

Date: November 1, 2010

Date Minutes Approved: November 8, 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; Robert S. Troy, Duxbury Town Counsel; and Barbara Ripley, Executive Assistant.

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

OPEN FORUM

Mr. Jim Hartford, Chairman of the Local Historic District Study Committee (LHDSC) asked for the opportunity to update the Board on the activities of the LHDSC. He said that the Massachusetts Historical Commission (MHC) has approved the preliminary application for three local historic districts in Town. He provided the Selectmen with a copy of the report accompanying the MHC application. The four next steps will be:

- Neighborhood meetings for affected neighborhoods: November 13, 2010 at 9:00 AM at the Nathaniel Winsor, Jr. House (479 Washington Street)
- Public Hearing: November 22, 2010 at 7:00 PM, Duxbury Senior Center
- Round-Table for Land Use and Finance Groups: Not yet scheduled
- Town Meeting Article: March 12, 2010

Three Local Historic Districts are proposed: 1) Winsor Local Historic District—located at the crossroads of Washington and Harrison Street; 2) Bradford Local Historic District—located near the intersection of Harrison and Tremont Streets; and 3) First Parish Church Local Historic District---located on Tremont Street.

The Selectmen thanked Mr. Hartford for his presentation.

CONFLICT OF INTEREST EXEMPTION (JOHN McCLUSKEY)

Mr. McCluskey explained that he is a member of the Shellfish Advisory Committee. Among other things, this committee reviews aquaculture licenses, regulations, matters pertaining to the use and management of the Bay, as well as new license applications. In addition, Mr. McCluskey holds two aquaculture licenses. He said that it has been considered desirable to have stakeholders comprise the committee. He also said that the committee is advisory to the Selectmen only, and does not make final decisions on regulations or applications. Nonetheless, there is a conflict. He said that he is applying for an exemption to two sections of the Conflict of Interest Law.

Mr. Will Zachmann, editor of the *Duxbury Times*, said that he has no quarrel with Mr. McCluskey's request. However, he was concerned about the conflict of interest disclosure

forms that were filed by two Town of Duxbury employees, and which were considered at the Selectmen's meeting of October 18, 2010. Duxbury Town Counsel explained that the disclosure forms only tell part of the story. Letters from the employee, opinions of the State Ethics Commission, and opinions of Duxbury Town Counsel are filed with the Duxbury Town Clerk.

Ms. Sullivan moved that, pursuant to M.G.L. c. 268A, §19 (b), (1), the Board of Selectmen determine that Mr. McCluskey's financial interest in Duxbury Bay is not so substantial as to be deemed likely to affect the integrity of the services which the Town may expect from him as a Special Municipal Employee, serving as a member of the Shellfish Advisory Committee. Second by Mr. Donato. Vote: 3:0:0.

Ms. Sullivan moved that the Board of Selectmen grant an exemption for Mr. John McCluskey from the provisions of M.G.L. c. 268A, §20(d), for his role as a member of the Shellfish Advisory Committee, and Manager of Duxbury Oyster Company, LLC. Second by Mr. Donato. Vote: 3:0:0.

DUXBURY TOWN COUNSEL: LITIGATION REVIEW

Mr. Troy said that he has been informed that there were questions at the last Selectmen's meeting about the following case: R.D. Matthews v. Town of Duxbury. This case involved the buildability of three lots in Duxbury (Tinkertown Ponds). The case spanned many years and two different judges. There were two parts to the case. In the first part, the judgment was in favor of the Town. The case was re-generated afterward, because the Zoning Board of Appeals allowed a transfer of the original Tinkertown Landing permit to R.D. Matthews. (There had been a previous developer.) The next judgment was in favor of R.D. Matthews. The Duxbury land use boards were consulted, and all agreed that the Town should appeal the judgment. The Town did not prevail. Mr. Troy has recommended that the Town not continue. It is expected that the developer will apply for a building permit.

