



Town of Duxbury Massachusetts Planning Board

TOWN CLERK
11 APR -4 PM 2: 10
DUXBURY, MASS.

Minutes 01/31/11

The Planning Board met at the Duxbury Senior Center, 10 Mayflower Street, on Monday, January 31, 2011 at 7:00 PM.

Present: George Wadsworth, Vice-Chairman; Cynthia Ladd Fiorini, Clerk; John Bear, Brian Glennon and Brendan Halligan.

Absent: Amy MacNab, Chairman; and Josh Cutler.

Staff: Thomas Broadrick, Planning Director; and Diane Grant, Administrative Assistant.

Mr. Wadsworth called the meeting to order at 7:02 PM.

OPEN FORUM

Mr. Joseph Shea: Ms. Ladd Fiorini reported that Mr. Joseph Shea, who served on the Highway Safety Committee and Development Review Team, War Memorial Monument Committee and Cemetery Committee, passed away.

21 River Lane: Mr. Broadrick reported that the Zoning Board of Appeals (ZBA) cancelled its meeting of January 27, 2011 due to inclement weather, and therefore could not address the decision on the Planning Board's appeal of the Director of Inspectional Services determination regarding two dwellings on a lot at 21 River Lane. Mr. Broadrick asked if the Board would designate him to sign an extension form to extend the decision deadline to February 15, 2011.

MOTION: Mr. Halligan made a motion, and Ms. Ladd Fiorini provided a second, to ratify the signature of Mr. Thomas A. Broadrick, AICP as a designee of the Planning Board regarding a Zoning Board of Appeals decision for 21 River Lane.

VOTE: The motion carried unanimously, 5-0.

CONTINUED PUBLIC MEETING, ADMINISTRATIVE SITE PLAN REVIEW: 774 TREMONT STREET / TOWN OF DUXBURY (CREMATORY)

Present for the discussion from the Crematory Building Committee were Mr. Robert Hayes and Mr. Emmett Sheehan; and their representative, Mr. Robert Crowell of Crowell Engineering. Mr. Broadrick stated that revised plans have been submitted and a revised draft decision incorporating Board comments from January 10, 2011 is ready for the Board's review. He reported that Mr. Peter Buttkus, Director of Public Works, will make sure that the swales are maintained properly.

Mr. Crowell stated that drainage calculations have been submitted and showed Board members plans showing existing drainage areas and proposed post-construction drainage areas. The drainage was designed to meet

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

standards for a 25-year storm. Everything goes just where it is supposed to go and all runoff stays on site. Water does not stand or go to wetlands.

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Regarding the swale maintenance, there is a one-year warranty on plants to ensure that they are established. After the plants are established the maintenance should be minimal. Hardy plants are proposed, many of which are in the cemetery already. Mr. Wadsworth asked if existing plants would be exposed to more water with the proposed plans, and Mr. Crowell responded that they would not.

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Mr. Wadsworth asked, in light of recent snowstorms, if the roof can handle a snow load, and Mr. Hayes replied that he had checked today and it can.

Mr. Wadsworth asked if trees would be removed, and Mr. Hayes responded that many trees have been cleared already. He stated that the DPW Director is committed to complying with Board requirements.

Mr. Halligan noted that the Fire Chief had recommended no chained gate but agreed that emergency entry signage could be posted. Mr. Broadrick added that the driveway will consist of eight inches of gravel covered by grass and no saplings. The grass will need to be mowed annually. The signage will discourage public access.

Mr. Glennon suggested that the applicants consider a breakaway barrier with reflectors that bend in order to discourage public entry to the emergency entry. Mr. Sheehan agreed to look into that option, noting that plowing may be an issue.

Mr. Glennon asked about on-site traffic circulation and how a procession would get to the new facility. Mr. Hayes responded that the hearse would go to the service entrance before the procession. The funeral director would lead the procession through the cemetery, not down Mayflower Street. Mr. Hayes noted that funeral processions to the crematory have been rare so far. The few that have taken place have taken about fifteen minutes each. Along with the six public parking spaces, overflow parking, if needed, would be along the cemetery road.

Mr. Wadsworth asked about the handicap-accessible parking space, and Mr. Hayes responded that the space is flat with a tree near it for shade. The other public spaces are down a slight hill.

