

**Date: October 15, 2012**

***Date Minutes Approved: November 5, 2012***

## **BOARD OF SELECTMEN MINUTES**

**Present: Theodore J. Flynn, Chair; Shawn Dahlen, Vice Chair; and David J. Madigan, Clerk  
(arrived at 6:12 PM for Executives Session B and the re-convening of the Open Session)**

**Absent: None**

**Staff: Richard MacDonald, Town Manager; Susan C. Kelley, Executive Assistant; and C. Anne Murray, Administrative Assistant.**

### **CONVENED IN OPEN SESSION**

The meeting was called to order at 6:00 PM in the Mural Room.

### **ENTERED EXECUTIVE SESSION**

Upon convening the meeting, the Chair entertained a motion to enter Executive Session. Mr. Dahlen moved that the Board enter Executive Session in order to discuss:

(a) the purchase, exchange, lease or value of real property, ( i.e., a proposed Conservation Commission Land Acquisition,

(b) strategy with respect to pending litigation, including the matters of the North Hill Country Club (a/k/a Johnson Golf), DeLuca case, 2 MCAD cases: James and Golden cases the Rossi Case, and

(c ) Personnel Matters

since an open meeting may have detrimental effect on the Town's negotiating and/or litigating position, and then to reconvene in Open Session. Second by Mr. Flynn.

As Chair, Mr. Flynn declared the necessity to discuss the afore-mentioned matters in Executive Session, as discussion in open session would be detrimental to the Town's negotiating and /or litigating position. Roll Call Vote: Mr. Dahlen---aye; Mr. Flynn---aye.

### **RECONVENED IN OPEN SESSION**

The Executive Session was adjourned and the Open Session meeting reconvened at 7:00 PM after the public entered the room.

### **OPEN FORUM**

Mr. Flynn announced that the Board had received notice of Town Manager Richard MacDonald's intention to retire on or about January 31, 2013. He mentioned that Mr. MacDonald has had a long and illustrious career with the Town of Duxbury. He also mentioned that the retirement date was not "fixed in stone". Mr. Flynn made very complimentary comments regarding Mr. MacDonald's service to the Town.

Mr. MacDonald mentioned that he has worked for the Town of Duxbury for 17 years, and he has enjoyed it. He echoed the comments that the retirement date was not etched in stone. He said that the Town has a management team that is second to none, and he appreciates all the volunteers, but he will be celebrating his 65<sup>th</sup> birthday next month and felt it was time to retire.

**ADJOURN AS SELECTMEN & CONVENE AS WATER & SEWER COMMISSIONERS**

Mr. Madigan moved that the Board of Selectmen adjourn the meeting as Selectmen in order to meet as the Water & Sewer Commissioners, with the intent of re-convening as Selectmen afterward. Second by Mr. Dahlen. VOTE: 3:0:0.

**MOTION FOR COMMITMENT:**

Mr. Madigan moved that the Board of Water & Sewer Commissions instruct the Treasurer to collect the amount of \$1,067,248.09 for water, sewer, and service. Second by Mr. Dahlen. VOTE: 3:0:0.

**ADJOURN AS WATER & SEWER COMMISSIONERS & RE-CONVENE AS SELECTMEN**

Mr. Madigan moved that the Board adjourn their meeting as Water & Sewer Commissioners and re-convene as Selectmen. Second by Mr. Dahlen. VOTE: 3:0:0.

**DISCUSSION OF CPA BALLOT QUESTIONS WITH COMMUNITY PRESERVATION COMMITTEE (CPC)**

Ms. Holly Morris and Ms. Pat Loring, members of the Community Preservation Committee (CPC), were present to represent the CPC for the discussion about the two CPA questions (#4 and #5), which will be on the November 6, 2012 ballot in the Town of Duxbury.

Ballot Questions #4 and #5 to be discussed appear as follows on the ballot:

**QUESTION 4:** Shall the Town of Duxbury exempt the first \$100,000 of assessed value of residential real property from the surcharge levied pursuant to the Community Preservation Act, M.G.L. c. 44B, as permitted by M.G.L. c. 44B, §3(e)(3) and approved by its legislative body (Town Meeting), beginning on July 1, 2013?

