

Date: September 10, 2012

Date Minutes Approved: September 24, 2012

BOARD OF SELECTMEN MINUTES

Present: Theodore J. Flynn, Chair; Shawn Dahlen, Vice Chair; and David J. Madigan, Clerk.

Absent: None

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 6:14 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 matter of the North Hill Country Club, since an open meeting may have detrimental effect on the Town's litigating position, and then to reconvene in Open Session. Second by Mr. Madigan.

As Chair, Mr. Flynn declared the necessity to discuss strategy with respect to pending litigation, including the matter of the North Hill Country Club in Executive Session. Roll Call Vote: Mr. Dahlen---aye; Mr. Madigan---aye; and 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_--Nothing was brought forward.

Before beginning the Chair mentioned that he would be taking items out of order from the listed Agenda.

TOWN COUNSEL SEARCH COMMITTEE – Draft Job Description

Mr. Martin Desmery, Chair of the Town Counsel Search Committee, and members of the Committee were present to discuss their draft document entitled "Request for Proposals (RFP): Town Counsel Services" with the Board of Selectmen.

Mr. Desmery began by mentioning that the Town Counsel Search Committee was formed by the Selectmen a couple of months ago. (*See 06-14-12 Selectmen Minutes.*) They have met 4-5 times. The Committee's charge was to develop a document, which could be used in the search for a new Town Counsel, and tonight they were here to discuss the document they have drafted with the Selectmen.

He noted that the document has been entitled "Request for Proposals: Town Counsel Services", but added that Chapter 30B (i.e. "Uniform Procurement Act" of the Massachusetts General Laws) does not apply to the hiring of attorneys.

The Committee met with Mr. Scott Lambiase just prior to meeting with the Selectmen and he made some recommendations regarding the document. Mr. Lambiase's first suggestion was that it not be called a RFP since the hiring of attorneys does not fall under the requirements of Chapter 30B. Mr. Desmery said the Committee discussed this but felt that adding the language ("Not under MGL Chapter 30B)" below the heading Request for Proposals would clearly indicate this. They also noted that language in the second paragraph clearly states this.

In Mr. Desmery's presentation he covered the following topics and others on the committee added comments along the way:

- Variety of Attorneys / Models for Town Counsel Services:

Mr. Desmery mentioned that the Committee considered a number of Town Counsel models: smaller individual Attorney to larger legal firms to whether the Town Counsel should be an in-house Counsel, i.e., a Town employee. He said that as a Committee it was their opinion that the Town Counsel should not be an employee. It was felt that initially this would not make sense, but it is something that could be considered and negotiated at a later time.

He mentioned that Mr. Lambiase's second comment was that the self-rating system included in a real RFP would be more well defined.

Mr. Andre Martecchini expanded upon Mr. Desmery's comments; specifically with respect to the self-rating. He said that as part of the Committee's process they had discussed "what kind of attorney/ attorneys is/are the Town looking for?" The Committee's intent was to not preclude anyone. The self-rating was just to get an idea of where the applicant would consider that they are expert and where they are not. The Committee discussed a number of possible models. In one model you hire a general Town Counsel, who can handle most of a municipalities needs, but there may be occasion when you bring in a specialist for certain cases. In another model, you may hire a larger firm of attorneys and the work is assigned to the individual attorneys according to their experience and specialties. He added in the situation of an in-house Counsel, the Attorney would then have to do everything.

Mr. Will Zachmann mentioned he was not in attendance when an in-house Town Counsel was discussed, but he advocated for hiring an in-house Town Counsel.

- Timeframes:
 - Finalize the draft and issue the RFP by September 12, 2012
 - Deadline for proposals would be October 17, 2010
 - October 18, 2012 to mid-November, 2012: The Committee would do the screening process
 - Mid-to-end of November, 2012 The Board of Selectmen would interview the finalists
 - Early December The Board of Selectmen decision
- Getting the word out / Advertising – 4 main sources and 1 additional identified:
 - Town website
 - Massachusetts Municipal Association (MMA)
 - City Solicitors and Town Counsel Association of Massachusetts
 - Lawyer's Weekly. He noted that it does cost about \$220./week and they were thinking it should be published for two weeks
 - Additional possibility: either an email or mail solicitation to a directory of Town Counsels

Mr. Zachmann suggested adding to the above list advertising in the Central Register.