TOWN MANAGER BRIEF

- 1) **DPW Grant:** Our insurance company (MIIA) has approved a \$5000 grant for the DPW to purchase an emergency response trailer. This grant will enable the Town to store and transport traffic control equipment such as barrels, barricades and cones. This will add to the safety of emergency responders as they work on or near roadways. The departments that might benefit from the purchase of such a trailer are the DPW, Police, Fire, Board of Health, and Conservation. Mr. MacDonald thanked DPW Director, Peter Buttkus, and Executive Assistant, Barbara Ripley, for their work in applying for this grant.
- 2) **Construction Costs:** Construction costs were \$1.3 million in October, which is a good sign, according to Mr. MacDonald. There are already several applications that have been submitted for November, which is another positive indicator.
- 3) **Professional Support Union De-Certified:** At an election, Service Employees International Union, Local 888 (Professional Support Workers), was de-certified by a vote of 8-0. Therefore, these employees will be covered under the Town's Personnel Bylaw.

ANNOUNCEMENTS

1. **STATE ELECTION:** The State Election will be held on Tuesday, November 2, 2010. In Duxbury the polls will be open from 6:00 AM to 8:00 PM at the Duxbury Middle School (GYM), 130 St. George Street.

2. **FLU CLINIC:** The Town of Duxbury will be offering a flu clinic at the Senior Center, 10 Mayflower Street, for all Duxbury residents over 9 years of age on Thursday, November 4, 2010 from 10:00 AM to Noon. This year's vaccine contains protection against both the pandemic H1N1 influenza and two other strains of influenza virus circulating in the fall and winter. Additional flu clinics will be scheduled when vaccine becomes available.

MINUTES

Ms. Sullivan moved that the Board approve the minutes of October 18, 2010 as written. Second by Mr. Donato. Vote: 3:0:0.

Ms. Sullivan moved that the Board approve the minutes of October 25, 2010 as written. Second by Mr. Donato. Vote: 3:0:0.

NEW BUSINESS / OLD BUSINESS

No items were brought forward.

VOTE TO ENTER EXECUTIVE SESSION

Mr. Dahlen moved that the Board enter Executive Session in order to consider the purchase, exchange, lease or value of real property since an open meeting may have a detrimental effect on the Town's negotiating position; and to discuss strategy with respect to litigation since an open meeting may have a detrimental effect on the Town's litigating position, and to adjourn immediately afterward, in accordance with Massachusetts General Laws Chapter 30a, Section 21, Paragraphs 6 and 3. Second by Mr. Donato. Roll Call Vote: Mr. Donato—aye; Ms. Sullivan—aye; Mr. Dahlen---aye.

(Note: The King Caesar matter, originally on the agenda, was resolved prior to the meeting. The real property issue was not on the original agenda, because the issue appeared over the weekend.)

ADJOURNMENT

At 8:32 PM, at the conclusion of the Executive Session, Mr. Donato moved for adjournment of the meeting. Second by Ms. Sullivan. Vote: 3:0:0.

LIST OF DOCUMENTS (AVAILABLE IN THE SELECTMEN'S OFFICE)

- 1) *Preliminary Report, Local Historic District Study Committee, 9-22-10*
- 2) *Disclosure Notice, John E. McCluskey, 6-29-10*
- 3) *Town Counsel Conflict of Interest Determination re: John McCluskey, 7-22-10*
- 4) *Opinion re Conflict of Interest, McCluskey, State Ethics Commission, 7-26-10*
- 5) *Town Counsel Memorandum: Conflict of Interest Information, 9-8-10*
- 6) *Letter from B. Ripley to J. McCluskey, 9-30-10*
- 7) *Conflict of Interest Disclosure forms from J. McCluskey, 10-19-10*
- 8) *Massachusetts General Laws, Chapter 268A, Sections 19 & 20*
- 9) *Town of Duxbury Construction Cost Estimates, October 2010*
- 10) *Minutes of 10-18-10 (Draft)*
- 11) *Minutes of 10-25-10 (Draft)*