**QUESTION 5:** Shall the Town of Duxbury reduce the surcharge on real property pursuant to the Community Preservation Act, M.G.L. c. 44B, from three percent (3%) of the real estate tax levy on real property to one percent (1%), as approved by its legislative body (Town Meeting), beginning on July 1, 2013?

With regard to question #4, Ms. Morris said that the \$100,000 exemption is endorsed by the CPC because it:

- offsets some of the anticipated tax increases
- applies to everyone's taxes being exempt

In addition, she noted that there are other exemptions already in place for low-income residents.

With regard to Question #5 (which would reduce the CPA surcharge from 3% to 1%), Ms. Morris said, the CPC is recommending a "no" vote, i.e., they do not support the reduction. She proceeded to give a lengthy list of reasons why the CPC recommends a "no" vote and cited numerous examples.

Some of the points Ms. Morris mentioned were:

- That the CPA helps to control growth by taking land out of development. She mentioned that growth increases taxes by adding increased demands on services, such as fire and police, the schools, waste management, and traffic on the roads, the bay and the beaches. Therefore, she opined that the CPA protects our quality of life.
- As an example she spoke about the Delano Farm land acquisition, which was sited for a 51 unit 40B, but instead has a single-family low-income home, a modest group home and a well site for future water needs were developed there.
- That by paying for projects with CPA funds, which received matching state monies, a number of Town-owned buildings and structures were restored without the need for borrowing. She added that because there was less need for borrowing for many of these projects the Town's debt burden remains low and that helped to protect the Town's AAA Bond Rating. The AAA Bond Rating in turn saved the Town substantial monies because of the favorable rates received when borrowing did have to be done for major projects, such as the school building project.
- Land acquisition buffers and protects drinking wells. It has also been important for future well sites development and aquifer protection. The future well sites will provide resources for growth, but will also provide redundancy should a well have to be closed. This will help to assure an adequate water supply for the future.
- the numerous projects which have been done through CPA funding. In doing so, she provided statistics to illustrate how the CPA funds had been leveraged when matched with State funds.

Mr. Bill Campbell, long-time Duxbury resident, began by acknowledging the benefits of the CPA program, but advocated for a "yes" vote on Question #5. He pointed out that the taxpayers can expect a substantial increase to their taxes because of the recent Town building projects. He mentioned that the combination of the anticipated tax increases and other costs going up with only modest increases to Medicare, many on fixed incomes cannot afford the CPA. He urged the Selectmen to consider those individuals.

Mr. Jim Sullivan, Carriage Lane, also advocated for a "yes" vote on Question #5. He stated that no one denies that there were good projects funded through the CPA. Having said that, he pointed out that we are now at a point where we are facing significant tax increases. He stated that the amount of the reduction provided by reducing the CPA surcharge from 3% to 1% is approximately equal to the anticipated tax increases for the Fire and Police Station projects. He pointed out that referring to the matching State monies as "free cash" is a misnomer because in reality those monies have been derived from monies taxpayers submitted as State taxes. He pointed out that the reduction to 1% does not close down the CPA, but slows it down during difficult fiscal times. He noted that it was a Town Meeting vote that put question #5 on the ballot.

Mr. Cap Kane, Harrison ST, spoke against reducing the CPA percentage. He said he was on the original land use committee that recommended bringing the CPA to Duxbury. He suggested that we don't really know what the tax picture will be. He suggested, however, with the CPA there has been a track record as to projects done. He advocated for voting "no" on Question 5.

Ms. Pat Loring, a CPC member, advocated against reducing the CPC. She mentioned that the land protection program is the most at risk. One of the intentions of the CPA was to balance growth, but not to be in debt, and that one of the major reasons for the creation of the CPA to serve as a funding source for land acquisition.

