

**Date: October 4, 2010**

*Date Minutes Approved: October 18, 2010*

## **BOARD OF SELECTMEN MINUTES**

**Present:** Shawn Dahlen, Chair; Elizabeth Sullivan, Vice-Chair; and Christopher Donato, Clerk.

**Absent:** No members were absent.

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

Meeting convened at 7:00 PM in Open Session.

OPEN FORUM - Nothing brought forward for discussion.

### **ACCEPT GIFT FROM SUSTAINABLE DUXBURY: TREES FOR TARKILN PROPERTY**

Ms. Judi Vose was present to represent Sustainable Duxbury\*. She said that Sustainable Duxbury is making a donation to the Town to cover the cost of four trees to be planted in the circular drive area of the Tarkiln Building. The donation of the trees is being made as Duxbury's participation in the 10/10/10 events being organized by the 350.org, an international movement to bring awareness to climate concerns. The selection and planting of the trees are being coordinated with the DPW and Lands & Natural Resources Directors. The trees will be maple trees and linden trees.

[\*Sustainable Duxbury is a community group of Duxbury residents who strive to learn about and encourage practical energy-saving measures to address the issues of global warming and sustainability at the local level. For more information, see their website: [www.sustainableduxbury.org](http://www.sustainableduxbury.org)]

Ms. Sullivan moved that the Board of Selectmen accept, on behalf of a grateful Town, the gift from Sustainable Duxbury of a check in the amount of \$1200.00 for the purchase of planting trees at the Tarkiln Building. Second by Mr. Donato. VOTE: 3:00.

Mr. Terry Vose added that arrangements for the purchase of the trees have already been made and delivery is expected shortly.

Mr. Dahlen announced that, with the agreement of the Johnson Golf Attorney, the Selectmen will review the event permits and One-Day Liquor Licenses next.

### **EVENT PERMITS**

#### **TARKILN PUMPKIN SALE ON 10-16-10**

Ms. Sullivan moved that the Board of Selectmen grant to the Friends of Tarkiln a permit to hold a Pumpkin Sale on Saturday, October 16, 2010, on the grounds of the Tarkiln Building, from 9:00 AM until 1:00 PM, subject to the conditions set forth on the permit. Second by Mr. Donato. VOTE: 3:00.

#### **REACH-OUT WALK-A-THON ON 10-21-10**

Mr. MacDonald mentioned that the Police Chief did not receive the particulars of this event. The rest of the departmental reviews are in order. Therefore, he recommended that they approve the event subject to the input from the Police Chief.

In reviewing this item Ms. Sullivan questioned that there was no specific time indicated on the permit. Ms. Murray pointed out that the starting time is included in the letter provided by the organizers and that resolved the issue.

Ms. Sullivan moved that the Board of Selectmen grant to Ms. Najarian, as a representative of the Alden School Reach-Out Program, permission to hold a Walk-a-Thon on Thursday, October 21, 2010 (rain date: October 27, 2010) to benefit the Plymouth Area Coalition of the Homeless, subject to the conditions set forth on the permit and from the Police Chief. Second by Mr. Donato. VOTE: 3:0:0.

#### ONE-DAY LIQUOR LICENSE REQUESTS

##### **CROSSROADS FOR KIDS HARVEST MOON FUNDRAISER ON 10-16-10**

Ms. Sullivan moved that the Board of Selectmen grant to Ms. Shira Moffatt, as a representative of Crossroads for Kids a One-Day Wine & Malt License to hold a fundraiser (Harvest Moon) at Camp Wing (742 Myrtle Street) on October 16, 2010 from 7:00pm to 11:00 PM, contingent upon the conditions listed on the license. Second by Mr. Donato. VOTE: 3:0:0.

##### **DUXBURY YACHT CLUB TWO EVENTS (10-16-10 & 10-22-10)**

Ms. Sullivan moved that the Board of Selectmen grant to Catherine M. Rogerson, as a representative of the Duxbury Yacht Club:

- a One-Day All-Alcoholic Beverage License to hold a Harvest Dinner on the Yacht Club porch and lawn on Saturday, October 16, 2010, and
- a One-Day Wine & Malt Beverage License to hold a Paddle Tennis Dinner at the Golf Clubhouse on Friday, October 22, 2010, from 6:00 PM to 10:00 PM,

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

##### **DUXBURY BAY MARITIME SCHOOL: PRIVATE EVENT ON 10-17-10**

Mr. Dahlen recused himself from the discussion and vote on this business item (because he is a Director of the Duxbury Bay Maritime School). He turned the chair over to Ms. Sullivan.

