

Date: July 15, 2013

Date Minutes Approved: July 29, 2013

BOARD OF SELECTMEN MINUTES

Present: David J. Madigan, Chair; Theodore J. Flynn, Vice-Chair

Absent: Shawn Dahlen, Clerk

Staff: Rene' Read, Town Manager; Susan Kelley, Executive Assistant

CONVENED IN OPEN SESSION

The meeting was called to order at 7:00 PM in the Mural Room

OPEN FORUM – Nothing was brought forward for discussion

ACCEPTANCE OF A DONATION FROM THE INTERFAITH COUNCIL

Others present for this item were:

Mr. Gordon Cushing, Recreation Director

Each summer the Duxbury Interfaith Council provides financial assistance to help send Duxbury school-aged children to summer camp. The camperships are distributed based upon need and the financial capabilities of the child's family. Mr. Cushing reported that this summer's donation totaled \$13,195.00. He thanked both the residents for their generous contributions to this cause and the Interfaith Council for their donation.

Mr. Flynn moved that the Board of Selectmen accept the gift from the Interfaith Council in the amount of \$13,195.00. Second by Mr. Madigan. VOTE 2:0:0

**ACCEPTANCE OF A DONATION FROM THE COPELAND FAMILY FOUNDATION
(for the Duxbury Animal Shelter)**

The Copeland Family Foundation has made a \$5,000.00 donation to the Duxbury Animal Shelter. They have made several similarly large gifts in the past. The money can be used for medical and other needs of the animals at the shelter.

Mr. Flynn moved that the Board of Selectmen accept, with gratitude, the Copeland Family Foundation, Inc. donation of \$5,000.00 for the Duxbury Animal Shelter. Second by Mr. Madigan. VOTE 2:0:0

AWARD OF CONTRACT TO ACE – DUXBURY SOLAR, LLC (ENERGY MANAGEMENT SERVICES AGREEMENT FOR SOLAR PHOTOVOLTAIC SYSTEM) AND RELATED LEASE AT 145 MAYFLOWER STREET

Others present for this item were:

Mr. Jim Goldenberg, Chair, Alternative Energy Committee; Lynn Smith, Alternative Energy Committee

Mr Read read the memo from Attorney Kevin Batt of Anderson & Kreiger as follows:

The Selectmen's agenda for July 15, 2013, includes consideration of an award of contract to ACE – Duxbury Solar, LLC (Energy Management Services Agreement for Solar Photovoltaic System) and related lease at 145 Mayflower Street. This memorandum provides a brief background on this item and why it has come before the Selectmen.

At a Special Town Meeting on October 29, 2011, the Town Meeting authorized the Town Manager to enter into a contract with a third party vendor for the installation, operation, maintenance and removal of a solar photovoltaic project to be located at Duxbury's closed landfill at 145 Mayflower Street, and authorized the Board of Selectmen to enter into a lease of the landfill for such project.

Following the evaluation of proposals submitted in response to a Request for Qualifications, Mr. MacDonald, predecessor Town Manager, executed an Energy Management Services Agreement (EMSA) with ACE on April 2, 2012. Exhibit I of the EMSA is a Solar Lease. Mr. MacDonald reported to the Board of Selectmen on the same day that he had signed the EMSA, as reflected in minutes of that meeting. This apparently came up under an agenda item for "Discussion about the Appointment of a Wind Advisory Committee".

The execution of the agreement was defective for two reasons. First, the procurement statute under which the contract award was made, G. L. c. 25A, §11 I, requires that the local government body "shall provide public notice of the meeting at which it proposes to award the energy management services contract, of the name of the parties to the proposed contract and of the purpose of the contract. The public notice shall be made at least 10 days before the meeting." There was no public notice in compliance with this requirement.