Mary Lynn Kerson mentioned that one of the reasons she moved to Duxbury was the CPA. She suggested that reducing the CPC percentage would be “penny-wise and pound-foolish” pointing out that you don’t know what you have lost until you lose it. She suggested potable water and aquifer protection are two important reasons to keep the CPA funding at its current level and urged the Selectmen and voters to vote “no” on Question #5.

At this point, Mr. Flynn mentioned that on January 23, 2012 the Board of Selectmen, which at the time included Shawn Dahlen, Christopher Donato, and himself (Ted Flynn) voted on the articles, which resulted in Question #4 and Question #5. The votes of that Board were:

On Question #4: Unanimously in favor of the \$100,000 CPC exemption

On Question #5: Unanimously against reduction of the CPC percentage

Having said that he suggested another vote by the current Board be taken at the end of the discussion and his colleagues agreed.

Mr. Campbell spoke again and mentioned the tool on the Town website, which allows a resident to put in their financials to see where their tax dollars are going, he found it very helpful. He again suggested that some individuals are struggling to pay for their needed living expenses and the reduction of the CPA percentage would provide some relief. He also pointed out that those who can afford it could continue to support the CPA program by making donations.

Mr. Dahlen mentioned he has weighed both sides of the issue. In doing so, he tried to look at what this would mean for the “average” taxpayer. He said at the March Town Meeting it had been expected that the town building projects might increase the average tax bill about \$1000., but because of favorable bonding rates that figure is closer to \$750. He said the exemption provided under Question #4 is greater than the savings that the 3% to 1% reduction would provide. By his calculation, the percentage reduction will only yield about \$123. to the average homeowner. He also mentioned that for a small investment the CPA fund was substantially increased by the State matching funds. He pointed out, that whether you agree with it or not, the State legislature has approved \$25 million expenditure to support the CPA program. Duxbury has the chance to participate to get a share of that funding by maintaining the CPA; otherwise it will go to other communities. For all of those reasons, he said he supports not reducing the CPA percentage and therefore his is a “no” vote on Question #5.

Mr. Madigan said that the \$100,000 exemption (Question #4) does have some value, and he supports that. He then voiced his concern with some of the projects that have not entirely been a public benefit, specifically voiced issue with those projects where funding was approved for projects owned by non-profit organizations. He opined that the CPC needs to more committed in their vetting of the projects that they bring to Town Meeting and with that understanding he said that he supports a “no” vote on Question #5.

In acknowledgement of Mr. Madigan’s comments, Ms. Morris responded by mentioning that only 1.3% of the CPC funding has gone to support projects for non-profits. She added that members of

the CPC have hear the message regarding the criticism of some of the non-profit projects that have been presented to the Town Meeting.

Mr. Rick Cowen also responded to Mr. Madigan's comments by pointing out that it was the Town Meeting that ultimately approve the funding of those project; not the CPC. Mr. Madigan agreed, but felt there should be better vetting of the projects by the CPC.

Several of the prior speakers spoke briefly again advocating for their respective positions before the Selectmen voted.

Mr. Madigan moved that the Board of Selectmen recommend the passage of Question 4.  
Second by Mr. Dahlen. VOTE: 3:0:0.

Mr. Madigan moved that the Board of Selectmen recommend approving question #5 regarding reducing the CPC from 3% to 1 %. Second by Mr. Dahlen. VOTE: 0:3:0. (*Explanation: the vote means the Selectmen do not support reducing the CPC percentage which is equivalent to voting "no" on Question 5.*)

**For the benefit of the public, Mr. Flynn mentioned that on the November 6<sup>th</sup> ballot are three other State-wide questions, which he summarized as follows:**

QUESTION #1: "Right to Repair" – The proposed law requires motor vehicle manufacturers to allow vehicle owners and independent repair facilities in Massachusetts to have access to the same vehicle diagnostic and repair information made available to the manufacturers' Massachusetts dealers and authorized repair facilities.

QUESTION #2: "Death with Dignity" – The proposed law would allow a physician licensed in Massachusetts to prescribe medication, at the request of a terminally-ill patient meeting certain conditions, to end that person's life.

