

Date: January 9, 2012

Date Minutes Approved: January 23, 2012

BOARD OF SELECTMEN MINUTES

Present: Shawn M. Dahlen, Chair; Christopher R. Donato, Vice-Chair; and Theodore J. Flynn, Clerk.

Absent: No members were absent.

Staff: Richard MacDonald, Town Manager; John Madden, Finance Director; and Barbara Mello, Executive Assistant.

CALL TO ORDER

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

SWEARING-IN OF ANDREW HOLMSTEAD

Chief Clancy introduced Andrew Holmstead, a veteran police officer who has come to work in Duxbury. Officer Holmstead formerly worked in North Adams, where he was very highly regarded. His many accomplishments included participation in crime scene teams, and the mountain-bike patrol. Ms. Nancy Oates administered the oath of office to Officer Holmstead. Present were Officer Holmstead's girlfriend, and several members of the Duxbury Police Department.

OPEN FORUM

No items were brought forward.

JAYCOX TREE FARM REVOLVING FUND

Mr. Grady, Conservation Administrator, requested that this item be postponed to the next meeting.

SEASONAL POPULATION ESTIMATE

Mr. Dahlen explained that Massachusetts General Laws require that an estimate of temporary increased resident population be made prior to March 1 in any year, for the purpose of establishing a quota of seasonal liquor licenses that a Town may issue. Duxbury currently has one Seasonal License (Duxbury Beach Park 2).

Mr. Flynn moved that the Board certify to the Alcohol Beverage Control Commission, based on information from the Town Clerk, that the estimated resident population as of July 10, 2012 will be 16,464 persons. Second by Mr. Donato. Vote: 3:0:0.

REMOTE PARTICIPATION (BOARDS & COMMITTEES)

Mr. Dahlen explained that the ability for remote participation in Board and Committee meetings was intended to be part of the New Open Meeting Law. However, the implementation of remote participation was delayed until now. Town Counsel has provided a memorandum explaining the specifics of this provision. Mr. Dahlen asked that this be distributed to all Board and Committee chairs. Mr. Dahlen said that he is pleased that the Commonwealth is now catching up to what other nonprofit boards and committees have been doing for a long time. It is a common occurrence, he said, for people to be able to participate in meetings while they are out of town.

Mr. MacDonald said that the law requires that the committee member who is participating remotely is able to hear all comments from the committee and the public, and that all committee members and the public be able to hear the member who is participating remotely. Mr. MacDonald said that he will be coordinating the logistics to make that possible.

Mr. Flynn moved that the Board of Selectmen allow remote participation in Board and Committee meetings, effective January 9, 2012, in accordance with Massachusetts General Laws, Chapter 30A, Section 20(d), and in accordance with 940 CMR 29.10. Second by Mr. Donato. Vote: 3:0:0.

(NOTE: This vote was amended later in the evening.)

TOWN MEETING ARTICLE: FOURTH OF JULY CELEBRATION

Ms. Katy Gaenicke, Co-Chair of the Fourth of July Committee, was present. Mr. Dahlen commented that this is an annual article. Mr. Flynn moved that the Board recommend approval of the 2012 Annual Town Meeting article pertaining to the Fourth of July celebration, in the amount of \$10,000.00. Second by Mr. Donato. Vote: 3:0:0.

TOWN MEETING ARTICLE: DUXBURY BEACH LEASE

(Mr. Dahlen recused himself from the discussion and vote on this issue, because he is the Vice-President of the Duxbury Beach Reservation.)

Ms. Margaret Kearney, President of the Duxbury Beach Reservation (DBR), was present. She said that the DBR has presented the Selectmen with the most recent financial statement. The DBR is pleased to offer the same lease rate again this year.

Mr. Flynn moved that the Board recommend approval of the 2012 Annual Town Meeting article pertaining to leasing Duxbury Beach from the Duxbury Beach Reservation, Inc. for FY 2013, in the amount of \$400,000.00. Second by Mr. Donato. Vote: 2:0:0 (Mr. Dahlen did not vote.)

