

Date: September 12, 2016

Date Minutes Approved: September 26, 2016

BOARD OF SELECTMEN

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

Absent: None

Staff: René J. Read, Town Manager; and Nancy O'Connor, Executive Assistant

Others in Attendance: Art Kreiger, Esq., Anderson & Kreiger

CONVENED IN OPEN SESSION –

I. CALL TO ORDER - The meeting was called to order at 7:02pm.

II. OPEN FORUM Nothing brought forward.

III. NEW BUSINESS

Discussion regarding litigation tracker update from Anderson & Kreiger

Attorney Art Kreiger was present and provided an updated litigation tracker as of September 9, 2016 to the Selectmen. Mr. Dahlen asked why school matters were included. Mr. Read responded that someone in the Town may be named and we want to track the progress.

Attorney Kreiger continued and stated that what we won't see are the Johnson Golf and the Troy cases, which have been settled and will no longer appear on this tracker. He further mentioned that the Roberts case was mediated and settled in the spring of 2016. He then provided a brief update of the below cases as follows:

1. Student matter regarding end of school year testing schedule – MIIA is handling and will do what is appropriate;
2. Calm Golf – MIIA/Brody Hardoon handling – waiting for Calm's response date which is extended to October;
3. Cook v. San Martino Imports – A&K monitoring - transfer station accident when pallet fell on employee, this is a personal injury claim (no claim against the Town) – trial scheduled for November 14, 2016;
4. Erikson – MIIA denied claim and has had no further response (matter closed);
5. Student personal injury claim – MIIA handling;
6. Hickey – MIIA/Pierce Davis handling – claim for wrongful cremation, in discovery;
7. Hines personal injury claim – MIIA handling and denied claim, filed closed on 8/23/16;
8. Johnson – police officer personal injury/Verizon detail claim – still in discussion with MIIA;
9. Lovejoy – A&K handling - appeal of firearms license suspension, criminal matter over, – hearing this fall;
10. Mahony small claims matter – MIIA/Pierce Davis handling – bicycle/pot hole accident – it is in small claims court because the statute for pot holes limits liability- hearing scheduled for September 13, 2016;
11. McLaughlin pier matter – MIIA/Brody Hardoon handling – pending in Superior Court; and
12. Mehegan personal injury matter – A&K monitoring - no claim against the Town.

Attorney Kreiger summarized stating that there appears to be no large liability cases.

Discussion regarding Executive Session minutes

Mr. Madigan stated that we are now discussing Selectmen Executive Session minutes concerning the settlement of the Johnson Golf case and the settlement of the Troy case. He continued to say that they wanted to be sure to

open these up, but that there are a lot more Executive Session minutes that will have to be reviewed and at some point released. Mr. Read added that with respect to releasing minutes, we went back two years, 2015 and 2016, to include the most recent minutes dealing with the settlement, which are more pressing to get to the public.

Attorney Kreiger continued the discussion with the June 1, 2015 Executive Session minutes. He referenced the Erikson matter, which has been concluded, but there is a little bit of attorney/client privilege information, but nothing sensitive. He then explained that we are entitled to redact attorney/client privilege materials in the minutes under the Public Records law, but we are also entitled to waive the privilege, and here there is nothing worth redacting. He then mentioned the Calm Golf case and stated that there was some discussion regarding the Troy matter, which has been marked redacted in the minutes. He further explained that we are entitled to waive the redaction ordinarily, but under the Troy settlement agreement we are allowed to disclose the terms only if compelled. Attorney Kreiger stated that he determined that in order to honor the agreement, we shouldn't waive the privilege even though we are entitled to, so discussions related to the merits of the case were marked redacted in the minutes.

Attorney Kreiger moved onto the April 25, 2016 Executive Session minutes regarding Johnson Golf and Attorney Robert Troy settlements. He stated that these minutes are more complicated because this is the end/settlement of the case. Attorney Kreiger said that he and Attorney Pickering-Cook carefully reviewed, and there are a number of redactions. He provided an example: it is fine to say that Attorney Kreiger was present to discuss the status, but the subsequent discussion was redacted as well as redacting those parts relating to the settlement agreement and honoring parts that he thought needed to be under the terms of the agreement and disclosing what he thought could be disclosed. He further explained that anything that doesn't fall under attorney/client privilege, we do not have the option of redacting and is to be disclosed under the Public Records law. He then confirmed that all the redactions here are not necessarily because they are sensitive, but rather are redacted because they are attorney/client privilege. But in the case of the terms of the settlement, we are not allowed to redact, that is why they remain in the minutes. Attorney Kreiger continued saying that the rest of the discussion in the minutes relates to financing the Johnson Golf settlement so that was not redacted. Lastly, he recommended that the Board vote to release these redacted minutes.