Ms. Sullivan moved that the Board of Selectmen grant to Ms. Linda Herrick, as a representative of Duxbury Bay Maritime School a One-Day Wine & Malt License to hold a private event at Clifford Hall, 457 Washington Street, on Sunday, October 17, 2010 from 9:00 AM to 1:00 PM, contingent upon conditions listed on the license. Second by Mr. Donato. VOTE: 2:0:0. (*Mr. Dahlen recused himself and did not vote.*)

#### **HEARING: POSSIBLE CONTRACT VIOLATIONS / JOHNSON GOLF MANAGEMENT, INC. / NORTH HILL COUNTRY CLUB**

Present for this item of business were:

Attorney Robert Troy, Town Counsel for the Town of Duxbury

Mr. Gordon Cushing, Town of Duxbury Recreation Director

Attorney Stephen R. Follansbee, of Follansbee & McLeod, Legal Counsel for Mr. Douglas Johnson, Mr. Jason Laramee, Johnson Golf Management, Inc., Manager at North Hill Country Club

Mr. Dahlen began this item of business by explaining the process the Board would be following in holding this hearing. He explained that tonight the Selectmen are charged with listening to the evidence regarding allegations of contract violations regarding the Town's contract at North Hill Country Club with Johnson Golf. He made it clear that they would be hearing information specific to the allegations outlined in the letter of September 28, 2008, which Mr. Johnson received. He said that the Board would be hearing from Town Counsel and one representative, who knows the most about the situation, and then they would hear from Legal Counsel for Johnson Golf and likewise one individual who could speak for Johnson Golf regarding the allegations at North Hill Country Club. He further stated that input would be limited to the aforementioned parties. Mr. Dahlen mentioned that there will be a lot of information for the Board to absorb so he proposed that the Board members all take time to absorb it and then to have it on the next Selectmen's Meeting Agenda on October 18<sup>th</sup> for a discussion of their determination. Mr. Dahlen then asked Town Counsel Robert Troy to begin.

Before beginning Attorney Troy gave to the Board of Selectmen and to Attorney Stephen Follansbee a packet of information and exhibits for the record. One of the items provided by Atty. Troy was a "List of Charges," which was substantively the same as the bulleted list in the letter of September 28, 2010. Atty. Troy also noted that a full stenographic record of tonight's hearing was being made.

Then Atty. Troy read each of the nine (9) allegations one by one, and Mr. Gordon Cushing commented on each (see "Affidavit of Gordon H. Cushing") referring to the "'Exhibit' documents for BOS hearing 10/4/2010." After the Town presented its findings, Attorney Follansbee, legal counsel to Johnson Golf, responded to the allegations and the comments made by Mr. Cushing, and the basis of his comments are contained in the letter dated October 4, 2010 from Johnson Golf Management, Inc. to the Board of Selectmen.

The nine (9) allegations on the "List of Charges" were as follows:

- Failing to provide a surety bond as required by Section 1.4 of the Management Agreement;
- Neglecting to pay the monthly rent on a timely basis;
- Failing to timely pay the June, 2010 PILOT payment;
- Operating a beverage cart on the golf course for the sale of alcoholic beverages without a liquor license permitting the sale of such beverages on the course;
- Submitting hand-written financial information to the Town instead of establishing a control and reporting system to audit the use of the course, as required by Section 3.1 of the Management Agreement;
- Increasing membership fees and greens fees in 2009 in violation of a court order to manage the course pursuant to the 2008 Agreement;
- Failing to submit an annual audit of the golf course by an independent auditing firm, as required by Section 4.2. of the Management Agreement;
- Sporadically providing the Town with monthly financial and course reports as required by Section 4.3 of the Management Agreement; and
- Establishing a "holiday" fee schedule without the approval of the Town as required by Section 8.2 of the Management Agreement.

