

Date: October 18, 2010

Date Minutes Approved: November 1, 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 Barbara Ripley, Executive Assistant.

Also Present: Attorney Robert S. Troy, Duxbury Town Counsel

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

OPEN FORUM

No items were brought forward.

MEETING OF THE WATER & SEWER COMMISSIONERS

At 7:01 PM, Ms. Sullivan moved that the Board adjourn their meeting as Selectmen in order to convene as Water and Sewer Commissioners, with the intent of re-convening as Selectmen afterward. Second by Mr. Donato. Vote: 3:0:0.

Mr. Donato moved that the Board of Water & Sewer Commissioners instruct the Treasurer to collect the amount of \$1,315,662.37 for water, sewer, and service. Second by Ms. Sullivan. Vote: 3:0:0.

Ms. Sullivan explained that this vote does not limit the right of ratepayers to appeal their bills.

CONFLICT OF INTEREST EXEMPTIONS

This matter involved Town employees who also serve as volunteers on Town Committees. Attorney Troy explained that, under M.G.L. Chapter 268A, there could be a conflict of interest. However, the conflict is cured by disclosure to the Selectmen. The employees had provided written disclosures of the conflict to the Selectmen. Ms. Sullivan stated her appreciation that Town Counsel had helped ensure the Town's compliance with Conflict of Interest Laws, and also thanked the Town employees for being willing to serve on Town committees.

Joseph Grady: Mr. Donato moved that the Board of Selectmen grant an exemption for Mr. Joseph Grady from the provisions of M.G.L., c. 268A, §20(d), for his roles as Conservation Administrator and member of the School Building Committee. Second by Ms. Sullivan. Vote: 3:0:0. (Mr. Grady was not present.)

Mary Beth MacQuarrie: Ms. Sullivan moved that the Board grant an exemption for Ms. Mary Beth MacQuarrie from the provisions of M.G.L. c. 268A, §20(d), for her roles as Information Systems Coordinator and ex-officio member of the Cable Advisory Committee, and further

that the Board of Selectmen grant an exemption for Ms. Mary Beth MacQuarrie from the provisions of M.G.L. c. 268A, §20(d), for her roles as Information Systems Coordinator and member of the Duxbury Cultural Council. Second by Mr. Donato. Vote: 3:0:0. (Ms. MacQuarrie was present.)

POST-HEARING DISCUSSION: NORTH HILL COUNTRY CLUB / POSSIBLE CONTRACT VIOLATIONS

Mr. Dahlen said that there had been a hearing on October 4, 2010 about possible contract violations at the North Hill Country Club, by Johnson Golf Management (JGM). At the hearing, the Selectmen asked Town personnel and JGM to provide additional documentation. He said that at tonight's hearing, the Selectmen will review the additional documentation, and allow JGM and Town representatives to speak. He said that there will not be an opportunity for public comment.

Present for JGM were: Attorney Steven Follansbee and Jason Laramée (Employee of JGM). Present for the Town of Duxbury were: Attorney Robert Troy and Gordon Cushing (Recreation Director).

Attorney Follansbee noted that he sent to the Board, via e-mail, copies of audited financial statements for 2006, 2007, and 2008. He also said that, in February 2009, the court said that JGM was likely to succeed in their case against the Town, based on the merits of their case. Finally, he addressed the issue of the September 2010 court order for JGM to provide the Town with a \$500K surety bond. He said that this order was based on incorrect information provided by the Town. He said that the court was told that Johnson would be collecting money in advance for the next golfing season. This is not true, he said. JGM has filed a motion to reduce the amount of the surety bond as a result.

Mr. Dahlen asked Mr. Follansbee about an audited financial statement for 2009. Mr. Follansbee said that he expected to have that in approximately seven days.

Attorney Troy said that he would like to correct the record in response to Mr. Follansbee's comments. He said that all representations made by the Town have been correct. Mr. Troy also said that, in September 2010, the court said that JGM has virtually no chance of success in their lawsuit against the Town. Next, Mr. Troy commented on part of the reason for the original injunction (February 2009) in favor of JGM. He said that when one of the parties in a case is a municipality, the public interest is taken into account. It was in the public interest to keep the golf course open during the legal dispute. This was accomplished by allowing JGM to continue to run the course.

Mr. Donato questioned Attorney Troy's statement that the Town is likely to prevail in the original lawsuit. Mr. Troy re-iterated his statement, while noting that it is irrelevant to the present proceedings. Tonight's matter is restricted to the question of whether JGM is in violation of the terms of their contract with the Town. Mr. Troy said that JGM is in violation for the following reasons:

- 1) Failing to provide a surety bond as required by Section 1.4 of the Management Agreement; and required again by the court in September 2010;
- 2) Failing to timely pay the June 2010 PILOT (Payment In Lieu of Taxes) payment;
- 3) 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;
- 4) 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;
- 5) Increasing membership fees and greens fees in 2009 in violation of a court order to manage the course pursuant to the 2008 Agreement, and raising the fees again within the last couple of weeks; and

- 6) **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.**

He said that it is up to the Selectmen to decide whether it is in the best interest of the Town to terminate the agreement.

