

Date: November 19, 2012

Date Minutes Approved: December 3, 2012

BOARD OF SELECTMEN MINUTES

Present: Theodore J. Flynn, Chair and Shawn Dahlen, Vice Chair.

Absent: David J. Madigan, Clerk

Staff: Richard MacDonald, Town Manager; John Madden, Finance Director; 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 strategy with respect to pending litigation, including the matters of the North Hill Country Club (a/k/a Johnson Golf) and the DeLuca case, 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 7:05 PM after the public entered the room.

OPEN FORUM --nothing was brought forward.

The Chair noted that Mr. Madigan was absent to attend a funeral out of state.

REVIEW MEMO FROM TOWN COUNCIL REGARDING TOWN MANAGER ACT AND TOWN BY-LAWS

The Chair recognized Atty. Art Kreiger, Special Counsel to the Town, to provide an overview of a memo he had prepared for the Board.

Atty. Kreiger said that he was asked to review the Town's General By-Laws (hereafter "By-Laws") and Duxbury Town Manager Act (hereafter "Act", Chapter 353 of the Acts of 1987, to determine whether or not there was any conflict regarding the use and supervision of Town Counsel. Atty. Kreiger stated that he reviewed both documents and in his opinion they are consistent. He went on to explain that both the Act and the By-Laws provide that the Board of Selectmen appoints Town Counsel. The By-Laws also authorize the Town Manager to employ counsel when authorized by the Selectmen, which is consistent with the Act.

The Act directs the Town Manager to oversee Town Counsel's activities under the Board's direction. The By-Laws authorize the Town Manager to bring, defend and settle litigation as an agent of the Selectmen.

Mr. Dahlen explained that he had requested the review as last year former Selectmen Christopher Donato questioned when the Board had given consent or approval for referral to Town Counsel on a specific case citing section 3.1.5 of the Bylaws. Mr. Dahlen stated that at the time the Board was fully apprised of the actions taken he wanted the question clarified because there was some implication made that the Selectmen needed to vote, but it was his position at the time that logistically it would not be practical for the Town Manager to request authorization each time a referral to Town Counsel had to be made. He cited as an example routing matters like individuals, who might need to check with Town Counsel whether they had a conflict of interest. Mr. Dahlen said that in his reading of Atty. Krieger's memo a specific vote of the Board would not be required.

Atty. Kreiger confirmed that by referred to his memo in which he indicated that the Board "can give the Town Manager broad authority in certain types or sizes of cases, or instruct him or her more specifically in a particular case. The Town Manager's authorization from the Selectmen need not be explicit; it may be inferred from their past practices and protocols."

Atty. Kreiger also mentioned in his experience since becoming Special Counsel he had handled a number of cases for the Town. He pointed out that in some of them a relatively quick turnaround was needed for an opinion, and it just would not have been practical to require specific authorization from the Board.

The general consensus was the Board was comfortable with the opinion given and no further action was needed. Atty. Kreiger then left the meeting.

Chairman Flynn then took a moment to congratulate the Duxbury girls' field hockey and soccer teams for winning their divisions. Both teams had great seasons but came up a bit short in the divisional tournaments. He also mentioned the Duxbury girls' volleyball team, which earned a place in the Division 2 Sectional Tournament, in only their second year as a varsity program. Their tournament begins shortly.

POLE HEARING: New Telephone Pole, Gurnet Road

The next order of business was a hearing for a new pole to be placed due to new construction. The hearing was advertised and the abutters notified.

Mr. Dahlen moved that the Board of Selectmen grant a location to Verizon New England, Inc. and to NSTAR Electric Company for one new pole (Pole 13/8 ½) on Gurnet Road, in the Town of Duxbury. Second by Mr. Flynn. VOTE: 2:0:0.

HEARING – USE OF MILLENNIUM TOWN GREEN: Duxbury Rotary Club / Paul Brogna

Mr. Brogna was present as the President of the Duxbury Rotary Club to request permission for use of the Millennium Town Green on Sunday, November 25th for the Annual Tree Lighting and Celebration as has become a tradition over the past 15 or more years.