COUNCIL-ON-AGING BUDGET PRESENTATION

Present were:

Ms. Joanne Moore, Council-on-Aging (COA) Director

Ms. Linda Hayes, COA Assistant Director

Ms. Joanne Moore gave a Power Point presentation. Highlights of the presentation included:

- The COA is requesting a 2.1% overall budget increase.

- Financial support for the COA comes from the Town of Duxbury (77%), the Greater Attleboro Transportation Regional Authority (12%), the Friends of the COA (7.5%), and a Formula Grant (3.5%).
- Volunteers gave 28,066 hours of service in FY2011.
- The COA is requesting \$43,408 in Capital Project Funds for: Interior Painting, Carpet Replacement, reconfiguration of the front desk area, and a new modular office.
- The number of Duxbury senior citizens is expected to grow from 3,550 in 2010 to 5,448 in 2020.

In response to a question from Mr. Dahlen, Ms. Moore said that she will be meeting with the Finance Director and Director of Assessing to consider a request for expanding the Senior Tax Work-Off program.

Mr. Flynn moved that the Board of Selectmen approve the Council-on-Aging budget as presented. Second by Mr. Donato. Vote: 3:0:0.

TOWN MEETING ARTICLE: HOUSING ALLOCATION PLAN

Ms. Diane Bartlett, Chairman of the Local Housing Partnership, was present. She explained that this is an annual article to establish how allocations from the Duxbury Affordable Housing Trust Fund will be expended. There are no changes from the previous year. There is currently \$135,000.00 in the Fund.

Mr. Flynn moved that the Board recommend approval of the 2012 Annual Town Meeting article pertaining to allocation of the resources of the Duxbury Affordable Housing Trust Fund for FY 2013. Second by Mr. Donato. Vote: 3:0:0.

DUXBURY FREE LIBRARY BUDGET PRESENTATION

Present were:

Ms. Carol Jankowski, Library Director
Ms. Rose Hickey, Technical Services Division Head
Ms. Denise Garvin, Circulation Division Head

Ms. Jankowski gave a Power Point presentation. Highlights of the presentation included:

- 4,000 to 5,000 people use the building each week
- Over 20,000 residents have active library cards
- There has been a huge increase in demand for digital media
- The building is 15 years old, and is need of repair in several areas
- Future goals include restoring the Reference Librarian to a full-time position, increasing Sunday and Monday hours, implementing a capital improvement plan, and increasing municipal materials funding

Mr. Dahlen said that the situation at the library demonstrates the need for a Town Facilities Director. The Library Director should not be spending so much time on building issues.

Mr. Flynn moved that the Board approve the Duxbury Free Library budget as presented. Second by Mr. Donato. Vote: 3:0:0.

REMOTE PARTICIPATION (BOARDS & COMMITTEES)-----REVISITED

Mr. MacDonald suggested that the Board amend their vote on Remote Participation to allow him time to work out the logistics for providing the appropriate speaker phones, etc., in the meeting rooms.

Mr. Flynn moved that the Board of Selectmen allow remote participation in Board and Committee meetings, effective February 1, 2012, in accordance with Massachusetts General Laws, Chapter 30A, Section 20(d), and in accordance with 940 CMR 29.10. Second by Mr. Donato. Vote: 3:0:0.

ANNUAL TOWN MEETING ARTICLE: CITIZEN PETITION PERTAINING TO BALLOT VOTES AT TOWN MEETING (JAMES SULLIVAN)

Mr. Sullivan said that, after the October 29, 2011 Special Town Meeting, several people approached him and requested that he sponsor this article. He said that several people were intimidated by having to make a public vote on the school building project article. He said that he worked with Duxbury Town Counsel to develop the petition language. He explained that his recommended bylaw change allows three methods for having a ballot vote at Town Meeting: 1) Moderator preference; 2) Recommendation of the Finance Committee; 3) A request by 20 voters at the meeting.

Mr. Friend Weiler, Duxbury Town Moderator, was present at the meeting. He said that Duxbury Town Meeting is run by the procedures outlined in the book, Town Meeting Time. Town Meeting time allows for a ballot vote to be called by the Moderator, or by a majority of those present at the meeting. Mr. Weiler said that he is generally not in favor of ballot votes because they delay the proceedings. He said that he is trying to keep people interested in Town Meeting by helping it to move along at a reasonable pace.