- Logistics

Mr. Desmery indicated the Committee would be asking Town staff for assistance with this.

Mr. Dahlen questioned that the amount of the professional liability insurance limit of \$2 million seemed low. There was some discussion about this with respect to what is the norm and the cost of such insurance. Ms. Kathleen Muncey indicated \$2 million per incident / \$5 million total was the standard for her firm. She said the cost

differential would be in the range of \$10,000. - \$20,000. Mr. Zachmann pointed out that the insurance levels are negotiable.

Mr. Madigan noted that basically the only requirement in the document is five (5) years of municipal town counsel experience. Mr. Zachmann pointed out that the document also indicates “or possess equivalent experience” which would leave this up to the selectmen’s discretion

Mr. Desmery said that Mr. Lambiase also mentioned that there is standard language which is inserted in the Town’s RFPs the gist of which is that the Town has the right to reject any submission. The Committee also discussed this, but their consensus was there was sufficient language in the draft document that it was not necessary to include the standard language as well.

The consensus of the Board of Selectmen was that after incorporating the changes mentioned they were comfortable with the advertising process to begin.

UPDATE ON TOWN’S LEGAL CASES / Atty. Art Kreiger of Anderson & Kreiger, LLP

This was not listed on the agenda as the Chair was not aware that Atty. Kreiger was prepared to provide an update tonight. Atty. Kreiger provided the following update:

- 7 ATB cases – are being handled by Stephen Dunn, Duxbury’s Director of Assessing
- Collari case –Gun permitting issue –There was a hearing and an Associate from Anderson & Kreiger attended to represent the Town. The lawyers representing both sides agreed to dismiss the case.
- Webster Point (a/k/a Delphic Development)- This was a Chap 40B case and it was recently settled.
- DeLuca case – Atty. Lenny Kesten of Brody Hardoon Perkins & Kesten, LLP is working on this case.
- Rossi case –This is a Police Union case. It is a long-standing case, which has now gone through settlement and mediation. Final details are being worked out, but if a settlement is not reached then arbitration is scheduled in October.
- Roth case – this was a dispute over a water bill and it has been settled.
- Foote v. Duxbury Conservation Commission: The Duxbury Conservation Commission voted in July to settle the case and the details are being worked out.
- 2 MCAD cases: James & Golden: Settlements are being worked on.
- Griffin v. Zoning Board of Appeals (ZBA): Case has been remanded from court. A ZBA hearing was held on 8/23/12 and there are deliberations scheduled for later this month to determine if all the underlying issues have been worked out.
- Johnson Golf – Board of Selectmen have been informed of the status in Executive Session.
- McCluskey case: Is being handled by Atty. Dan Script and is in discovery phase
- McLaughlin case: Has been appealed and is back before the Conservation Commission.

TEMPORARY EASEMENT: Verizon New England and NSTAR, St. George Street

Mr. Flynn indicated that the next item of business was for a temporary easement to allow the placement of a telephone pole. The pole in question is near the corner of St. George ST and Alden ST and needed with respect to the school building project. It was explained that 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, construct, operate, maintain, connect, replace and remove pole 24/573A, which may

be erected at different times with the necessary conduits, cables, wires, anchors, guys, supports, fixtures and appurtenances thereto for the transmission and/or distribution of telecommunications, over and across land at 71 Alden Street as recorded with the Plymouth County Registry of Deeds in Book 2088 Page 489 and shown on Duxbury MS-HS Plot Plan, Assessor property ID 082/180 508 007. Second by Mr. Dahlen. VOTE: 3:0:0.

AWARDING OF BONDS (Eastern Bank)

Mr. MacDonald was proud to report that the Town has received its 4th consecutive AAA rating from Standard and Poor’s. He indicated that this was the result of a lot of work and planning by many people, especially the Finance Department staff. He then turned further discussion of this matter over to Mr. John Madden, Duxbury Finance Director, and Mr. Thomas Connolly, Duxbury Town Treasurer.