It was noted that there have been no objections and the Town Departments have reviewed the request and any comments have been indicated in the conditions on the permit.

Mr. Dahlen moved that the Board of Selectmen grant to Mr. Paul Brogna, as a representative of the Duxbury Rotary Club, an event permit for the Annual Tree Lighting and Celebration, to be held on the Millennium Town Green on Sunday, November 25, 2012 from 1:00 PM to 7:00 PM, subject to the conditions listed on the permit. Second by Mr. Flynn. VOTE: 2:0:0.

TOWN COUNSEL SEARCH COMMITTEE UPDATE: Marty Desmery, Chair

Mr. Desmery was present along with several of the other members of the Town Counsel Search Committee. Mr. Desmery gave an overview of the work that the Committee had done. He mentioned that thirteen law firms had submitted applications. The Committee discussed the applications in public meetings and selected seven applicants for interviews. The Committee unanimously voted to recommend the following applicants to the Board of Selectmen:

- Barbara Saint Andre of Petrini & Associates, PC of Framingham
- Lisa Mead of Blatman, Bobrowski & Mead of Concord, Millis and Newburyport
- Art Kreiger of Anderson & Kreiger, LLP of Cambridge

Mr. Desmery mentioned that the Committee did ask him to mention that there were some economic differences between the firms. He noted that Anderson & Kreiger did have the highest hourly rate. When they interviewed Atty. Kreiger he did indicate that the hourly rate was negotiable and that they would be willing to propose a flat fee arrangement. The other two firms did propose flat fee arrangements so it was suggested the Selectmen request this of Anderson & Kreiger for comparison purposes.

On behalf of the Board, Mr. Flynn thanked all the members of the Town Counsel Search Committee for their work. He indicated that the Board would be conducting its own interviews with the firms shortly, and as the Committee's task has been completed he disbanded the Town Counsel Search Committee.

MEETING OF THE WATER & SEWER COMMISSIONERS

RE: Water Commitment

ADJOURN AS SELECTMEN & CONVENE AS WATER & SEWER COMMISSIONERS

Mr. Dahlen 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. Flynn. VOTE: 2:0:0.

MOTION FOR COMMITMENT:

Mr. Dahlen moved that the Board of Water & Sewer Commissions instruct the Treasurer to collect the amount of \$1,003,216.85 for water, sewer, and service. Second by Mr. Flynn. VOTE: 2:0:0.

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

Mr. Dahlen moved that the Board adjourn their meeting as Water & Sewer Commissioners and re-convene as Selectmen. Second by Mr. Flynn. VOTE: 2:0:0.

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 –None

TOWN MANAGER'S BRIEF

Mr. MacDonald mentioned the following items:

1. **Powder Point Bridge** – Mr. MacDonald mentioned that the Town received permission to proceed with emergency repairs. Three quotes are in the process of being requested, and then the award will be made. He noted that there are five areas to be specifically repaired. Once the repairs are done this should allow emergency and limited access vehicles; likely to be one-way traffic on the bridge. We are still several weeks away from beginning the repairs. Once these repairs are done, then we can begin the process to prepare for the spring and the rest of the repairs.

Mr. Dahlen commented that receiving this approval was important so that the emergency repair work could be done now, which would hopefully demonstrate the carbon wrapping is a viable option to make moving forward in the spring easier.

2. **State Revenue Forecast:** Mr. MacDonald said the State has indicated that their revenues are down approximately \$250 million. He hopes that will not impact local aid or other monies sent to municipalities. He will be watching this closely and keep the Board informed.
3. **Call for Articles for Annual Town Meeting:** Mr. MacDonald mentioned that Annual Town Meeting is on March 9, 2013. Anyone who plans to bring an article before Town Meeting must submit complete language for their article by December 4th. If you need help with drafting an article please contact Susan Kelley in the Town Manager's office as she will be arranging meetings with Town Counsel.
4. **Duxbury Beach Committee Meeting:** The Town Manager said that he attended a Duxbury Beach Committee meeting along with the Harbormaster and some of his staff. He said that much of the discussion was about the bridge, and he has charged the Duxbury Beach Committee at looking at the non-resident fees with respect to it.
5. **Town Hall hours:** Town Hall will be closed on Thursday, November 22nd for the Thanksgiving Day holiday. Town Hall will be open the regular Friday hours from 8 AM to 12:30 PM on November 23rd.