The Attorneys responded to some questions from the Board of Selectmen and both attorneys made some additional comments to respond to issues raised

The Board asked that both parties provide the following supplemental documents by Wednesday, October 13<sup>th</sup> with the submissions to go to Attorney Troy's office. The requested supplemental documents were:

1. **A history of rental payments:** In discussion it was determined that these should go back to the beginning of Johnson Golf's management of the North Hill Country Club so that a determination can be made whether or not Johnson Golf is in arrears.

2. **Regarding the surety bond:** Only one letter had been submitted regarding Johnson Golf's inability to obtain the surety bond. The Board specifically asked for any further documentation Johnson Golf could provide regarding their attempts to obtain the surety bond, and/or declines were received from other agencies.
3. **Audits:** Requested that Johnson Golf provide copies of all certified audits for at least the past five years. In addition, the Board requested a listing of dates when the audits were provided and/or received.

In response to a question from the Board, Attorney Troy explained that the Board has a number of options if it finds the Agreement was violated and described them as follows:

1. The Board could decide to take no action.
2. The Board could decide that the Agreement was violated and could order compliance by Johnson Golf within a given number of days.
3. The Board could determine that Agreement was violated, and the defaults were serious enough to terminate the Agreement.
4. The Board could fashion other remedies.

Ms. Sullivan moved that the Board of Selectmen close the hearing and take the matter under advisement, for discussion at the Board of Selectmen meeting on Monday, October 18, 2010 at approximately 7:00 PM. Second by Mr. Donato. VOTE: 2:1:0. (*Mr. Donato was the "nay" vote.*)

## **BUSINESS**

### **ANNOUNCEMENTS**

**Last Day to Register to Vote in State Election:** Mr. Donato announced that Wednesday, October 13, 2010 is the last Day to Register to vote in the November 2, 2010 State Election. The Town Clerk's office is open during the standard Town Hall hours to register citizens. On October 13th, the Town Clerk's office will be open until 8 PM. Bring identification with you. It also is the last day to change party enrollment for the state election.

### **TOWN MANAGER BRIEF**

Mr. MacDonald mentioned the following items:

1. **Construction Costs for Sept. 2010:** Mr. MacDonald said that the September Construction Costs were \$1.3 million. He stated that was very good and it seems to be an indication that things are picking up.
2. **Open Meeting Law Training:** Notifications have been sent out to the Chairs of all Boards and Committees that there will be Open Meeting Law Training on Wednesday, October 20, 2010 at 7:00 PM at the Duxbury Senior Center. It is hoped that as many board members as possible will attend.
3. **Columbus Day Holiday:** Mr. MacDonald reminded everyone that the Town Offices will be closed on Monday, October 11, 2010 for the Columbus Day Holiday. There will be no Selectmen's meeting next Monday. The next Selectmen's Meeting will be on Monday, October 18, 2010.
4. **National COA Delegates' Dinner:** Mr. MacDonald advised the Board that the National Conference of Councils on Aging is being held in the area. Tonight a dinner was hosted at the Duxbury Senior Center and there were about 30-45 delegates there. Mr. MacDonald said he had the pleasure of welcoming them and of meeting many of them.

## **MINUTES**

**Ms. Sullivan moved that the Board accept the Executive Session Minutes of September 27, 2010, as presented with the records to be kept sealed until the need for confidentiality passed. Second by Mr. Donato. VOTE: 3:0:0.**

**Ms. Sullivan moved that the Board accept the Open Session Minutes of September 27, 2010, as presented. Second by Mr. Donato. VOTE: 3:0:0.**

## **BOARDS AND COMMITTEES: APPOINTMENTS**

**There were no Board or Committee Appointments to be made tonight. The list of open seats read at the last meeting was read again. It was noted that two individuals just came forward to fill the open seats on the Nuclear Advisory Committee and their Talent Bank forms will be circulated shortly.**

**Ms. Sullivan stated that she would like a joint meeting with the Zoning Board of Appeals to discuss protocols before making the ZBA appointments.**

**OLD BUSINESS - No old business was brought forward for discussion.**

## **NEW BUSINESS**

**Mr. Dahlen asked when Town Meeting articles have to be submitted by. Mr. MacDonald said not until early December, but he was not sure of the exact date. Mr. Dahlen asked if the Board could get a schedule of the Town Meeting timeframes for an upcoming meeting.**

## **ADJOURNMENT**

**Mr. Donato moved to adjourn the meeting at 8:35 PM. Second by Ms. Sullivan. Vote: 3:0:0.**