Mr. Madden mentioned that the Finance Department takes a conservative approach. At the time of the Annual Town Meeting they were basing figures on a 4% interest rate, which seemed likely at the time. He was happy to report that the actual bonding rate received was 2.61%, which will substantially lower the borrowing costs and save the Duxbury taxpayers considerable money. To illustrate the projected savings he mentioned the following:

Projects at 2012 Annual Town Meeting based on 4% rate	Projections now based on 2.61% rate	Projected savings
Average value residence \$1005.34 /yr.	Average value residence \$740.00/ year	\$265./ year and \$6,900. over the life of the loan
Median value residence \$830./ year	Average value residence \$610./ year	\$220./ year and \$5,700 over the life of the loan

Mr. Madden did mention that the bonding is not for the entire liability, but for an amount sufficient to get through to the Certificate of Occupancy in September 2014. There will likely be site work and change orders, but it was felt bonding the cost of that work could be done when the figures are known and as needed.

He recognized that a lot of people were involved in the process said he appreciated the help given by the department heads and the various Town committees.

Mr. Madden noted the Standard & Poor’s did reference the following in their summary:

- Duxbury is an affluent community.
- The town’s financial position remains strong and consistent.
- The Town’s management, financial policies, and planning.

In closing he recognized that Mr. Connolly had done much of the work gathering and compiling the financial data, which was presented to Standard & Poor’s.

LONG-TERM: SIGNING OF BONDS & CLOSING PAPERS (Eastern Bank)

Mr. Connolly informed the Board that there were 9 bidders, which was more than the 4-5 they had hoped for. The winning bidder was Citigroup Global Marketing Global Markets, Inc. He pointed out that at the end of the meeting the Board will be asked to sign all the paperwork, but specifically noted that a vote of the Board is required, which is rather lengthy.

Mr. Madigan moved that the Board of Selectmen vote the following:

I, the Clerk of the Board of Selectmen of the Town of Duxbury, Massachusetts (the “Town”), certify that at a meeting of the board held September 10, 2012, of which meeting all members of the board were duly notified and at which a quorum was present, the following votes were unanimously passed, all of which appear upon the official record of the board in my custody:

Voted: that the sale of the \$83,447,000 General Obligation Municipal Purpose Loan of 2012 Bonds of the Town dated September 14, 2012 (the “Bonds”), to Citigroup Global Markets Inc. at the price of \$90,663,866.63 and accrued interest, if any, is hereby approved and confirmed. The Bonds shall be payable on September 1 of the years and in the principal amounts and bear interest at the respective rates, as follows:

<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>
2013	\$2,972,000	3.00%	2026	\$3,570,000	3.00%
2014	4,020,000	3.00%	2027	3,570,000	4.00%
2015	3,585,000	3.00%	2028	3,150,000	4.00%
2016	3,585,000	3.00%	2029	3,150,000	4.00%
2017	3,585,000	4.00%	2030	3,150,000	4.00%
2018	3,580,000	4.00%	2031	3,150,000	4.00%
2019	3,580,000	4.00%	2032	3,150,000	3.00%
2020	3,580,000	4.00%	2033	2,840,000	3.00%
2021	3,580,000	4.00%	2034	2,840,000	3.00%
2022	3,580,000	4.00%	2035	2,840,000	3.00%
2023	3,570,000	3.00%	2036	2,840,000	3.00%
2024	3,570,000	4.00%	2037	2,840,000	3.00%
2025	3,570,000	3.00%			

Further Voted: that in connection with the marketing and sale of the Bonds, the preparation and distribution of a Notice of Sale and Preliminary Official Statement dated August 29, 2012, and a final Official Statement dated September 6, 2012 (the “Official Statement”), each in such form as may be approved by the Town Treasurer, be and hereby are ratified, confirmed, approved and adopted.

Further Voted: that the Bonds shall be subject to redemption, at the option of the Town, Upon such terms and conditions as are set forth in the Official Statement.