Mr. Dahlen concurred that he prefers that a majority of the voters be required for a ballot vote. Mr. Flynn said that if only 20 voters are required, that there could be a "tyranny of the minority". For example, he said that a small number of people could require ballot votes for each and every article, for the purpose of delaying the vote on a future article to a future evening of Town Meeting.

Mr. Weiler said that he is encouraged by the development of electronic voting at Town Meetings. The procedure is gaining acceptance across the Commonwealth. This will speed up Town Meeting, and allow every vote to be private. The procedure is new and not fully developed, but it is on the horizon.

Mr. Sullivan said that he would definitely be in favor of electronic voting. However, he said that his article fills the gap until that becomes available.

Mr. Donato said that he agrees with Mr. Dahlen and Mr. Flynn that a majority vote requirement for a ballot vote is better. However, he said that he appreciates that Mr. Sullivan is trying to eliminate any form of intimidation.

Mr. Flynn moved that the Board recommend approval of the 2012 Annual Town Meeting Citizen Petition article pertaining to Ballot Votes at Town Meeting, sponsored by Mr. James Sullivan. Second by Mr. Donato. Vote: 0:3:0. (Motion failed.)

ANNUAL TOWN MEETING ARTICLE: CITIZEN PETITION PERTAINING TO BALLOT VOTES AT TOWN MEETING (ROBERT DOYLE)

Mr. Robert Doyle was present to explain the petition. He said that some people are afraid to vote against a popular spending project. He feels they should have the right to vote by private ballot. Mr. Doyle explained that his petition allows for two circumstances where a ballot vote would be taken: 1) Moderator preference; and 2) A request by 20% of the voters present at an Open Town Meeting.

The Selectmen and Moderator voiced the same concerns about this petition as the previous one. All felt that a majority of the voters should be required.

Mr. Flynn moved that the Board recommend approval of the 2012 Annual Town Meeting Citizen Petition article pertaining to Ballot Votes at Town Meeting, sponsored by Mr. Robert Doyle. Second by Mr. Donato. Vote: 0:3:0. (Motion failed.)

ANNUAL TOWN MEETING ARTICLE: CITIZEN PETITION PERTAINING TO RECONSIDERATION VOTES AT TOWN MEETING

Mr. Paul McCormack was present to describe the petition.

Mr. McCormack said that there are three reasons for having a reconsideration vote at Town Meeting:

- 1) New evidence about the article becomes available.
- 2) There appears to have been some confusion about the vote.
- 3) It can be used to prevent a "Gotcha" Vote. A "Gotcha" vote would occur if a vote were reconsidered after proponents of the "winning" side had already left the meeting. By calling for reconsideration when proponents of the "winning" side are still present, a "Gotcha" vote is avoided.

Mr. McCormack said that several Massachusetts towns have gotten away from allowing reconsideration votes. One of the Towns requires that the proponent of a reconsideration vote file an explanation with the Town Clerk before it can be allowed.

Mr. McCormack said that the reconsideration vote for Article 24 of the March 2011 Annual Town Meeting should never have been allowed. He said that only a proponent of the "winning" side may move for reconsideration. In this case, the individual requesting the reconsideration vote was on the "losing" side.

Mr. Weiler explained that, in practice, it is very difficult to determine whether someone is on one side or another. Therefore, over time, Moderators have abandoned the practice of trying to determine which side the requestor is on.

Mr. Donato said that he would be reluctant to do away with reconsideration votes entirely, in case they were needed due to new evidence or confusion about a vote.

Mr. Dahlen said that this article should be reviewed by Town Counsel. He is concerned that the Attorney General may not allow the Town to take away a current right held by the voters (to call for a reconsideration vote).

Mr. Madigan, member of the Fiscal Advisory Committee said that a reconsideration vote could be needed if an article is passed for which there is not enough money. It might then be necessary to re-visit an earlier vote on the budget, in order to make room for spending on the new project.

Mr. Flynn moved that the Board recommend approval of the 2012 Annual Town Meeting article pertaining to Reconsideration votes at Town Meeting. Second by Mr. Donato. Vote: 0:3:0. (Motion failed.)

