

Date: February 28, 2011

Date Minutes Approved: 03-07-11

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; C. Anne Murray, Administrative Assistant; and Barbara Mello, Executive Assistant.

The meeting was opened at 6:30 P.M. At that time Mr. Donato, Mr. Dahlen, Mr. MacDonald, and Ms. Murray were present.

VOTE TO ENTER EXECUTIVE SESSION

At 6:31 PM, Mr. Donato moved to enter Executive Session in order to discuss matters regarding the King Caesar Fund, 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 30a, Section 21, and then to reconvene in Open Session. Second by Mr. Dahlen.

Mr. Dahlen declared that the Executive Session was necessary due to the confidential nature of all King Caesar Fund cases. Roll Call Vote: Mr. Dahlen---aye; Mr. Donato---aye.

END EXECUTIVE SESSION

At approximately 6:45 P.M., Mr. Donato moved that the Board end Executive Session, and take a short recess until the beginning of the Open Session at 7:00 P.M. Roll Call Vote: Mr. Donato---aye; Mr. Dahlen----aye. At this point, Ms. Murray left the meeting.

OPEN SESSION

The Open Session convened at 7:00 P.M. Present were: Mr. Dahlen, Ms. Sullivan, Mr. Donato, Mr. MacDonald, Mr. Madden, and Ms. Mello.

OPEN FORUM

No items were brought forward.

STREET ACCEPTANCE PUBLIC MEETING AND TOWN MEETING ARTICLE #43: ICE HOUSE ROAD & CUSHING DRIVE

Mr. Mark Casey, resident of Duxbury and Principal of South Shore Survey was present. Mr. Casey explained that he had drawn the original plans for the Freeman Farms subdivision (consisting of two streets---Ice House Road and Cushing Drive). The subdivision was originally approved in 1998 for seventeen house lots. Since then, only six homes have been built. However, the roads have been completed. The Planning Board has approved the As-

Built plans. All but \$2,000.00 of the Performance Bond for the completion of the roadways has been returned to the developer, Brad Cushing. This \$2,000.00 was held back to make sure that the grass grows back in an area that had been damaged by plows.

Mr. Casey said that the developer and the subdivision residents would like the streets to be accepted as public ways in the Town of Duxbury. He said that the Planning Board did not want to sponsor the street acceptance, so the matter was being brought forward via a citizens petition.

Mr. Casey said that there is no provision in the Duxbury Subdivision Rules and Regulations for when a roadway can be accepted by the Town. Mr. Casey said that the Planning Board has stated that they do not want to recommend street acceptance until all of the homes are built. He said they are concerned that the road could be damaged by heavy construction equipment.

Mr. Casey said that the possibility of road damage is covered by the fact that, when a house is being built, the builder is required to obtain a road opening permit. The road opening permit requires the posting of a \$5,000.00 bond, in case of road damage.

Mr. Casey also noted that Hounds Ditch Lane was accepted before all the homes were built.

Mr. Casey said that the Town has received benefits from the construction of the Freeman Farms subdivision. Mr. Cushing donated 12.71 abutting acres of extremely environmentally-sensitive land to the Town, he said. Mr. Cushing currently pays \$55,000.00 per year in taxes for the undeveloped lots. The current homeowners pay a total of approximately \$72,000.00 annually in property taxes.

Mr. Donato asked how the street acceptance would benefit the current residents. Mr. Casey explained that the residents would receive Town services such as plowing and street cleaning.

At this point, Duxbury Planning Director Tom Broadrick arrived at the meeting. Mr. Broadrick explained that two issues are before the Selectmen: 1) The Selectmen are being asked to "lay out" the roadways, in the Street Acceptance Public Meeting. There is no reason not to do that, as the road has been completed and the as-built plan has been accepted; 2) The Selectmen are being asked to support (or not support) the Town Meeting citizen petition to accept these "laid-out" roadways as public ways in the Town.

Mr. Broadrick said that the Planning Board has always taken the position that the subdivision homes must be completed before the streets can be accepted by the Town.

Mr. Dahlen commented that the subdivision residents are paying taxes, but are not getting the benefit of Town services. Mr. Keating, a resident of Ice House Road, concurred with Mr. Dahlen's statement and said that the subdivision residents unanimously support the Town Meeting article to accept the streets as public ways.