Second, the execution by the Town Manager was not consistent with Duxbury's Town Manager Act, which provides in Section 3.C.13 that "The town manager shall be responsible for the negotiation of all contracts, which are subject to execution by the board of selectmen." The BOS appears to have been informed, but the minutes do not reflect that they approved the contract, nor does there appear to have been a motion to delegate execution to the Town Manager. In addition, although the Town Meeting authorized the Town Manager to "enter into" an EMSA, it authorized the Selectmen to enter into the lease.

The following corrective action is proposed to cure these minor procedural defects. Doing so will assure ACE and its financing parties of the validity of the contract and lease, and enable the submission of a valid contract to the Department of Energy Resources (DOER), which filing also is required by G. L. c. 25A, §11 I.

Mr. Flynn moved that the Board of Selectmen ratify an award of contract to ACE – Duxbury Solar, LLC for an Energy Management Services Agreement for Solar Photovoltaic System and related lease at 145 Mayflower Street. Second by Mr. Madigan. VOTE 2:0:0

**MEMORANDUM OF UNDERSTANDING ON THE REAL-TIME RADIATION MONITOR /
Duxbury Nuclear Advisory Committee**

Others present for this item were:

Duxbury Fire Chief Kevin Nord; Ms. Mary Lampert, Chair, Nuclear Advisory Committee; Ms. Becky Chin, and Joe Waldstein Nuclear Advisory Committee

Ms. Lampert indicated that as of July 1, the money is available to fund the 2013 Annual Town Meeting Article (#20) which approved the purchase of a real-time radiological air monitoring station to be located in Duxbury at Mattakeesett Court. The Memorandum of Understanding (MOU) between the Town of Duxbury and the Massachusetts Department of Public Health (MDPH) will start the purchase and installation process moving. She indicated that there were no surprises in the agreement and that the Town has no economic responsibilities for the monitoring station after the initial purchase. The MOU states that the MDPH will install the monitor, integrate it into their system, calibrate, maintain and if necessary, replace the monitor. The MDPH suggested that the Town should consider the solar-powered model to avoid connection issues.

While not included in the MOU or part of the Town Meeting article, Ms. Lampert stated that the MDPH will be placing 3 meteorological monitors in the area; one in Plymouth, one in Quincy and one at the Gurnet. The Duxbury Nuclear Advisory Committee feels that the 3rd monitor should not be placed at the Gurnet but rather at Mattakeesett Court. Placing the meteorological monitor at the Gurnet would not provide helpful information for emergency planning purposes.

Mr. Flynn moved that the Board of Selectmen approve and execute the Memorandum of Understanding between the Town of Duxbury and the Massachusetts Department of Public Health regarding Real-Time Radiological Air Monitoring of Emissions from Pilgrim Station in the Town of Duxbury contingent upon review and approval by Town Counsel. Second by Mr. Madigan. VOTE 2:0:0

BUSINESS

One Day Liquor License Requests - None

Event Permit Requests – None

TOWN MANAGER’S REPORT

Mr. Read briefed the Board on the following:

1. **Construction-related projects around town:**
 - ***Former Police Station*** - Asbestos abatement will be commencing within the next two weeks. Demolition of the site will occur at the end of September (mid fall). Prior to demolition, the Police and Fire departments will be using the facility as a training site. When these training exercises occur, we will provide advance notice.
 - ***Tennis courts*** - Prior to commencing with the project (paving of Wadsworth and Tarkiln tennis courts), we need the right conditions – temperatures of above 70 degrees and below 90 degrees and 5 days without rain.
2. **Duxbury Beach** - As you all know, Duxbury Beach has re-opened. This year’s opening saw beach guests having access to almost 9,000 linear feet of beachfront which, according to the Harbormaster’s office, is almost unprecedented for an opening following closure as a result of the presence of threatened or endangered species. As a result, the beach was opened which allowed for the maximum capacity of 500 off road vehicles (250 resident and 250 non-resident pursuant to the Beach Management Plan).