QUESTION #3: "Medical Marijuana" – The proposed law eliminates state criminal and civil penalties related to the medical use of marijuana, allowing patients meeting certain conditions to obtain marijuana produced and distributed by new state-regulated centers or, in specific hardship cases, to grow marijuana for their own use.

*[More complete information regarding the ballot questions can be found on the Secretary of (State's) Commonwealth webpage: <http://www.sec.state.ma.us> under Elections and Voting.]*

**LICENSE AGREEMENT/TEMPORARY EASEMENT: Verizon New England and NSTAR, off Pine Hill Ave for 130 St. George Street**

Mr. Flynn indicated that the next item of business was for another temporary easement to allow the placement of a telephone pole to provide service with respect to the school building project. The pole in question is off Pine Hill Ave. and will provide service to 130 St. George ST.

As was explained at a recent Selectmen's meeting, it is standard practice for temporary easements to be granted by a Board of Selectmen until the next scheduled Town Meeting when the town body will be asked to approve a permanent easement.

Mr. Madigan moved that the Board of Selectmen approve and execute a License Agreement with VERIZON NEW ENGLAND, INC. and NSTAR Electric Company, together with their respective successors and assigns, as tenants in common the right to access, erect, construct, operate, maintain, connect, extend, replace and remove pole 244/1 Pine Hill Avenue, which may be erected at different times with the necessary conduits, cables, wires, anchors, guys, supports and fixtures appurtenant thereto for the transmission and/or distribution of telecommunications subject to the terms and conditions in the License Agreement. The location of said easement to be 15' in width as shown on a sketch labeled Exhibit A attached to the License Agreement and made a part thereof. Second by Mr. Dahlen. VOTE: 3:0:0.

### **SELECTMEN SIGN STATE ELECTION WARRANTS**

Mr. Flynn announced that in order for the State Election to be held a warrant must be posted by a Constable of the Town to notify the public of the date, time and place of the State Election. He called for a motion allowing for the posting of the warrant.

Mr. Madigan moved that the Board directs any of the Constables of the Town of Duxbury to notify and warn the inhabitants of Duxbury who are qualified to vote in Elections to vote at Precincts One through Six at the T. Waldo Herrick Gymnasium, Duxbury Middle School, 71 Alden Street, Duxbury, Massachusetts on Tuesday, the 6th Day of November, 2012 from 6:00 AM to 8:00 PM.

*[Editorial Note: The polls are only required to be open from 7:00 AM to 8:00 PM, but at the request of the Town Clerk the Selectmen previously voted to approve the 6:00 AM poll opening in Duxbury.]*

### **ELLISON FUND: Project Discussion**

Mr. Gordon Cushing, the Recreation Director, gave a brief overview of the Eben H. Ellison Fund (hereafter "the Ellison Fund"). He said the Ellison Fund is a non-expendable trust, which was accepted by the 1990 Annual Town Meeting. The terms of the gift allow for half of the interest to be spent for worthy Town projects and the other half to be spent on the upkeep of the Ellison playground (i.e., the one adjacent to the Duxbury Free Library). Mr. Cushing said that the Treasurer has indicated that \$16,356. is available for this fiscal year. Normally, the Board of Selectmen recommends projects to the Ellison Trustees. The Trustees have the final approval.

A memorandum providing details of the recommendations for worthy Town projects was provided to the Board. Mr. Cushing summarized the memorandum by suggesting the Board request the following expenditures as worthy Town projects:

- \$3, 178 for paving of the Lincoln Street parking area and access road area to be done over a two to three year timeframe. And
- \$5,000. for repair of the Wadsworth and Tarkiln tennis courts.

He noted that these recommendations came out of discussions with a number of Town employees. He said he made site visits and discussed the projects with the Ellison Fund Trustees, who have indicated their support.

Mr. Madigan moved that the Board of Selectmen recommend a total expenditure of \$8,178. from the Eben H. Ellison Trust fund for the worthy Town projects portion to be expended as follows:

- \$3, 178 for paving of the Lincoln Street parking area and access road area (to be done over a two to three year timeframe); and
- \$5,000. for repair of the Wadsworth and Tarkiln tennis courts.