Mr. Donato said that he is very torn on this issue. He said that he wants to support the Planning Board, because the Town asks the Planning Board to look out for the Town with regard to subdivisions, roadways, etc. However, Mr. Donato said that he does not like to see what is happening to the current residents of the subdivision.

Mr. John Baldwin, resident of Duxbury, said that he has built forty houses in Duxbury and has never damaged a road.

Ms. Sullivan called for a vote. Ms. Sullivan moved that the Board of Selectmen lay out Cushing Drive and Ice House Road, as shown on the Street Acceptance Plans on file with the Town Clerk. Second by Mr. Donato. Vote: 3:0:0.

Next, Ms. Sullivan moved that the Board of Selectmen support 2011 Annual Town Meeting Article #43, a citizen petition to accept the layouts of Cushing Drive and Ice House Road as Public Ways in the Town of Duxbury. Second by Mr. Donato. Vote: 3:0:0.

TOWN MEETING ARTICLE #31: LOCAL HISTORIC DISTRICTS

Mr. Jim Hartford, Chairman of the Duxbury Local Historic District Study Committee (LHDSC), was present. He explained that the LHDSC took their charge from the Board of Selectmen, to determine whether there would be a benefit to establishing one or more historic districts in the Town. After studying the issue, the committee decided that there would be a benefit. However, they felt that they wanted the prospect to be as non-confrontational and non-controversial as possible. They did not want to include any properties in a recommended district where the property owner objected. In addition, the proposed rules for the historic district are very lenient.

The three proposed historic districts are: 1) The Winsor Local Historic District (comprising four Federal period houses at the crossroads of Washington and Harrison Streets; 2) The Bradford Local Historic District (comprising 13 parcels and 8 buildings at the intersection of Tremont and Harrison Streets); and 3) The First Parish Church Local Historic District (comprising the 1840 First Parish Church on Tremont Street).

Mr. Hartford said that the question for Town meeting is whether the Town wants the benefits offered by Local Historic Districts as shown by these three districts.

Mr. Hartford explained that the Finance Committee found some minor errors in the proposed Local Historic District bylaw. He will be preparing a hand-out for Town Meeting so that voters can see the corrections.

Mr. Dennis Murphy, ZBA member, said that he had asked the Selectmen to form the LHDSC two years ago, so that the idea of creating a Local Historic District for High Street would be considered. The LHDSC did consider High Street. However, they ultimately decided to focus on other areas. Mr. Murphy expressed his hope that the LHDSC would consider High Street after Town Meeting, or that the Selectmen would appoint another committee.

Ms. Sullivan moved that the Board approve Town Meeting Article #31, pertaining to Local Historic Study Districts, as presented. Second by Mr. Donato. Vote: 3:0:0.

CHANGE ORDER OF AGENDA

Mr. Dahlen explained that Ms. Mello had arranged the agenda for the scheduling convenience of article presenters. However, Mr. Dahlen proposed to change the order of presentations to follow the numerical order of articles as found in the Annual Town Meeting Warrant. There were no objections, so the order was changed.

TOWN MEETING ARTICLES #33 (CITIZEN PETITION PERTAINING TO ACCESSORY STRUCTURES) AND #34 (PLANNING BOARD ARTICLE PERTAINING TO ACCESSORY STRUCTURES)

The author of the Citizen Petition, Ms. Jessica Williams, was present. Ms. Williams is a Duxbury resident and local architect. She said that this matter came to her attention when her client wanted to build an accessory structure on their lot. She said that for forty years, the Building Inspector used certain criteria for determining whether the application for an accessory structure was allowable. Finished living space is allowed. However, a dwelling unit is not allowed. The Building Inspector was able to distinguish between the two. For forty years, this process seemed to function well. However, recently, some members of the

Planning Board and the Zoning Board of Appeals (ZBA) began to feel that the Building Inspector was misinterpreting the Zoning Bylaw. These Board members were concerned about the possibility of double-density, or two dwellings on one lot. The assumption seemed to be, according to Ms. Williams, that some of the applicants intend to “cheat”, and turn the accessory structures into dwelling units. Ms. Williams said that the presumption of cheating is not a good way to set policy.

