the Massachusetts State Legislature relative to the assessment of tax betterments for seawall repairs. This was done, but he just learned from State Representative Webster that "According to House Counsel, local approval for home rule petitions is determined to be stale as soon as an intervening Town Meeting occurs, or there is an election to select a member to the local Board of Selectmen, whichever occurs first after the bill is filed." Therefore, in order to move House Bill 622 forward local approval needs to be reaffirmed at a Town Meeting.

Mr. Witten moved that the Selectmen add draft Article K to the 2010 Special Town Meeting Warrant, as presented. Second by Mr. Donato. VOTE: 3:0:0.

BUSINESS

**One-Day Liquor License Request / Mary Beth Brown for Duxbury Art Association:
Winter Juried Show Reception on February 6, 2010**

**Mr. Witten moved that the Board of Selectmen grant to Ms. Mary Beth Browne, as a representative of the Duxbury Art Association, a One-Day Wine & Malt License to hold a reception on February 6, 2010 from 6:00 PM to 9:00 PM at the Art Complex Museum (186 Alden Street), contingent on the five conditions listed on the license. Second by Mr. Donato.
VOTE: 3:0:0.**

TOWN MANAGER'S BRIEF

Mr. MacDonald mentioned the following items:

- 1) Percy Walker Pool: The pool renovations have been moving right along and the anticipated completion is at the end of April 2010.**
- 2) Water Withdrawal Limits –DEP Case: Mr. MacDonald advised that the Superior Court has validated the Towns' position regarding the water withdrawal limits that the Department of Environmental Protection was trying to impose.**
- 3) Verizon FIOS: Mr. MacDonald reported that as he recently reported the negotiations are moving forward. The Cable Television Advisory Committee has a meeting next week and Mr. MacDonald anticipates the language is close to being finalized.**

ANNOUNCEMENTS

There were no official announcements, but Ms. Sullivan did mention that Mr. MacDonald, Ms. Ripley, and she attended the Massachusetts Municipal Association conference last week. She made some general comments about some of the workshops she attended and the speech given by Gov. Deval Patrick.

MINUTES

Mr. Donato moved that the Board approve the Open Session Minutes of January 11, 2010 as presented. Second by Ms. Sullivan. Vote: 2:0:1. (Mr. Witten abstained as he was not present at that meeting.)

Mr. Donato moved that the Board approve the Executive Session Minutes of January 11, 2010, with the amendment that Mr. John Madden, Finance Director, was not present, and with the contents to remain sealed until the need for confidentiality has passed. Second by Ms. Sullivan. Vote: 2:0:1. (Mr. Witten abstained as he was not present at that meeting.)

COMMITTEE APPOINTMENTS/RE-APPOINTMENTS - None

ADJOURNMENT

**Mr. Witten moved to adjourn the meeting at approximately 9:40 PM. Second by Mr. Donato.
VOTE: 3:0:0.**