Mr. Glennon asked if the gas line will need to be redirected, and Mr. Hayes replied that it has not been decided yet because it depends on if the new police station will be built on Mayflower Street as is proposed by the Public Safety Building Committee. It would be more direct to go through the cemetery. Mr. Sheehan added that the DPW will excavate and NStar will install the pipes.

Mr. Wadsworth invited public comment, and there was none.

Mr. Broadrick reviewed the draft decision with the Board members, noting that a septic plan will be included. Mr. Crowell confirmed that the septic plan is completed.

Mr. Glennon confirmed with Mr. Hayes that the Fire Department is aware that no water spraying is allowed near the retorts because it would create an explosion. Mr. Sheehan added that there is an automatic shut-off for gas redundant systems to prevent this.

Mr. Glennon recommended that if the use becomes more intensive, the Board should review the Administrative Site Plan Review again. Mr. Wadsworth noted that even if the number of shifts increases, the parking needs would not change. Mr. Glennon stated that if more cremations are being viewed, the Board

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should have a chance to review. Mr. Broadrick cautioned that the Board should not regulate the Crematory hours of operation. Mr. Bear stated that an increase in use would not have a significant impact on Site Plan Review, and the current decision would cover parking requirements.

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MOTION: Ms. Ladd Fiorini made a motion, and Mr. Glennon provided a second, to approve an Administrative Site Plan Review decision as presented for the Town of Duxbury Crematory located at 774 Tremont Street.

VOTE: The motion carried unanimously, 5-0.

Ms. Ladd Fiorini will sign the decision at the Planning Office.

AS-BUILT REVIEW: FREEMAN FARMS DEFINITIVE SUBDIVISION / ELM STREET REALTY TRUST

Present for the discussion was the applicant's representative, Mr. Mark Casey of South Shore Survey. Mr. Casey submitted a set of revised plans with seven sheets, noting that plans now reflect drainage, utilities, fences, and sidewalks. Plans were revised to reflect comments made by the consulting engineer, Mr. Patrick Brennan of Amory Engineers in an email dated December 28, 2010. Sheet 5 shows profiles for drainage structures in response to Mr. Brennan's recommendation to show grades, so topography has been added.

Mr. Bear asked what happens to the road when future dwellings are constructed, and Mr. Broadrick reminded the Board that they are reviewing the As-Built plan, not the Street Acceptance plan, which is under consideration as a citizen petition for Annual Town Meeting 2011. The purpose of the As-Built review is to certify that the road was constructed according to approved Definitive Subdivision plans.

Mr. Broadrick advised the Board that they should request a final letter from the consulting engineer before providing As-Built approval. Mr. Casey agreed to come back to a Board meeting on Monday, February 14, 2011, and offered to answer any Board questions in the meanwhile.

Mr. Wadsworth asked if trees along the subdivision roads were planted outside the road layout, and Mr. Broadrick agreed to confirm this is the case. Mr. Wadsworth noted that it appears that a few of the trees have died. Mr. Casey stated that the Board could choose to establish a performance bond to guarantee the trees.

Mr. Broadrick asked about a slope easement depicted on As-Built plans, and Mr. Casey stated that the easement gives the town control and authority but no responsibility for maintenance.

Mr. Wadsworth confirmed with Mr. Casey that all utilities were installed within the way.

Mr. Broadrick distributed photographs submitted by Mr. Wadsworth that show damage from snowplow equipment to sod along the newly constructed sidewalks. Mr. Broadrick offered to ask Mr. Brennan to inspect the damage and report back, although with snow on the ground now it may be difficult to assess if there is any damage to the road.