Ms. Williams noted that most accessory structures increase taxable space, without adding to the school system.

Ms. Williams concluded that she may amend her proposed at Town Meeting as shown (added language is shown in bold italics):

Accessory Structure

A structure, such as, but not limited to, a detached garage, shed, swimming pool, tennis court, pier, greenhouse, or a structure with finished living space that is not a “dwelling unit”, **as described herein**, located on the same lot with and accommodating a use accessory to the principal structure, or use of the lot, except a pier may be located on a lot adjacent to the principal structure.

Planning Director Tom Broadrick was present to describe the Planning Board’s point of view on their Accessory Structure article. He said that there had never been such a problem before with accessory structures becoming extra houses. This is what the Planning Board is concerned about.

Mr. Dahlen commented that he has never seen a single incident of “cheating”.

Mr. James Lampert, Duxbury resident and former ZBA Chair, said that for years, the Building Inspector and the ZBA used the criteria: “Does the proposed structure have a stove or not?” This was very easy to apply. However, the recent decision on 21 River Lane changed everything. The stipulations of the decision introduced great confusion into the decision-making process. Mr. Lampert suggested that a committee be appointed to study the issue.

Mr. Zachmann said that examples of “cheating” are rampant. One can simply look at the www.Zillow.com website, and see numerous homes for sale where the extra income from an “illegal” accessory dwelling structure is advertised. Mr. Zachmann agreed that the Town needs clear rules about what is allowed vs. what is not allowed. He said that neither of the proposed articles solves the problem. He agreed that a committee is needed.

Mr. Bill Campbell, resident of Humphries Lane, said that denial of applications because of what MAY happen in the future is inappropriate.

Mr. Paul Driscoll, resident of Crescent Street and local attorney, said that he represented the owner of 21 River Lane. He said that there will be an appeal to the decision. He said that the Board members are dealing with a “fear” of double-density. What they should be dealing with, he said, is the black and white “ink” of the Zoning Bylaw.

Mr. Dennis Murphy gave his opinion that neither proposed article is “ready for prime time”. He suggested that both articles be indefinitely postponed.

Mr. Scott Casagrande, resident of Duxbury and member of an ad-hoc committee that has been looking at this issue, said that there is better guidance available with the Citizen Petition than with the Planning Board sponsored article.

Mr. Dahlen made the following four points:

- 1) We need clarity on the issue.

- 2) No one believes that we should have double-density.
- 3) The Bylaw should take into account that there are different family configurations. He gave the example of building living space for his parents over his detached garage. He said that this was a wonderful thing for his family.
- 4) He has not seen a single example of "cheating".

Ms. Sullivan moved that the Board approve Article #33 (Citizen Petition pertaining to Accessory Structures) as presented, recognizing that there may be a slight amendment to the language. Second by Mr. Donato. Vote: 2:1:0. (Mr. Donato against.)

Ms. Sullivan moved that the Board approve Article #34 (Planning Board article pertaining to Accessory Structures) as presented. Second by Mr. Donato. Vote: 1:2:0 (Mr. Dahlen and Ms. Sullivan against.)

TOWN MEETING ARTICLE #35 (PERTAINING TO ACCESSORY APARTMENTS)

This article is sponsored by the Local Housing Partnership. Mr. Broadrick stated that the Planning Board supports the article. It basically reduces the time required between the addition of new living space in a dwelling and a Special Permit application to create an accessory apartment.

Mr. Matt Walsh, member of the Local Housing Partnership and a local attorney, said that there were many housing advocates who wished for even greater changes to the accessory apartment bylaw. The proposed article represents a compromise.

Ms. Sullivan moved that the Board approve Town Meeting article #35, pertaining to Accessory Apartments. Second by Mr. Donato. Vote: 3:0:0.

TOWN MEETING ARTICLE #36 (RESOLUTION FOR SINGLE-DENSITY PLANNING)

Ms. Nancy Landgren, author of the Citizen Petition, was present to describe the article, which is a resolution to endorse single-density planning in Duxbury. She explained that she was a direct abutter to 21 River Lane. She said that there is a great deal of confusion over what is allowed in terms of accessory structures. She feels that double-density building has been allowed over the past several years. However, she acknowledged that articles 33 and 34 address this issue. If she is satisfied with the Town Meeting discussion of these articles, she may withdraw the article.