ANNOUNCEMENTS

Mr. Madigan made announcements about two upcoming events: the Duxbury Business Association's Holly Days Celebration on Sunday, November 25th and the Duxbury 375th Anniversary "Starry Starry Night" Holiday Gala on Friday, December 7th.

MINUTES - No minutes for review and approval this evening.

COMMITTEE APPOINTMENTS / RE-APPOINTMENTS

Mr. Flynn moved to appoint Ms. Lynn Smith to the Municipal Commission on Disabilities to fill an unexpired term due to expire on June 30, 2015. Second by Mr. Dahlen. Vote: 2:0:0.

Mr. Flynn mentioned that Ms. Smith had previously served on the MCOB and was asked to serve again as the Chair was concerned about running into quorum issues as they are short a couple of members. He urged anyone interested in serving to please complete a Talent Bank form and submit it to the Selectmen's Office.

BONUS SHELLFISH SEASON

Mr. Dahlen moved that the Board of Selectmen declare a temporary Bonus Shellfish Season:

- 1) for the commercial harvesting of softshell clams for the month of December, 2012 in accordance with posted Attachments B & C; and
- 2) for the commercial harvesting of quahog clams for the month of December, 2012 in accordance with posted Attachments A & C; and
- 3) for the recreational harvesting of softshell clams for the month of December, 2012 in accordance with posted Attachment D.

Before concluding the meeting Mr. Flynn suggested that as a next step in the hiring of a Town Counsel the Board should have a meeting during the daytime to interview the firms. It was agreed the staff would work on setting up that meeting and coordinating it with the three recommended firms.

ADJOURNMENT

At approximately 7:25 PM, Mr. Dahlen moved that the Board adjourn. Second by Mr. Flynn. VOTE: 2:0:0.

Minutes prepared by: C. Anne Murray

LIST OF DOCUMENTS FOR OPEN SESSION MEETING

1. *11-16-12 Memorandum from Atty. Arthur P. Krieger and Nina L. Pickering-Cook of Anderson & Kreiger LLP RE: Comparison of Duxbury's Town Manager Act and By-Laws – Town Counsel*
2. *Duxbury Girls Field Hockey, Soccer & Volleyball - articles*
3. *Gurnet Road Pole Hearing packet: suggested motion; 10-15-12 Letter from Daryl Crossman of Verizon with Petition for Joint or Identical Pole Locations for Verizon and NSTAR, 9-12-12 Map (#2012B-13) showing placement of new Pole, and list of notified abutters and sample notification letter dated 11-05-12*
4. *Event Permit packet for Dux. Rotary Club 11-25-12 Annual Tree Lighting and Celebration, including the request, the departmental feedback, and Town Green abutters' notification list*
5. *11-15-12 Memorandum from Marty Desmery, Chair of Town Counsel Search Committee, Exhibit A Request for Proposals (not under MGL Chapter 30B; Exhibit B: Town Counsel Interview Questions; and Exhibit C: Reference Inquiries for each of the 3 recommended law firms.*
6. *Meeting of the Water & Sewer Commissioners: Suggested motions for convening, authorizing the commitment and adjourning the meeting. Copy of the meeting posting and copy of the commitment letter.*
7. *Suggested Announcements for 11-19-12 with copy of the Duxbury 375th Anniversary "Starry Starry Night" Holiday Gala flyer*
8. *Board and Committee Appointment sheet: Municipal Commission on Disabilities*
9. *Bonus Shellfish Season (for December 2012): Suggested motion and 11-19-12 Memorandum from Don Beers, Harbormaster*