Mr. Dahlen said that, of all the violations, there are two that are most harmful to the community: 1) the lack of a surety bond; and 2) the lack of audited financial statements. In addition, he is concerned about the unauthorized increase in fees at the course.

Ms. Sullivan said that she agrees with Mr. Dahlen. She said that the Selectmen have a limited window in which to address these problems (the off-season), before the impact to the public will be greatly increased. She said that she is most deeply concerned about the surety bond. It is the job of the Selectmen to protect the financial well-being of the Town.

Mr. Donato said that he feels he is being given conflicting information. He would like to leave the matter to the court to decide. He said that the surety bond issue will be decided very quickly, since JGM has filed a motion for clarification to the court.

Mr. Dahlen said that he wants to send a message to the court that we are concerned about the surety bond and the lack of financial statements.

Mr. Donato asked what would happen to the golf course if we terminate the contract. Ms. Sullivan asked the Town Manager to report next week on how the Town will manage the course.

Mr. Follansbee said that the Town has violated the contract with JGM due to the destruction of the residence, which was part of the leased premises.

MOTION:

Ms. Sullivan moved that the Board of Selectmen find that Johnson Golf Management is in default with regard to its contract with the Town of Duxbury for the following reasons:

- 1) **Failing to provide a surety bond as required by the Management Agreement;**
- 2) **Submitting handwritten financial information to the Town instead of establishing a control and reporting system to audit the use of the course, as required by the Management Agreement;**
- 3) **Increasing fees, in violation of the Management Agreement; and**
- 4) **Failing to submit an annual audit of the golf course, as required by the Management Agreement;**

and further moved that the Town terminate the Management Agreement with Johnson Golf Management, effective October 31, 2010;

and further moved that the Town Manager provide a plan for future management of the course at one of the next two Selectmen meetings.

Second by Mr. Dahlen. There was no further discussion. Vote: 2:1:0 (Mr. Donato voted against.)

TOWN MANAGER BRIEF

- 1) **Powder Point Bridge**: Repairs on the Powder Point Bridge are currently underway. Access to Duxbury Beach is via Gurnet Road during the repair period.
- 2) **Ban on Outdoor Evening Activities**: The Duxbury Board of Health announced today that the suspension of all outdoor recreational activities has been lifted. It is

important for people to be aware that the risk level assessed by the Massachusetts Department of Public Health has not changed and even with the decrease in mosquito activity this does not completely eliminate the possibility of being bitten by an infected mosquito. Personal protection should still be applied when outdoor at peak mosquito hours.

- 3) **Fire Department Open House**: There will be an Open House at the Duxbury Fire Department on Saturday, October 23 from 10:00 AM until 2:00 PM. All are invited.
- 4) **Bay Circuit Trail**: A crew from the Channel Five Chronicle program filmed a portion of the Bay Circuit Trail on October 15. The segment will be shown sometime in November.
- 5) **Open Meeting Law Seminar**: Duxbury Town Counsel Robert Troy will present a seminar on the new Open Meeting Law on Wednesday, October 20, 2010 at the Senior Center, beginning at 7:00 PM. The Chair of all boards and committees are strongly encouraged to attend. The public is invited.
- 6) **Flu Clinic**: Free flu shots will be available at the Duxbury Senior Center on November 4, 2010 from 10:00 AM until Noon. When the Town receives another batch of the flu vaccine, an evening clinic will be held.

ANNOUNCEMENTS

- 1) **Town Meeting 2011**: The Board of Selectmen invites citizens, Department Heads, and Boards & Committees to submit articles for the 2011 Annual and Special Town Meeting. Articles must be submitted to the Town Manager's Office by December 7, 2010. Complete language is required. If you need assistance in drafting your article, Town Counsel will be available to meet with article proponents. Please call Barbara Ripley in the Town Manager's office, to schedule your appointment with Town Counsel.
- 2) **Massachusetts Memories Road Show**: Citizens are asked to bring their Duxbury photos to the Duxbury Free Library on October 23, 2010 from 10:00 AM to 4:00 PM, where they will be scanned for inclusion in a digital archive of the community as part of UMass Boston's Massachusetts Memories Road Show. The photos of Duxbury can be old or new; formal or snapshots; color or black and white. For more details visit the website: www.MassMemories.net.
- 3) **Support our Troops in Afghanistan this Veterans' Day** ---- with a donation of retractable ballpoint pens and notebook paper. Gifts may be dropped off in the Senior Center Lobby from November 1 through November 10.

MINUTES

Ms. Sullivan moved that the Board approve the minutes of October 4, 2010, as amended to correct the record of the vote for a One-Day Liquor License for Duxbury Bay Maritime School. Second by Mr. Donato. Vote: 3:0:0.

APPOINTMENTS

Mr. Donato moved that the Board appoint Ms. Nancy Landgren to fill an unexpired term on the Nuclear Advisory Committee, such term to end on June 30, 2012; and to appoint Ms. Janet Brown to fill an unexpired term on the Nuclear Advisory Committee, such term to end on June 30, 2011. Second by Ms. Sullivan. Vote: 3:0:0.

ADJOURNMENT

Ms. Sullivan moved for adjournment of the meeting at 8:20 PM. Second by Mr. Donato. Vote: 3:0:0.