Second by Mr. Dahlen. Vote: 3:0:0.

## LABOR COUNSEL AGREEMENT

Mr. MacDonald advised the Board that Attorney Dupere has represented the Town for about 7 years with respect to Labor Relations. He asked the Board to authorize him to sign the contract to continue Atty. Dupere's services. He suggested contracting with Atty. Dupere was money well spent and that the charges were reasonable.

Mr. Madigan moved that the Board of Selectmen authorize the Town Manager to sign the contact ("Retainer Agreement by and between the Town of Duxbury and the Dupere Law Offices). Second by Mr. Dahlen. VOTE: 3:0:0.

## **BUSINESS**

*For Event Permits and One-Day Liquor Licenses, departmental reviews of the requests were done. There were no objections and departmental feedback was incorporated into the conditions listed on the permit or license.*

### **One-Day Liquor License Requests**

*Duxbury Art Boosters – Fundraiser, October 19, 2012*

Mr. Madigan moved that the Board of Selectmen grant to Ms. Roberta Sullivan, as a representative of the Duxbury Art Boosters, a One-Day Wine and Malt License to hold a fundraiser on Friday, October 19, 2012 from 7:00 PM to 10:00 PM at the Art Complex Museum, 189 Alden Street, contingent upon the conditions on the license. Second by Mr. Dahlen. VOTE: 3:0:0.

### **EVENT PERMITS --None**

## **TOWN MANAGER'S BRIEF**

Mr. MacDonald mentioned the following items:

- 1. Construction Costs** – The construction costs for the past 8 months have been over \$2 million. The September construction costs are about \$2.3 million.  
Mr. Madigan asked what the Town gets financially from that level of growth? Mr. Madden indicated it is difficult to know until year end, but in the past it has meant as much as \$350,000. to \$500,000.
- 2. Budgets:** Mr. MacDonald said work is continuing on the budgets and he expects that all departmental budgets will be in and reviewed shortly.
- 3. Mark Mahoney:** Mr. MacDonald mentioned that he understood that Mr. Mahoney was recently hospitalized and wanted to extend his best wishes to him.

## **ANNOUNCEMENTS**

Mr. Madigan made announcements about the following:

- 1. PRESIDENTIAL ELECTION** – Tuesday, November 6

The last day to register to vote in the November 6<sup>th</sup> Election is Wednesday, October 17<sup>th</sup>. The Town Clerk's office will be open until 8:00 PM on October 17<sup>th</sup> to register voters. The polls will be open from 6:00 AM – 8:00 PM. All voting takes place in the gymnasium at the Duxbury Middle School at 71 Alden Street.

## 2. 2013 TOWN MEETING - Call for Articles

The Board of Selectmen invites citizens, Department Heads, and Boards & Committees to submit articles for the 2013 Annual and Special Town Meetings.

Articles must be submitted to the Town Manager's Office by December 4. Complete language is required.

If you need assistance in drafting your article, Town Counsel will be available in November - a date to be determined. Please call Susan Kelley in the Town Manager's office if you would like to schedule an appointment with Town Counsel.

He also announced the dates, times and details about three upcoming events:

1. **FIRE STATION CEREMONY AND OPEN HOUSE** on Sunday, October 21, 2012;
2. **FALL FOLIAGE FIESTA** on Sunday, October 21, 2012; and
3. **STORMWATER EDUCATION PRESENTATION** on October 24, 2012

## MINUTES

### Minutes of August 13, 2012 (Open Session) and of August 27, 2012 (Open Session)

Mr. Madigan moved that the Board of Selectmen approve the Minutes of August 13, 2012 Open Session and the August 27, 2012 Open Session, as written. Second by Mr. Dahlen. VOTE: 3:0:0.

