



Town of Duxbury Massachusetts Planning Board

Minutes 01/05/09

The Planning Board met in the Duxbury Senior Center, 10 Mayflower Street, Ellison Room on Monday, January 5, 2009 at 7:00 PM.

Present: Amy MacNab, Chairman; Brendan Halligan, Clerk; George Wadsworth, Vice-Chair; John Bear, Cynthia Ladd Fiorini, and Harold Moody.

Absent: James Kimball.

Staff: Diane Grant, Administrative Assistant.

CPTC WORKSHOP: “ROLES AND RESPONSIBILITIES OF PLANNING AND APPEALS BOARDS”

Ms. Judith Cutler of Koppelman and Paige facilitated a joint workshop on behalf of the Citizen Planner Training Collaborative for the Planning Board and Zoning Board of Appeals.

Ms. MacNab opened the public meeting at 8:20 PM. Open Forum was deferred until later in order to begin public hearings.

PUBLIC HEARING ON ANNUAL TOWN MEETING WARRANT ARTICLES

The public hearings commenced at 8:20 PM. Mr. Halligan read the public hearing notice into the record for tonight's public hearings. Ms. MacNab explained to the public that three zoning articles would be addressed tonight. Some of these articles are sponsored by the Planning Board on behalf of other entities that want to bring the articles forward to Town Meeting. The Planning Board prefers to keep the public hearings open to allow for as much input as possible. Once they have reviewed the article, the Planning Board can choose to recommend or not recommend it, or they can choose not to vote on an article.

PUBLIC HEARING ON A PROPOSED ZONING BYLAW SECTION 616, WIND FACILITIES DEVELOPMENT REGULATIONS, FOR ANNUAL TOWN MEETING 2009

Mr. Halligan read the correspondence list into the public record:

- Article as submitted to Board of Selectmen on 12/09/08
- Public hearing notice published in Duxbury Clipper on December 17, 24, and 31, 2008
- Email from D. Murphy to A. MacNab dated 12/08/08 re: no ZBA review as of 12/01/08
- Draft Planning Board meeting minutes of 12/08/08.

Six members of the article's proponent, the Alternative Energy Committee, were present: Mr. Frank Duggan, Ms. Barbara Bartlett, Mr. John Doherty, Mr. Don Greenbaum, Mr. John Murdock, and Ms. Donna Theodossiou.

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The mission of the Town of Duxbury is to deliver excellent services to the community in the most fiscally responsible and innovative manner while endeavoring to broaden our sense of community and preserve the unique character of our town.

Mr. Frank Duggan presented the warrant article on behalf of the committee. Mr. Duggan stated that the committee wished to be proactive in addressing wind facilities for the Town of Duxbury because many coastal towns are being approached by energy firms. The intent of the proposed bylaw would be to provide clear and concise guidelines in order to protect the environment and to control the size and location of facilities to maintain the rural character of the Town. Mr. Duggan noted that the warrant article incorporates recommendations from a preliminary discussion with the Planning Board on December 8, 2008.

Ms. MacNab asked for questions or comments from the Board. Mr. Bear asked how the committee based setback requirements, and Mr. Murdock responded that they were modeled on two other communities' standards but tailored to the Town of Duxbury.

Mr. Moody noted that the 100-foot setback appears to be removed from an earlier draft of the article. He also noted that the Town of Plymouth has a 100-foot setback and limits wind turbine facilities to five-acre minimum sites. Mr. Murdock responded that the 100-foot setback was removed in order to allow the setbacks to conform with current Zoning Bylaws Section 425 (Intensity and Dimensional Regulations for All Neighborhood Business Districts).

Ms. Ladd-Fiorini confirmed with Mr. Duggan that wind facilities are proposed for commercial use only. She questioned the 250-foot height restriction. Mr. Murdock stated that although the height may be too high, guidelines are needed.

Ms. MacNab noted that applying for a wind turbine facility through a special permit would trigger Administrative Site Plan Review. She also suggested that "Regulations" be removed from the proposed Bylaw heading. Mr. Bear noted that amendments such as this could be introduced on the floor at Annual Town Meeting.

Mr. Wadsworth asked if a wind turbine facility owner could sell excess energy and Mr. Duggan responded that the wind turbine would serve only the site load adjacent to the facility unless it is defined as a Utility-Scale Wind Facility.