Further Voted: that the Town Treasurer and the Board of Selectmen be, and hereby are, authorized to execute and deliver a continuing disclosure undertaking in compliance with SEC Rule 15c2-12 in such form as may be approved by bond counsel to the Town, which undertaking shall be incorporated by reference in the Bonds for the benefit of the holds of the Bonds from time to time.

Further Voted: that each member of the Board of Selectmen, the Town Clerk and the Town Treasurer be and hereby are, authorized to take any and all such actions, and execute and deliver such certificates, receipts or other documents as may be determined by them, or any of them, to be necessary or convenient to carry into effect the provisions of the foregoing votes.

I further certify that the votes were taken at a meeting open to the public, that no vote was taken by secret ballot, that a notice stating the place, date, time and agenda for the meeting (which agenda included the adoption of the above votes) was filed with the Town Clerk and a copy thereof posted in a manner conspicuously visible to the public at all hours in or on the municipal building that the office of the Town Clerk is located or, if applicable, in accordance with an alternative method of notice prescribed or approved by the Attorney General as set forth in 940 CMR 29.03(2)(b), at least 48 hours, not including Saturdays, Sundays and legal holiday, prior to the time of the meeting and remained so posted at the time of the meeting, that no deliberations or decision in connection with the sale of the Bonds were taken in executive session, and in accordance with G.L. c.30A, §§18-25 as amended.

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

Mr. Madigan mentioned the following:

- The Town received a \$7 million premium on this bond sale.
- There is a provision for a 10-year call on the bonds longer than 10 years, so they can be refinanced then, if rates should happen to be lower in the future.

WINE & MALT LICENSE, Bo-Tes Duxbury, LLC – Change of Manager, Mr. Thomas M. Campanelli

Mr. Flynn mentioned that the Board had received a request for a change of manager to the alcoholic beverages license held by Bo'-Tes from Mr. Michael C. Fennimore to Mr. Thomas M. Campanelli. All other conditions have remained the same, and the paperwork is in order.

Mr. Madigan moved that the Board of Selectmen, acting as the Licensing Authority, approve an Amendment to the Wine & Malt Package Store License for Bo'-Tes Duxbury, LLC, located at 1514 Tremont Street, to reflect a change in manager from Michael C. Fennimore to Thomas M. Campanelli. All other terms and conditions of the license remain unchanged. 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.

EVENT PERMITS

PILGRIM CHURCH CROP HUNGER WALK – October 14, 2012 – Amendment to Permit

Mr. Madigan moved that the Board of Selectmen vote to amend an Event Permit granted August 27, 2012 as follows:

That Ms. Kathy Leaf, is granted permission to conduct the Pilgrim Church's Fourth Annual CROP Hunger Walk beginning at the Pilgrim Church, 404 Washington Street, on Sunday, October 14, 2012 *at 12 noon and ending at approximately 3:00 PM*, subject to the conditions on the permit.

Before the vote, Mr. Madigan explained that the amendment to the permit was need to correct the hours of the permit and because the organizers are expecting more participants. The Pilgrim Church is now expecting over 150 participants, so a dedicated EMT detail will be required, if the total number exceeds 150 and this condition was added to the permit. In addition a requirement for insurance has been added to the permit.

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

TOWN MANAGER'S BRIEF

Mr. MacDonald mentioned the following items:

1. **Old Colony Planning Council (OCPC)** – Last spring Duxbury decided to join the Old Colony Planning Council. He received a communication that at a recent meeting the OCPC did vote to accept Duxbury as a member.
2. **Port Security Grant:** The Town Manager announced that through the Harbormaster's Departments the Towns of Duxbury and Plymouth received a joint 2012 Port Security Grant with Plymouth for the total amount of \$185,794. The grant does require \$46,000 match, but that can come in the form of in-kind services.
3. **Recreation Director's Summer Programs Report:** Citing a report from the Recreation Director, Mr. MacDonald mentioned that over 1000 people enjoyed the recreational programs this summer. At the request of the Selectmen Mr. MacDonald agreed to have the report posted on the Town website.
4. **Construction Costs for August:** Mr. MacDonald reported that the construction costs for August were \$2.2 million.
5. **Mosquitos** – Mr. MacDonald said Duxbury is still considered in the "moderate" risk level. Residents are advised to continue to use caution when outside during dawn and dusk. It is recommended to wear long sleeves and long pants and to use bug repellent.
6. **Water Fluoridation Quality Award:** Mr. MacDonald said the Duxbury Water Department received the Water Fluoridation Quality Award from the Centers for Disease Control and Prevention. He pointed out that this recognition is not easily obtained but takes a lot of work and careful monitoring and he commended the Water Department.
7. **Town-wide Fall Litter Sweep:** He said that he had been in communication with Ms. Mary Gazzola and plans are being made for the Fall Litter Sweep to take place in October.

Mr. Will Zachmann asked if there was any resolution regarding the recent "groper incidents"? In response Mr. MacDonald indicated that this is a police activity under investigation.

ANNOUNCEMENTS

Mr. Madigan read the announcements:

- **The Annual Duxbury Beach Sweep** will take place on Saturday, September 22, 2012 from 9 AM to NOON.
- **375th Committee upcoming events:** (a) An "Open House Tour" on September 16th from 1-4PM. The event is free to the public. (b) **Candlelight Concert** on November 16th at 7 pm at the Duxbury Performing Arts Center . Tickets are \$15 per concert. See www.duxbury375.com for more details.

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>
Economic Adv. Committee	Wayne Dennison	Appt. as the ZBA rep.	To fill an unexpired seat to 6-30-14	Mr. Madigan	Mr. Dahlen	3:0:0
Recreation Activities Comm.	Stuart McEntee	Re-Appt.	6-30-15	Mr. Madigan	Mr. Dahlen	3:0:0
Recreation Activities Comm.	Rob Ali	Re-Appt.	6-30-15	Mr. Dahlen	Mr. Madigan	3:0:0
Recreation Activities Comm.	Brian Campbell	Re-Appt.	6-30-15	Mr. Dahlen	Mr. Madigan	3:0:0
ZBA Associates	Freeman Boynton, Jr.	6-30-15	6-30-13	Mr. Flynn	Mr. Madigan	3:0:0
ZBA Associates	Robert Crowell	6-30-15	6-30-13		Mr. Madigan	3:0:0
ZBA Associates	John Baldwin	6-30-15	6-30-13	Mr. Flynn	Mr. Madigan	3:0:0
ZBA Associates	Borys Goynycz	6-30-15	6-30-13	Mr. Flynn	Mr. Madigan	3:0:0

Mr. Flynn moved to recommend Richard Prone to the Town’s Representative to the MBTA Advisory Board as a volunteer reporting to the Town Manager. Second by Mr. Madigan. VOTE: 3:0:0.

ADJOURNMENT

At 7:47 PM, Mr. Madigan moved that the Board adjourn. Second by Mr. Dahlen. VOTE: 3:0:0.

LIST OF DOCUMENTS FOR OPEN SESSION MEETING

1. Motion for Executive Session
2. DRAFT “Request for Proposals: Town Counsel Services” (not governed by MGL 30B)
3. Letter from Daryl Crossman of Verizon with the License Agreement and a map of the location for the pole.
4. Standard and Poor’s RatingsDirect® SUMMARY: Duxbury, Massachusetts; General Obligation Summary
5. Bo’ Tes Petition for Change of License packet
6. Pilgrim Church CROP Hunger Walk: Explanation of amendments and drafted permit, prior permit and packet materials regarding the event
7. Town Manager’s Brief: Background materials on potential items to be mentioned: 2012 Port Security Grant, Recreational Director’s Summer Programs 2012 report; Construction Costs for August 2012 coversheet; Mosquito/EEE information; Water Fluoridation Quality Award
8. Suggested Announcements
9. Board & Committee Appointment Sheet 09-10-12: Economic Advisory Committee-ZBA Rep; Recreation Activities Committee; ZBA Associates. Citizen Volunteer to MBTA Rep.