

Date: November 13, 2014
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DUXBURY, MASS.

BOARD OF SELECTMEN MINUTES

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

Absent: René J. Read, Town Manager

Staff: Nancy O'Connor, Executive Assistant

Others present for this meeting:

Attorney Art Kreiger, Anderson & Kreiger, LLP via conference call; Tom Broadrick, Planning Director

Members of the Planning Board in Attendance (joint meeting): George Wadsworth, Brian Glennon, John Bear (via conference call), Scott Casagrande, Jennifer Turcotte, and David Uitti

Members of the Zoning Board of Appeals in Attendance (joint meeting): Wayne Dennison, Judi Barrett, Kathleen Muncey, and Freeman Boynton.

CONVENED IN OPEN SESSION

I. CALL TO ORDER

The meeting was called to order at 7:00PM in the Small Conference Room.

II. NEW BUSINESS

Review and discuss Planning Board request to fund an appeal of the Zoning Board of Appeal's recent decision on the property at 29 Summerhouse Lane, Decision #2014-0021.

Mr. Dahlen stated that Town Counsel, Attorney Art Kreiger, was consulted and believed that there were sufficient grounds to hold this meeting. Mr. Dahlen spoke with Atty. Kreiger on how to proceed so that everyone has a chance to speak and protect the Town of Duxbury at the same time. Mr. Dahlen stated that the Board of Selectmen would move to enter Executive Session and then reconvene in Open Session.

Attorney Paul Driscoll, representing Susan Curtis (owner of Lot D), spoke to challenge the fact that this constituted an executive session. He stated that Ms. Curtis doesn't get to hear the decision of the Planning Board or the ZBA unless they can repeat what they said in open session.

Mr. Dahlen stated that with the potential of an appeal and pending litigation, we cannot protect the Town's interest in open session.

Atty. Driscoll respectfully disagreed and said that everything was already discussed at the public hearing. He respects the attempt to be fair, but makes objection to the procedure.

A resident then echoed Atty. Driscoll's concern and asked how this fell under the general reasons to hold an executive session.

Mr. Dahlen stated that Atty. Kreiger was consulted and that the BOS were going on his recommendation.

III. EXECUTIVE SESSION

VOTE TO ENTER EXECUTIVE SESSION

Mr. Flynn then moved that the Board of Selectmen enter into an Executive Session in order to discuss strategy with respect to pending litigation regarding appeal of ZBA decision of property located at 29 Summerhouse Lane since an open meeting may have detrimental effect on the Town's litigating. This Executive Session will adjourn when completed and will reconvene in Open Session. Second by Mr. Madigan.

As Chair, Mr. Dahlen declared that an open meeting may have a detrimental effect on the Town's litigating position so it is necessary for the matter to be discussed in Executive Session.

ROLL CALL VOTE: Mr. Flynn ---aye; Mr. Madigan---aye; and Mr. Dahlen---aye.

EXECUTIVE SESSION ADJOURNED and RE-CONVENED IN OPEN SESSION --

At approximately 8:25pm, Mr. Flynn moved that the Board of Selectman adjourn the Executive Session and reconvene in Open Session. Second by Mr. Madigan.

ROLL CALL VOTE: Mr. Flynn ---aye; Mr. Madigan---aye; and Mr. Dahlen---aye.

Mr. Dahlen stated that he wanted the opportunity to discuss both boards' legal opinions and facts if a suit was brought forward and to determine whether or not the Board of Selectmen would approve funds for an appeal. He further mentioned that he was distressed having two boards arguing as it's not a good idea to have one board sue another.

Ms. Karen Goldberg (abutter) said that she finds this situation upsetting and how the Planning Board voted (in reference to Ms. Turcotte's vote).

Ms. Jennifer Turcotte (Planning Board) – confirmed that she was not able to attend the meeting, but instead sent an email stating that she was not in favor of appealing the decision.

Ms. Goldberg asked if her mind was made up before the meeting.

Ms. Turcotte then stated that she based her decision after reading information before meeting.

Ms. Goldberg continued stating that she attended the meetings and felt that there were disclosure and transparency issues at the public hearing. She also felt that it hasn't been right or fair and that the Planning Board and the Board of Selectmen have an obligation to support them.

Mr. Mike Spellman (abutter) – stated that he feels that there is an interpretation issue and thought that Monday's meeting was suggesting a continued discussion. He would like discussions in a non-litigious way as decisions should be made outside of involving town counsel.

Mr. Bob Lancelot (lot owner) – bought a lot on Summerhouse Lane based on a letter stating that it was a buildable lot. He feels the situation is blown out of control and inappropriate. He just wants to build his house.

Attorney Paul Driscoll (representing Sue Curtis) – stated that we are talking about building one house in a residential zone – not a subdivision. This is a single house on a single lot.

Ms. Amy McNab – would like to get into merits of the case and agree with the Selectmen’s angst and town boards should work together. She stated that during hearings, she was quoted by Planning several times, and those quotes were taken out of context. The roadway existed at a certain point and didn’t carry through to Torrey Lane and didn’t require deliberations because it was already decided as an unbuildable parcel. The problem here is that a mistake has been made and this does not look good for the Town of Duxbury and it is a worrisome event to be occurring in our town. This is an ethical dilemma and we should have seminars about that.

John Sager (abutter – Torrey Lane) – stated that part of the ZBA decision was based on 2007 approval of ANR plan and that needs to be resolved. Zoning laws allows one board to sue another as a check and balance. He doesn’t approve of spending tax money, but if it is needed to confirm checks and balances, then it is money well spent.

B. Casey – 25 Lincoln Street -- concerned that after only one hour of input from the ZBA and the Planning Board, the Selectmen will be basing their decision to fund and they shouldn’t unless they have read every paper and watched every meeting. Otherwise, you have too little information to make a decision.

Mr. Flynn then stated that he does not believe in suing himself and that there are other avenues.

Mr. Madigan stated that there were a series of errors made and this would be a costly case. Zoning by-laws should be addressed to prevent more cases rather than wait for someone to buy a lot and opening ourselves up to more litigation.

Mr. Flynn said that he would like members of the various boards form a plan so that these errors don’t occur again.

Mr. Dahlen further stated that both boards brought forth their decisions and instead of proving which volunteer group out did the other, we should be developing a policy to avoid people purchasing lots like this. Suggested policy would be to have the building inspector not send out an approval letter without seeking advice from both planning and zoning.

Ms. Goldberg stated that there was not enough frontage on the lot.

Mr. Spellman stated that in the deed there was no access from Torrey Lane to Summerhouse Lane.

Ms. Goldberg said that it comes down to interpretation and there should be checks and balances.

Mr. Flynn moved that the Board of Selectmen fund an appeal of the ZBA decision by the Planning Board. Second by Mr. Madigan VOTE: 0:3:0 (Mr. Dahlen – nay; Mr. Madigan – nay; Mr. Flynn – nay)

IV. ADJOURNMENT

At approximately 9:10pm Mr. Flynn moved that the Board adjourn. Second by Mr. Madigan. Vote: 3:0:0

Minutes respectfully submitted by Nancy O’Connor

LIST OF DOCUMENTS (documents are kept in the Board of Selectmen files)

- 1) Agenda*
- 2) Email from Tom Broadrick requesting appeal*
- 3) ZBA Decision*