Mr. Dahlen said that he agrees with the spirit of the petition. However, he disagrees with the second sentence, which says: "Whereas the Town has become home to double-density sites in the past few years." Mr. Dahlen repeated his assertion that there has been no evidence of this.

Ms. Sullivan said that, while she cannot support the article, that she appreciates the time and effort that Ms. Landgren has expended on the issue.

Ms. Sullivan moved that the Board approve Town Meeting Article #36, a resolution to support single-density planning. Second by Mr. Donato. Vote: 0:3:0.

TOWN MEETING ARTICLE #37 (BED & BREAKFAST DEFINITION)

Mr. Broadrick said that our Zoning Bylaw defines a "Guest House" as something more commonly known as a "Bed and Breakfast". The Planning Board proposes to clarify the definition and change the title of the definition, but not the definition itself.

Ms. Sullivan moved to approve Town Meeting Article #37, pertaining to the definition of “Bed and Breakfast”. Second by Mr. Donato. Vote: 3:0:0.

TOWN MEETING ARTICLE #38 (LOT COVERAGE)

Mr. Broadrick noted that this article has been before Town Meeting on other occasions, but there has not yet been resolution. The current allowable lot coverage ratio is 50%. However, the Planning Board proposes to count crushed stone parking and driveways as impervious coverage, so it will be much more difficult to achieve the 50%. The Town meeting article proposes to raise allowable lot coverage to 70%. However, as of this time, 3 members of the Planning Board support 60% coverage, and 3 others support 70% coverage.

Ms. Sullivan said that she would like to see the Planning Board come to agreement on this issue.

Mr. Dahlen said that he thinks the Planning Board is going about this issue the wrong way. He suggested that the Board take a survey of what currently “works” in Town, and craft the bylaw to match that.

Ms. Sullivan moved that the Board approve Town Meeting Article #38, pertaining to lot coverage. Second by Mr. Donato. Vote: 2:1:0 (Mr. Dahlen against.)

TOWN MEETING ARTICLE #39 (OPEN SPACE)

Mr. Broadrick explained that this is a companion article to Article #38. The portion of a lot which is not “covered” is deemed as “open space”.

Ms. Sullivan moved that the Board approve Town Meeting article #39 as presented. Second by Mr. Donato. Vote: 2:1:0 (Mr. Dahlen against.)

TOWN MEETING ARTICLE #40 (PARKING)

Mr. Broadrick explained that the Planning Board has been working for several years to refine a Parking Bylaw that will work for the Town. Mr. Dahlen said that he objects to the proposed parking space size requirement, which is larger than average. He said that more asphalt will be required to create the required number of parking spaces for each potential use. This results in less “green” space.

Ms. Sullivan moved that the Board support Town Meeting Article #40, pertaining to a Parking Bylaw. Second by Mr. Donato. Vote: 1:2:0. (Mr. Dahlen and Ms. Sullivan against.)

TOWN MEETING ARTICLE #41 (USE VARIANCES)

Mr. Broadrick said that the Zoning Bylaw very carefully describes the uses that are permitted in each zoning district. The Planning Board does not see the benefit to having a procedure to “allow things that are not allowed”.

Attorney Driscoll said that the Town adopted Massachusetts General Laws, Chapter 40A (the Zoning Law) many years ago. Chapter 40A has a provision for use variances. However, there are very strict hurdles to pass. He said that it is important to leave this provision in the Town’s zoning bylaw.

Ms. Sullivan moved that the Board approve Town Meeting Article #41, pertaining to use variances. Second by Mr. Donato. Vote: 0:3:0.

TOWN MEETING ARTICLE #42 (OWNER PETITION)

Present were:

**Mr. John Baldwin, local builder and applicant's representative
Mr. and Mrs. William Driver, applicants
Mr. Alan Loomis, MacKenzie Engineering Group, Inc.**

Mr. Baldwin explained that a large portion of the Drivers' lot is zoned in the Wetlands Protection District. However, Mr. Baldwin asserts that the area does not meet the criteria to be called "wetlands". He said that the original zoning was done in 1971, and that there were some mistakes. He said that the Zoning Bylaw makes Town Meeting the remedy for any incorrect zoning of the Wetlands Protection Overlay District.