Mr. Dahlen moved that the Board of Selectmen waive the attorney/client privilege to the extent reflected in these minutes dated June 1, 2015 and April 25, 2016 and to release the minutes to the public. Seconded by Mr. Flynn Vote: 3:0:0

Attorney Kreiger then added that under the settlement agreement, he gave Mr. Troy notice of the Town's intent to release these minutes, and he received no move to prevent the release.

Mr. Read then mentioned that in anticipation of being asked what the total attorneys' fees were for these cases, and expecting that question may be asked at Special Town Meeting, he felt that it would be beneficial to the audience and the press to discuss now.

Attorney Kreiger responded that the Town paid Mr. Troy from 2009 to 2012, during which time there was a lot of work done by Mr. Troy (discovery/motions/preliminary injunctions). Mr. Flynn replied that he thought the total fees paid to Mr. Troy were about \$177,000. Attorney Kreiger agreed that sounded right. Anderson & Kreiger (A&K) replaced Mr. Troy in 2012. Thereafter, the Town paid A&K approximately \$378,000 through April, 2016, some of which included the Troy malpractice case, but not a lot. In addition, the Town paid Attorney Lenny Kesten approximately \$57,000, part of which was a contingent fee.

Attorney Kreiger then said that the question may come up at Special Town Meeting "why did you pay so much" or "what did you get for that?" He said that's a question that reflects on him as well as the Town, and he will address. He continued saying that when A&K first got involved, there was extreme distrust between Bob Troy and Lenny Kesten, but that was why Troy recommended the Town hire successor counsel to represent the Town's interests. He further stated that ordinarily when special counsel is handling a matter, he does not

duplicate their work, but in this case his charge was to be active. He mentioned that Brody Hardoon/Lenny Kesten did a fine job, but he wasn't satisfied with the way certain things were being done so he became active through the trial. Attorney Kreiger continued that his major contribution at trial was to help prepare the expert in the damage case. While Lenny Kesten did all the examining, Attorney Kreiger said that he prepared the expert. He stated that he claim for damages was over \$900,000, and the jury came back at \$200,000, which was doubled to \$400,000, so the \$900,000 would have been \$1.8m, including interest. Attorney Kreiger feels that he saved the Town a lot money just on this issue, and got the Town a much lower verdict than we would have had, and that's what we got for the money.

Attorney Kreiger continued to explain that the jury came back at \$200,000, which doubled to \$400,000, and then there was interest and attorney fees, so the judgment was \$839,000. From then on post-judgment interest started accruing to the point it would have been around \$1.1m if settled. If the jury came back with \$600,000, instead of \$200,000 with less expert preparation, which would have then doubled to \$1.2m – the total would be closer to \$1.8m instead of the \$839,000. Mr. Madigan added that the total attorneys' fees paid were approximately \$600,000 for the whole thing. (Troy \$177k; A&K \$378k; Kesten \$57k).

Mr. Dahlen then responded that Anderson & Kreiger were brought in because they lost confidence in Troy, and that to hire both A&K and Lenny Kesten of Brody Hardoon was done so in the best interest of the Town.

Mr. Flynn also added that if we lost the appeal, we could have paid \$1.2m without the benefit of any insurance contributions from MIIA or other sources and the entire \$1.2m would have been on the Town. Mr. Flynn then expressed his thanks to Attorney Kreiger.

Mr. Dahlen further mentioned that the Town now has a different procedure in place for procurement. Now we have someone dedicated to procurement to avoid these issues in the future. Attorney Kreiger commented that the Town has had a number of complicated procurements and the Town staff has done a terrific job of drafting.