### September 5, 2012 EXECUTIVE SESSION Minutes

Mr. Madigan moved that the Board of Selectmen approve the September 5, 2012 Executive Session Minutes, as written, with the contents to remain sealed until the need for confidentiality has passed. Second by Mr. Dahlen. VOTE: 3:0:0.

### August 13, 2012 EXECUTIVE SESSION A Minutes

Mr. Dahlen moved that the Board of Selectmen approve the August 13, 2012 Executive Session A Minutes as presented, with the contents to remain sealed until the need for confidentiality has passed. Second by Mr. Flynn. VOTE: 2:0:1 (*Mr. Madigan abstained as he was not present for 08-13-12 Exec. Session A.*)

### August 13, 2012 EXECUTIVE SESSION B Minutes

Mr. Dahlen moved that the Board of Selectmen approve the August 13, 2012 Executive Session B Minutes as presented, with the contents to remain sealed until the need for confidentiality has passed. Second by Mr. Madigan. VOTE: 3:0:0.

## COMMITTEE APPOINTMENTS / RE-APPOINTMENTS

The following votes were taken pertaining to appointments to Town Boards and Committees:

<u>Committee</u>	<u>Name</u>	<u>Appt or Re-Appt</u>	<u>Term Expires</u>	<u>Motion</u>	<u>Second</u>	<u>Vote</u>
Historical Commission	Andrew S. Wiemeyer	Appt.	To fill an unexpired term to 6-30-14	Mr. Madigan	Mr. Dahlen	3:0:0



<u>Committee</u>	<u>Name</u>	<u>Appt or Re-Appt</u>	<u>Term Expires</u>	<u>Motion</u>	<u>Second</u>	<u>Vote</u>
Recreation Activities Committee	Chuck Rubin	Appt.	To fill an unexpired term to 6-30-13	Mr. Madigan	Mr. Dahlen	3:0:0

Mr. Madigan mentioned that the Board of Selectmen received the resignation of Ms. Lois McKeown from the Historical Commission due to work commitments, and thanked her for her service.

**ADJOURNMENT**

At 8:03 PM, Mr. Madigan moved that the Board adjourn. Second by Mr. Dahlen. VOTE: 3:0:0.

Minutes prepared by: C. Anne Murray

**LIST OF DOCUMENTS FOR OPEN SESSION MEETING**

1. *Suggested Motion for Entering Executive Session and Executive Session materials (in Executive Session file).*
2. *Suggested Motions for Entering and Adjourning as Water & Sewer Commissioners, copy of meeting posting, copy of the October 12, 2012 commitment letter, and suggested motion for the commitment.*
3. *The Community Preservation Act brochure and 10-10-12 Memorandum from Holly Morris RE: Ballot Question 5 and the Future of the CPA in Duxbury*
4. *(State) Ballot Questions – November 6, 2012 Presidential Election*
5. *License Agreement for Temporary Easement for Verizon and NStar RE:Pole 244/1 off Pine Hill AVE.*
6. *State Election Warrant suggested motion for posting of the warrant*
7. *10-02-12 Memorandum from Gordon Cushing RE: Eben H. Ellison Fund – REVISED MEMO*
8. *Labor Counsel Agreement: 09-18-12 Letter from Fred Dupere, Esq. and Retainer Agreement by and Between the Town of Duxbury and the Dupere Law Offices.*
9. *One-Day Liquor License packet for Duxbury Art Boosters event on 10-19-12.*
10. *Potential Town Manager’s Brief Items: Construction Costs for Sept. 2012 and Upcoming Affordable Housing Meetings informational flyer*
11. *Suggested Announcements 10-15-12*
12. *Suggested Motions for Minutes: 08-13-12 Open Session Minutes –DRAFT; 08-13-12 Executive Session Minutes A –DRAFT; 08-13-12 Executive Session B Minutes –DRAFT; 08-27-12 Open Session Minutes-Draft; and 09-05-12 Executive Session -Draft*
13. *Board & Committee Appointment Sheet 10-15-12 Historical Commission; Recreation Activities Committee*
14. *Board & Committee Resignation Sheet 10-15-12 – Lois McKeown-Historical Commission*