Mr. Halligan asked if a commercial wind facility could be placed on a residential lot. Ms. Bartlett noted that the committee did not intend for the bylaw to be restricted to non-residential areas, asking why a 50-acre residential site should be restricted, for example. Mr. Duggan noted that the economics need to be justified in order to install a wind turbine facility. Ms. Theodossiou speculated that property owners would not be likely to install a 250-foot wind turbine on their residential lots. Mr. Halligan responded that he would not be surprised if someone did, noting that cell towers are being proposed for residential sites.

Ms. MacNab asked if federal initiatives may eventually overrule local regulations such as this one, and Mr. Murdock noted that laws exist which may override local bylaws. Mr. Duggan noted that a number of local communities do have wind facilities regulations.

Ms. MacNab thanked committee members for attending the public hearing.

MOTION: Mr. Bear made a motion, and Mr. Halligan provided a second, to continue the public hearing for a proposed Zoning Bylaw for Wind Facilities to Monday, January 26, 2009 at 7:15 PM.

VOTE: The motion carried unanimously (6-0).

**PUBLIC HEARING ON A PROPOSED AMENDMENT TO ZONING BYLAWS
SECTION 400, RELATIVE TO WIRELESS TELECOMMUNICATIONS SERVICE
FACILITIES, FOR ANNUAL TOWN MEETING 2009**

The public hearing started at 9:07 PM. Mr. Halligan read the correspondence list:

- Article submitted to Board of Selectmen on 12/09/08
- Public hearing notice published in Duxbury Clipper on December 17, 24, and 31, 2008
- Email from D. Murphy to A. MacNab dated 12/08/08 re: no ZBA background and comments
- Planning Board minutes of 11/03/08
- Planning Board minutes of 10/06/08

Mr. Dennis Murphy, Chairman of the Zoning Board of Appeals (ZBA), was present for the discussion. Mr. Murphy noted that the existing Modoc Street cell tower predates the cell tower bylaw. Two years ago during a special permit review of a proposed cell tower on Temple Street, ZBA members discovered that there was no cell tower overlay district, which reduces the Town's leverage in permitting them. Planning Director, Ms. Christine Stickney, recommended the proposed amendments as a stop-gap measure. Mr. Murphy recommended that the Board consider putting together a cell tower study working group for a future Town Meeting.

Mr. Murphy noted that the reason behind the changes was that the ZBA's consultant on a former project, Mr. David Maxim, advised the ZBA that an 800-foot radius, which represents the current setback, would require a 40-acre parcel. Mr. Murphy noted that the proposed setback of 400 feet from the nearest dwelling unit on an adjacent or nearby property provides maximum protection without becoming invalidated. He offered to perform more research on other local Towns to make sure that the proposed setback is reasonable.

Mr. Bear noted that some residents at Annual Town Meeting may be concerned with radiation. Mr. Murphy re-emphasized that the ZBA consultant advised the ZBA that an 800 feet setback was too high. He also noted that federal law is clear that if a gap in coverage exists, local zoning does not apply.

Mr. Halligan noted that the warrant article should reference "Article 600 Section 610.4 by replacing 5(d)" rather than "replacing (d)." Mr. Murphy noted minor "scrivener's errors" which he will submit to the Board of Selectmen.

MOTION: Mr. Bear made a motion, and Mr. Wadsworth provided a second, to continue the public hearing for proposed amendments to Zoning Bylaws regarding wireless telecommunications service facilities to Monday, January 26, 2009 at 7:30 PM.

VOTE: The motion carried unanimously (6-0).

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Mr. Murphy, who had not been present for the Wind Facilities public hearing, asked to receive a copy of any revisions based on tonight's discussion. Ms. MacNab responded that the Planning Board had continued the public hearing to January 26, 2009 and invited the ZBA to submit their comments prior to that public hearing.

PUBLIC HEARING ON A PROPOSED AMENDMENT TO TOWN ZONING MAPS FOR ANNUAL TOWN MEETING 2009

The public hearing started at 9:15 PM. Mr. Halligan read the correspondence list into the record:

- Article submitted to Board of Selectmen on 12/09/08
- Proposed Zoning Maps dated March 2009
- Public hearing notice published in Duxbury Clipper on December 17, 24, and 31, 2008
- Planning Board minutes of 11/03/08
- Original vote to approve parcel rezoning at Annual Town Meeting 2007 (Article 34).