Discussion and review pertaining to the Duxbury Food & Wine Festival - Event Permits and One-Day Liquor Licenses

Mr. Richard Marble, organizer of the Duxbury Food & Wine Festival, spoke and stated that this event started three years ago, is growing, and keeping it going with corporate sponsorships. He mentioned that this year, however, has been a challenge and is still waiting for his insurance packet, which should be ready tomorrow. Mr. Marble also said that the purpose of this event it to provide charitable donations.

Mr. Dahlen moved that Mr. Richard Marble, as a representative of the Duxbury Food & Wine Festival, is granted an event permit for the "Historic Foodways at the Alden House Historic Site" on Saturday, September 17, 2016 located at the Alden House Historic Site, 105 Alden Street, from 12:00 Noon to 5:00 PM, contingent upon the conditions of the permit. Seconded by Mr. Flynn. Vote: 3:0:0

Mr. Dahlen moved that Mr. Richard Marble, as a representative of the Duxbury Food & Wine Festival, is granted an event permit for the "Farm Day" on Saturday, September 17, 2016 located at O'Neil Farm, 146 Winter Street, from 11:00 AM to 4:00 PM, contingent upon the conditions of the permit. Seconded by Mr. Flynn. Vote: 3:0:0

Mr. Dahlen moved that Mr. Richard Marble, as a representative of the Duxbury Food & Wine Festival, is granted a One-Day Wine & Malt License for the "Anne's Festival Kick-Off Reception" on Thursday, September 15, 2016 Anne Henning's Gallery located in the Duxbury Marketplace, 19 Depot Street, from 6:00 PM to 9:00 PM, contingent upon the conditions of the license. Seconded by Mr. Flynn. Vote: 3:0:0

Mr. Dahlen moved that Mr. Richard Marble, as a representative of the Duxbury Food & Wine Festival, is granted a One-Day Wine & Malt License for the “Oktoberfest Under the Tent” on Friday, September 23, 2016 located at the Parking Lot behind Sweetser’s, 459 Washington Street, from 6:30 PM to 10:30 PM, contingent upon the conditions of the license. Seconded by Mr. Flynn. Vote: 3:0:0

Mr. Dahlen moved that Mr. Richard Marble, as a representative of the Duxbury Food & Wine Festival, is granted a One-Day Wine & Malt License for the “Festival Grand Tasting” on Saturday, September 24, 2016 located at the Parking Lot behind Sweetser’s, 459 Washington Street, from 3:00 PM to 7:00 PM, contingent upon the conditions of the license. Seconded by Mr. Flynn. Vote: 3:0:0

Mr. Dahlen moved that Mr. Richard Marble, as a representative of the Duxbury Food & Wine Festival, is granted a One-Day Wine & Malt License for the “Sweet Sound Oyster Dinner” on Sunday, September 25, 2016 located on oyster work float, Duxbury Bay, from 5:00 PM to 7:00 PM, contingent upon the conditions of the license. Seconded by Mr. Flynn. Vote: 3:0:0

That Mr. Dahlen moved that Mr. Richard Marble, as a representative of the Duxbury Food & Wine Festival, is granted a One-Day Wine & Malt License for the “Peterman Home Wine Dinner” on Wednesday, September 28, 2016 located at the Peterman Residence, 113 Saint George Street, from 6:00 PM to 9:00 PM, contingent upon the conditions of the license. Seconded by Mr. Flynn. Vote: 3:0:0

IV TOWN MANAGER’S REPORT

9-11 Vigil

Mr. Read stated that yesterday was the 15th anniversary of 9/11 and extended his thanks to members of the police department, fire department and the Interfaith Council for their efforts in organizing this vigil so successful. He also expressed his appreciation to all residents for their participation.

WATD – Public Information

On Saturday, September 17 from 8 AM - 10 AM the WATD radio show “McNamara on Money” will be about the FEMA flood maps. Citizens in the communities of Duxbury, Marshfield and Scituate are invited to tune in and /or to call in to have their questions answered. Tune your radio to WATD at 95.9 FM.

Winter Street update

The latest update for the Winter Street Intersection project was received on Friday, September 9, 2016 from James A. Kersten at MassDOT:

- Contractor/subcontractor and MassDOT landscape architect are coordinating to tag plantings at nursery. Contractor will then spread loam and layout/begin installation of plantings.