Mr. Alan Loomis, of MacKenzie Engineering, was present to describe his survey of the property. He found that the soils were not at all indicative of wetlands.

The original Town Meeting article requested that the entire parcel be re-zoned as RC (or Residential Compatibility). However, after meeting with the Conservation Commission, the applicant is agreeable to a 50-foot buffer line.

Ms. Sullivan moved that the Board approve Town Meeting Article #42, an owner petition for re-zoning off Franklin Street. Second by Mr. Donato. Vote: 3:0:0.

LOCAL INITIATIVE PROJECT (L.I.P) APPLICATION FOR TEMPLE STREET: FEINBERG BOG ROAD

Mr. Matt Walsh was present from the Local Housing Partnership Committee. The Committee has completed all the steps to make a formal application to the Department of Housing and Community Development for a L.I.P. project. The Selectmen were asked to endorse the application. Mr. Dahlen, who is the Selectmen liaison to the committee, said that the committee worked hard to give the project the look and feel of Duxbury. They have also worked closely with the abutters.

Mr. Donato moved that the Selectmen support the Local Initiative Project known as Feinberg Bog Road, off Temple Street in Duxbury. Second by Ms. Sullivan. Vote: 3:0:0.

ONE-DAY LIQUOR LICENSE: DUXBURY BAY MARITIME SCHOOL

Mr. Dahlen recused himself from the discussion and vote on this issue, since he is a Director of the Duxbury Bay Maritime School.

Ms. Sullivan moved that Ms. Linda Herrick, as a representative of the Duxbury Bay Maritime School, is granted a One-Day All-Alcohol License to hold a "Shipwreck Ball" at Clifford Hall, 457 Washington Street, on Saturday, March 5, 2011 from 7:00 PM to 11:30 PM, subject to the conditions listed on the license. Second by Mr. Donato. Vote: 2:0:0.

TOWN MANAGER BRIEF

- 1) Blairhaven Committee: Mr. MacDonald said that there is a Town Meeting article to consider the purchase of three acres of land adjacent to Howland's Landing, known as "Blairhaven". He announced that he is appointing a committee to determine existing uses and potential uses in keeping with the neighborhood and the environment. The members will be:**

Betsy Sullivan or her designee (Selectmen)
Joe Messina (Conservation Commission)
John Brawley (Duxbury Bay Management Commission)
Pat Loring (Open Space & Recreation Committee)
Tony Kelso (Town Historian)
Holly Morris (Community Preservation Committee)
Joe Jannetty (Citizen At-Large)
Mike Barbour (Citizen At-Large)
Joe Grady (Conservation)
Don Beers or his designee, *ex officio* (Harbormaster)
Gordon Cushing or his designee, *ex officio*, (Recreation)
Peter Buttkus or his designee, *ex officio*, (DPW)

- 2) The Sisters of Saint Margaret plan to sell their facility in Boston and move permanently to Duxbury, with future building plans yet to be determined.
- 3) The Town Manager thanked everyone for their concern about him, given his recent accident.

Mr. Donato asked about the bidding results for the management of the North Hill Golf Course. Mr. MacDonald replied that there were no bidders.

Mr. Dahlen interjected that the bids for Fire Station construction came in lower than expected, which will reduce the overall cost of the project.

ANNOUNCEMENTS

1. **Welcome Back to Reporter Kathy Koch (*pronounced "Cook"*):**
Kathy Koch is the new reporter for The Duxbury Reporter, who will be covering the Town of Duxbury. Since moving to the area in 2001, Kathy has covered a number of local communities and previously covered Duxbury. The Board of Selectmen would like to introduce Kathy to the community and welcome her back.

2. **Stop Smoking Initiative for Veterans & Their Families (March –June 2011):**
Veterans and their families can call 1-800-QUIT-NOW (1-800-784-8669) or go online to www.makesmokinghistory.org/veterans to qualify for their FREE, two-week supply of nicotine patches. This promotion applies to any individual in Massachusetts who has served in the military or serves now, including the National Guard, and to the families of those veterans.