Ms. MacNab noted that the proposed amendment would reflect the rezoning of Bongis's parcel at 414 Kingstown Way. Mr. Wadsworth pointed out a typographical error in the warrant article.

MOTION: Mr. Bear made a motion, and Ms. Ladd-Fiorini provided a second, to continue the public hearing for a proposed amendment to Town Zoning Maps to Monday, January 26, 2009 at 7:40 PM.

VOTE: The motion carried unanimously (6-0).

OTHER 2009 ANNUAL TOWN MEETING WARRANT ARTICLES

Ms. MacNab noted that the Board of Selectmen will be holding a public hearing on Monday, January 12, 2009 regarding street acceptances of Hillside Lane and Amado Way. These streets were accepted at Annual Town Meeting 2007 but the plans were not recorded by the Department of Public Works. This year's acceptance will provide a mechanism for recording the plans at the Registry of Deeds.

MOTION: Mr. Bear made a motion, and Mr. Halligan provided a second, to recommend approval of the proposed acceptance of the layouts of Hillside Lane and Amado Way as public ways.

VOTE: The motion carried unanimously (6-0).

OTHER BUSINESS

Planning Director Search Team Appointments: Ms. MacNab noted that Town Manager, Mr. Richard MacDonald, has recommended a search team to include himself as the Town Manager, along with two Planning Board members, one member of the Board of Selectmen, and one member of the public at large. This approach is more streamlined than the previous Planning Director search, and Mr. MacDonald believes it will facilitate the process. Ads have been placed in the *Duxbury Clipper* and the Mass. Municipal Association web site.

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MOTION: Mr. Wadsworth made a motion, and Ms. Ladd-Fiorini provided a second, to appoint Ms. MacNab and Mr. Halligan to the Planning Director search committee.

VOTE: The motion carried unanimously (6-0).

Mr. Bear noted that no other staff directors have been included in the Search committee. Mr. Halligan stated that he will use his best effort to ensure that the Conservation Administrator and Director of Inspectional Services will have input.

Island Creek 40B Comprehensive Permit, Tremont Street. Ms. MacNab noted a letter from Mr. Dennis Murphy, chairman of the Zoning Board of Appeals (ZBA) dated December 17, 2008 advising the Planning Board that because the applicant has not requested certain waivers, the Planning Board is required to review the proposed assisted living facility. A report is requested by mid-April 2009. The Board also reviewed a response memo to the ZBA from Ms. Christine Stickney, who was Planning Director at the time. In her memo, Ms. Stickney contended that a comprehensive permit relieves the applicant of local zoning and only requires action by the ZBA.

It was agreed that Ms. MacNab would speak with Mr. Murphy regarding the process of requesting waivers and Planning Board filings if waivers are not requested.

Meeting Minutes:

MOTION: Mr. Wadsworth made a motion, and Mr. Halligan provided a second, to accept meeting minutes of December 8, 2008 as written.

VOTE: The motion carried 5-0-1, with Mr. Bear abstaining.

Bay Farm Montessori School, Loring Street: Board members reviewed a newspaper article from the December 11, 2008 Patriot Ledger entitled, "Duxbury Montessori School to Open Middle School." Mr. Halligan noted that, when asked during the Administrative Site Plan Review process in 2006, the applicants said that they had not plans for future expansion. Board members asked staff to forward the article to Town Counsel, who is currently providing counsel on an appeal regarding this project.

OPEN FORUM

Planning Board Terms: Mr. Wadsworth noted that he does not intend to run for a Planning Board term because he has taken papers to run for Board of Selectmen in the event that Mr. Andre Martecchini does not run for Board of Selectmen, noting that incumbency holds a very strong appeal to voters. Ms. MacNab encouraged Mr. Wadsworth to run on his own merits. It was also noted that Mr. James Kimball's Planning Board term is expiring in March.

ADJOURNMENT

The Planning Board meeting adjourned at 10:20 PM. The next meeting of the Planning Board will take place on Monday, January 12, 2009 at 7:00 PM at the Duxbury Senior Center, Mayflower Street.

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