U.S.S. Duxbury Bay – Veterans’ reunion event

On Monday, September 19, 2016, from 11:00 a.m. until 12:00 noon on the Powder Point Bridge, the Town of Duxbury will be hosting a wreath-laying ceremony in remembrance of all who served aboard the U.S.S. Duxbury Bay (AVP-38) on the occasion of the 50th Anniversary of her decommissioning. This will likely be the last reunion of the surviving shipmates in Duxbury, and the last opportunity to honor these veterans who selflessly honored their country with their dedicated service. As part of the event proceedings, the U.S.S. Constitution has committed their Color Guard to participate in this ceremony. The public is invited to attend this ceremony as we honor the crew in attendance and the memory of all those who served aboard her.

Harbormaster Don Beers – Retirement

After more than 30 years of service to the Town of Duxbury, Don Beers is retiring today (September 12, 2016). Mr. Read continued to say that he will be appointing Jake Emerson as interim Harbormaster. He further mentioned that there will be a retirement party for Don on October 20, 2016 from 5-7:30PM to be held at the

Senior Center, which is open to the public and all are invited. On behalf of the Town, Mr. Read wished Don the best for a long, happy and healthy retirement.

V COMMITTEE APPOINTMENTS/RE-APPOINTMENTS/ RESIGNATION

None Presented

VI ONE-DAY LIQUOR LICENSE REQUESTS

09-20-16 Marshfield Country Club Golf Clinic

That Mr. Daniel G. Hall, as a representative of the Marshfield Country Club, is granted a One-Day Wine & Malt License for their Driving Range Golf Clinic event to be held at the Marshfield Country Club off Acorn Street, Duxbury, on Tuesday, September 20, 2016 from 10:00am to 4:00pm, subject to the conditions of the license. Seconded by Mr. Flynn. Vote: 3:0:0

VII EVENT PERMITS *None Presented*

VIII MINUTES

Executive Session Minutes: None Presented

Open Session Minutes: 08-29-16 Selectmen's Minutes –DRAFT

Mr. Dahlen moved that the Board of Selectmen approved the 8/29/16 Selectmen's minutes, as presented. Seconded by Mr. Flynn. Vote: 3:0:0

IX ANNOUNCEMENTS

1) Special Town Meeting:

REMINDER...There will be a Special Town Meeting on Monday, September 19th beginning at 7 PM at the Performing Arts Center (PAC), 73 Alden ST, Duxbury.
The Special Town Meeting Warrant is posted and can be downloaded from the Town News column on the website. Copies will also be available at the meeting.

2) New Subscriber Feature on the Town Website:

On the Town website under the "Subscribe to News" on the homepage you can now subscribe to receive electronically information regarding Annual Town Meetings. If you have already subscribed to receive other items you must edit your subscription to indicate you want to also receive "Annual Town Meeting Information."

3) Duxbury Triathlon

Reminder that the Duxbury Triathlon will be held on Saturday, September 24, 2016 beginning at 7:15 AM. The Duxbury Beach Triathlon is a .35 mile swim in Duxbury Bay parallel to the Powder Point Bridge, a 13-mile bike involving the Washington ST to Bay Road area and 3-mile run involving the Powder Point Bridge –King Caesar Road –Powder Point Av loop. This year the primary non-profit beneficiaries will be the Special Olympics of Massachusetts and the Duxbury Student Union.

4) Farm Day 2016:

The Historic O'Neil Farm will hold its annual Farm Day on Saturday, September 17, 2016

from 12:30 PM to 3:30 PM. (*Rain date: Sunday September 18*). Free and open to the public.
This is a family-friendly event.

5) Next Scheduled Selectmen's Meeting is on: September 26, 2016.

VI ADJOURNMENT

At approximately 7:52 p.m., Mr. Dahlen moved that the Board adjourn. Seconded by Mr. Flynn. Vote: 3:0:0

Minutes submitted by Nancy O'Connor

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

- 1) *Agenda*
- 2) *Litigation Tracker*
- 3) *Released Exec Session Minutes*
- 4) *Documentation related to Duxbury Food & Wine Festival*
- 5) *ODLL – Marshfield CC*
- 6) *Open Session Minutes*
- 7) *Announcements*