MINUTES

Mr. Donato moved that the Board accept the minutes of February 7, 2011 as presented. Second by Ms. Sullivan. Vote: 3:0:0.

COMMITTEES

Mr. Dahlen moved to appoint Mr. Walter Amory to fill an unexpired term on the Open Space and Recreation Committee, such term to expire on June 30, 2011. Second by Mr. Donato. Vote: 3:0:0.

BONUS SHELLFISH SEASON

Mr. Donato, due to abundant shellfish resources, moved to:

- 1) Declare a temporary Bonus Shellfish Season for the commercial harvesting of softshell clams for the month of March. Regulations as attached. (Please see Attachment B & C)**
- 2) Declare a temporary Bonus Shellfish Season for the commercial harvesting of quahog clams for the month of March. Regulations as attached. (Please see Attachment A & C)**
- 3) Declare a temporary Bonus Shellfish Season for the recreational harvesting of Soft Shelled Clams for the month of March. Regulations as attached. (Please see Attachment D).**

Second by Ms. Sullivan. Vote: 3:0:0.

OLD BUSINESS

Mr. Zachmann reminded the Board that Verizon FIOS subscribers do not have access to Selectmen and School Committee meetings on cable television. Mr. MacDonald said that there is a Verizon site visit scheduled for this week, and that the process is underway.

ADJOURNMENT

Ms. Sullivan moved for adjournment at 10:10 PM. Second by Mr. Donato. Vote: 3:0:0.

LIST OF DOCUMENTS

- 1) Print-outs of Annual Town Meeting Articles 43, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, & 42**
- 2) Information Packet Pertaining to Street Acceptance Meeting for Freeman Farms:**
 - Planning Director Memo, dated 2-23-11 re: Street Acceptance Process
 - Original Citizen Petition, dated 12-7-10
 - Revised Citizen Petition, dated 1-31-11
 - Legal Description for "Cushing Drive" and "Ice House Road"
 - Legal Advertisement for Street Acceptance Public Meeting
 - E-Mail from Mark Casey (South Shore Survey), dated 2-16-11, re: Applicant's case for recommending Street Acceptance at the Annual Town Meeting
 - Planning Director Memo, dated 2-23-11, re: Response to Casey e-mail of 2-16-11
 - Slope Easement information dated 2-2-09 submitted by M. Casey to Planning Board on 2-14-11
 - Protective Covenant between developer and lot owners, dated 8-29-03
- 3) Final Report of the Local Historic District Study Committee, dated 12-07-10**
- 4) Summary of Planning Board Recommendations for Zoning Articles, and Planning Director Explanatory Notes**
- 5) Letters from James Lampert, former ZBA Chair, pertaining to Town Meeting Articles #33 and #34; letters dated 2-3-11 and 2-22-11**
- 6) Information Packet Pertaining to Town Meeting Article #42:**
 - Memo, dated 2-3-11, from Health Agent Tracy Mayo, regarding soil evaluation of 1 Cape Verde Terrace (off Franklin Street), and soil testing results.
 - Wetland Delineation Report for 1 Cape Verde Terrace, dated July 6, 2010, by Brad Holmes: Professional Wetland Scientist #1464, Environmental Consulting and Restoration, LLC
 - Site Locus Map, 1 Cape Verde Terrace
 - FEMA Map, 1 Cape Verde Terrace
 - 2008 MassGIS on-Line Mapping: Priority & Estimated Habitat, 1 Cape Verde Terrace

- Exhibit Plan, McKenzie Engineering Group, Inc., dated 1/28/11
 - Duxbury Clipper article, dated 3-25-1976, "Wetland Protection Zoning", by Lansing Bennett
 - Wetlands Protection Overlay District Modification Plan for 1 Cape Verde Terrace, dated 1/28/11, by McKenzie Engineering Group, Inc.
- 7) **Department of Housing and Community Development: Local Initiative Program Application for Feinberg Bog Road**
 - 8) **One-Day Liquor License Application for Duxbury Bay Maritime School Event on 3-5-11**
 - 9) **Committee Appointment Information Sheet**
 - 10) **Harbormaster Recommendations for March 2011 Bonus Shellfish Season**