This past weekend, the maximum capacity of 250 non-resident beach permit holders was reached before 11:00 a.m. and as a result, a number of non-resident patrons had to be turned away for a period of time. Today our office received calls from a number of these patrons seeking refunds as a result of this temporary limitation. As stated on each sticker application (which has been the same for many years), sticker purchasers and beach guests are required to

sign a statement noting that they “understand and acknowledge: 1) all Duxbury Beach rules and other applicable laws; 2) that limitations may be imposed as to the number of vehicles allowed on the beach; 3) that possession of a permit does not guarantee parking; and 4) that stickers are non-refundable and non-transferable.

I understand that the privileges associated with this permit will be revoked due to violation of noted rules and/or laws by myself or my designated parties.”

Our suggestion today is the same as it has been for many years, if you want to get a parking spot on the beach, we encourage both resident and non-resident beach guests to arrive early as limited entry is granted on a first come, first served basis.

The Duxbury Beach Committee will be meeting on Thursday, July 18, 2013 at 7:00 p.m. in the Setter Room at the Library.

3. **NSTAR Tree Clearing** - NSTAR’s tree clearing project has begun along their right-of-way. NSTAR is currently working on re-planting plans which will be made available to the public and made available in the Planning office as well as the DPW office and Library by the middle or end of next week.

ANNOUNCEMENTS

Open Meeting Law Training – All Board and Committee members are invited to attend and participate in an Open Meeting Law training being presented by Nina Pickering-Cooke of Anderson & Kreiger, LLC, Duxbury’s Town Counsel. The Open Meeting Law training has been scheduled for Wednesday, July 24, 2013 starting at 7:00 PM in the Ellison Room at the Senior Center. Please save the date!

Next Scheduled Selectmen’s meeting: Monday, July 29, 2013

MINUTES

Mr. Flynn moved that the Board of Selectmen approve the 05-06-13 and 06-10-13 Open Session minutes as presented. Second by Mr. Madigan. Vote 2:0:0.

COMMITTEE APPOINTMENTS/RE-APPOINTMENTS

Resignation:

Wind Advisory Committee – Jack Murphy – Chair / BOS Liaison: Ted Flynn
Jack Murphy Duxbury Wind Wise Representative Term expires 6/30/15

Appointment:

Wind Advisory Committee – *new* Andreas Kline – Chair / BOS Liaison: Ted Flynn
Joanne Levesque Duxbury Wind Wise Representative to fill an unexpired term due to expire
on 6/30/15

Mr. Flynn moved that the Board of Selectmen accept the resignation of Mr. Jack Murphy and appoint Ms. Joanne Levesque to fill the unexpired term on the Wind Advisory Committee. Second by Mr. Madigan.

VOTE 2:0:0

ADJOURNMENT

At 7:18 PM, Mr. Flynn moved that the Board adjourn. Second by Mr. Madigan. Vote 2:0:0.

LIST OF DOCUMENTS

1. *Letter from Duxbury Recreation Department to Interfaith Council dated June 27, 2013*
2. *Letter from Copeland Family Foundation to Animal Control Officer Eddy Ramos dated June 14, 2013; copy of donation check in the amount of \$5,000.00*
3. *Memorandum from Attorney Kevin Batt of Anderson & Kreiger to the Board of Selectmen RE: Ratification of Solar Energy Management Services Agreement and Lease at 145 Mayflower Street; Energy Management Services Agreement for Solar Photovoltaic System between the Town of Duxbury and ACE – Duxbury Solar, LLC dated March 29, 2012*
4. *Memo from the Duxbury Nuclear Advisory Committee to the Board of Selectmen including the Memorandum of Understanding between the Town of Duxbury and the Massachusetts Department of Public Health*
5. *Announcements*
6. *Board of Selectmen Open Session Draft Minutes of 05-06-13 and 06-10-13*
7. *Committee Appointments / Re-Appointments (including a Resignation)*