ANNUAL TOWN MEETING ARTICLE: CITIZEN PETITION PERTAINING TO REPRESENTATIVE TOWN MEETING

Mr. Paul McCormack was present to describe the petition. He said that his petition is adapted from Chapter 43A of the Massachusetts General Laws. The main points are:

- The Selectmen, Moderator, and Town Clerk would be Town Meeting members at-large.
- Each of the six precincts would have 30 Town Meeting members.
- Secret ballot votes would not be allowed.
- Any resident or taxpayer of the Town who is not a Town Meeting member would be able to speak at the Town Meeting, but not vote.
- Town Meeting members would receive no compensation.
- Vacancies are filled by the Town Meeting members of a precinct, until the next election.
- A procedure is described for overturning Representative Town Meeting votes.

Mr. McCormack said that the current Open Town Meeting procedure disenfranchises a lot of citizens. He gave as examples:

- Military personnel who are serving overseas
- Elderly people who are not physically fit enough for the long hours of Town Meeting
- Parents of young children
- People who work Saturdays and evenings

Mr. Dahlen said that he is a traditionalist. This would be a huge change in the way Duxbury conducts its business. He noted that we do so much better than the state and federal governments with our budget. He attributed that to the Open Town Meeting process.

Mr. Weiler said that only having 180 Town Meeting members disenfranchises citizens also. Mr. McCormack responded that the difference is that all citizens would have the right to vote for the Town Meeting members.

Mr. Flynn said that the Town Government Study Committee found that attendance at Representative Town Meeting has been found to be "not that great".

Mr. Weiler said that he would like to see a change of this magnitude be studied by a committee before it is brought to Town Meeting.

Mr. Mangione, member of the Fiscal Advisory Committee, said that he has lived in Towns with both kinds of systems. Overall, he finds that the Open Town Meeting procedure is more effective.

Mr. Flynn moved that the Board recommend approval of the 2012 Annual Town Meeting Citizen Petition article pertaining to Representative Town Meeting. Second by Mr. Donato. Vote: 0:3:0. (Motion failed.)

EVENT PERMIT REQUEST: DREW DAVIS FOR THE GREAT GETAWAY BIKE TOUR (TO BENEFIT THE MULTIPLE SCLEROSIS SOCIETY) ON JUNE 23, 2012

Mr. Flynn moved that the Board of Selectmen grant permission to the National Multiple Sclerosis Society (Central New England chapter) to conduct a portion of their 28th annual Great Mass Getaway Bike Tour in the Town of Duxbury on Saturday, June 23, 2012, subject to the conditions listed on the license. Second by Mr. Donato. Vote: 3:0:0.

TOWN MANAGER BRIEF

- 1) **Construction:** Permits for construction in December 2011 were issued in the amount of \$1,8 million dollars. Mr. MacDonald is pleased that construction remains strong.
- 2) **Alternative Energy:** The Town of Duxbury has entered into an innovative energy cost savings agreement with Pegasus Renewable Energy Partners, LLC of Marstons Mills, MA. The Town will be purchasing net metering credits via a solar array project

in the Town of Acushnet. These credits can be used to pay a portion of the Town's electricity bills. Once operational, the Town will save an estimated \$25,000 to \$30,000 per year. Mr. MacDonald said that the Town's Alternative Energy Committee, led by Jim Goldenberg and Josh Cutler, negotiated the agreement. The broker for the agreement was Duxbury Energy LLC, led by Mark Moriarty.

- 3) **Shared Services (Town/School)**: On January 11, 2012, Mr. MacDonald will attend the School Committee meeting to discuss shared services between the Town and Schools.
- 4) **Public Safety**: The past couple of weeks have been very difficult for the Town's public safety departments. There have been a number of accidents and other incidents that have been very traumatic. Mr. MacDonald commended the Police and Fire Departments for their professionalism.

MINUTES

Mr. Flynn moved that the Board approve the Executive Session Minutes of December 19, 2012 as presented, with the contents to remain sealed, due to medical confidentiality. Second by Mr. Donato. Vote: 3:0:0.

Mr. Flynn moved that the Board approve the Open Session Minutes of December 19, 2012 as presented. Second by Mr. Donato. Vote: 3:0:0.

OLD BUSINESS

Mr. Donato said that he would like to bring up a subject under Old Business. He wanted to read a prepared statement, and then request that the matter be placed on a future agenda.

Mr. Donato said that the Town Manager authorized Town Counsel to handle a legal case for which we could have had free legal counsel through our insurance company. He said that he made a request for Executive Session minutes from the period before he became a Selectman, so that he could be sure that the Board had not approved Town Counsel's handling of this matter. However, this request was met by an opinion from Town Counsel about whether these minutes could be released. The Selectmen did not authorize Town Counsel to write this opinion. Mr. Donato said that the Town Manager Act says that the Town Manager coordinates legal services under the direction of the Selectmen. Mr. Donato said that he also requested copies of legal bills from 2008 to the present, so that he could calculate how much Mr. MacDonald's decision to use Town Counsel has cost the Town.

Throughout Mr. Donato's comments, Mr. Dahlen endeavored to stop Mr. Donato from speaking, stating that he was violating Open Meeting Law (since this matter is not on the agenda), and that he was talking about litigation matters in Open Session. Mr. Donato said that he was not violating Open Meeting Law since he was not asking the Selectmen to deliberate the issue. Mr. Dahlen further said that if Mr. Donato had a question about a legal case, that he should telephone Town Counsel. Mr. Donato said that he did not want to speak with Town Counsel because Town Counsel has made statements to him that are untrue.

At this point, Mr. MacDonald said that he would leave the meeting because he did not want to be part of violations of the Open Meeting Law.

Mr. Donato said that he wants the Selectmen to direct the Town Manager to: 1) Produce Executive Session minutes from December 2008 to March 2009; 2) Provide copies of Town Counsel bills for that same period without a cost to the Selectmen; and 3) Oversee legal expenses only under the direction of the Selectmen.

Mr. Donato further requested that the following items be placed on the agenda for the next Selectmen's meeting:

- 1) Role of Town Counsel**
- 2) Role of the Town's insurance company when the Town has been sued.**
- 3) The Town Manager Act and how it applies to legal services.**

Mr. Dahlen repeated his concern that this matter was originally discussed in Executive Session, and now Mr. Donato was bringing it up in Open Session, which is a violation of executive confidentiality.

ADJOURNMENT

Mr. Flynn moved for adjournment at 9:00 PM. Second by Mr. Donato. Vote: 3:0:0.

LIST OF DOCUMENTS

- 1) Seasonal Population Estimate: Suggested Motion and Memorandum from the Town Clerk pertaining to the population of Duxbury, dated 1-4-12*
- 2) Remote Participation: Suggested Motion and Memorandum from Town Counsel, dated 12-23-11*
- 3) Town Meeting Article (Fourth of July): Suggested Motion, Draft Article, Fourth of July Activities Committee Report, dated 1-4-12*
- 4) Town Meeting Article (Duxbury Beach Lease): Suggested Motion, Draft Article, and Duxbury Beach Reservation Funds Re-Cap for the fiscal year ending 10-31-2011.*
- 5) Council-on-Aging Budget: Power Point Presentation*
- 6) Town Meeting Article (Housing Allocation Plan): Suggested Motion, Draft Article, and memorandum from the Duxbury Local Housing Partnership, dated 10-27-11*
- 7) Duxbury Free Library Budget Presentation: Power Point Presentation*
- 8) Town Meeting Article (Town Meeting Ballot Votes---James Sullivan): Suggested Motion and Citizen Petition*
- 9) Town Meeting Article (Town Meeting Ballot Votes---Robert Doyle): Suggested Motion and Citizen Petition*
- 10) Town Meeting Article (Reconsideration Votes): Suggested Motion and Citizen Petition*
- 11) Town Meeting Article (Representative Town Meeting): Suggested Motion and Citizen Petition*
- 12) Application Packet: MS Bike Ride on June 23, 2012*
- 13) Town Manager's Brief: Construction Cost Estimates for December 2011; E-mail, dated 1-5-12 from Josh Cutler pertaining to Pegasus Net Metering Contract*
- 14) Draft Minutes of December 19, 2011 Executive Session*
- 15) Draft Minutes of December 19, 2011 Open Session*