CONTINUED PUBLIC HEARING ON ANNUAL TOWN MEETING ZONING ARTICLES

Mr. Wadsworth opened the public hearing at 7:44 PM. Approximately fourteen members of the public were present for the discussion. He noted that four public hearings remain open for public comment. Ms Ladd Fiorini read the correspondence list into the public record:

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- Email from R.S. Troy dated 01/25/11 re: Town Counsel concern about Spot Zoning regarding landowner petition to re-zone Cape Verde Terrace
- Email from S. McCormick dated 01/31/11 re: Opposition to landowner petition to re-zone Cape Verde Terrace
- Revised plans dated 01/28/11 entitled, "Wetlands Protection Overlay District Modification Plan, Assessor's Map 20C Lot 38-005, 1 Cape Verde Terrace, Duxbury, Massachusetts," stamped and signed by Shane M. Brenner, RPLS of McKenzie Engineering Group, Inc., on 01/28/11 (one sheet), submitted by J. Baldwin to Planning office on 01/31/11
- Detail from Wetland and Watershed Protection District map dated March 4, 1971 depicting proposed landowner petition to re-zone Cape Verde Terrace, submitted by J. Baldwin to Planning office on 01/31/11
- Perc test results submitted by J. Baldwin to Planning office on 01/31/11
- Memorandum from T. Mayo dated 01/31/11 and submitted by J. Baldwin at public hearing re: perc test results regarding landowner petition to re-zone Cape Verde Terrace

B. AN ARTICLE TO SEE IF THE TOWN WILL VOTE TO AMEND THE DUXBURY PROTECTIVE BYLAW UNDER SECTION 302 "DEFINITIONS" IN ORDER TO CHANGE THE DEFINITION OF "ACCESSORY STRUCTURE" (SUBMITTED BY THE PLANNING BOARD)

Mr. Wadsworth invited any new comments on the proposed article. Mr. Scott Casagrande of 500 Washington Street stated that the Board appears to be limiting the uses by eliminating the term 'such as,' and asked why that is an improvement over the current language 'may include.' Mr. Halligan suggested adding the phrase 'without limitation' so that the article would read 'may include without limitation' in order to clarify that the list is not exhaustive.

Mr. Casagrande asked if bedrooms or bathrooms would be allowed under the proposed bylaw, and Mr. Wadsworth noted that the intent is to remove the thought that the accessory building is a dwelling. Mr. Emmett Sheehan of 122 Powder Point Avenue stated that he is in the process of getting plans drawn for a dance studio and bedroom in an accessory structure and asked if that would be allowed. Mr. Wadsworth responded that he is not sure; he stated that a pool house with a bathroom and kitchen may be allowed but he would have an issue with a pool house with a bedroom. Mr. Casagrande stated that clarification is needed regarding whether a bedroom is allowed in an accessory structure. Mr. Wadsworth stated that often the accumulation of amenities creates a dwelling. Mr. Halligan noted that it is difficult to anticipate every possibility and then the Zoning Board of Appeals becomes the arbiter. Sometimes accessory structures end up as dwellings over time so the definition of dwelling becomes a moving target. The critical issue is monitoring the situation so that an accessory structure does not become 'designed exclusively as' a dwelling. Mr. Bear added that the present article would not prevent a bedroom.

Ms. Jessica Williams of 1243 Tremont Street asked who would be responsible for determining whether an accessory structure is a dwelling or not. She asked if the Building Inspector writes, 'Not to be a dwelling,' when does the Planning Board appeal? What direction is the Board providing to the Building Inspector with the proposed article? Mr. Broadrick responded that 'gray areas' of interpretation can go to the Zoning Board of Appeals (ZBA) if the Building Inspector chooses to do so.

Mr. Casagrande noted that the current proposal differs from what was agreed with the working group. He stated that the citizen's petition appears to "draw a clearer line in the sand." He recommended that the Board consider the definition of 'dwelling unit.' He stated that the current article is confusing as proposed.

Mr. John Baldwin of 180 High Street recommended that the Board attempt to eliminate the gray areas for the benefit of contractors like him.

MOTION: Mr. Glennon made a motion, and Ms. Ladd Fiorini provided a second, to close the public hearing for an article to see if the town will vote to amend the Duxbury Protective Bylaw under Section 302 "Definitions" in order to change the definition of "accessory structure" (submitted by the Planning Board).

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VOTE: The motion carried unanimously, 5-0.

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C. AN ARTICLE TO SEE IF THE TOWN WILL VOTE TO AMEND THE DUXBURY, MASS. PROTECTIVE BYLAW UNDER SECTION 302 "DEFINITIONS" IN ORDER TO CHANGE THE DEFINITION OF "ACCESSORY STRUCTURE" (SUBMITTED BY CITIZEN PETITION)

Ms. Jessica Williams of 1243 Tremont Street stated that she proposed this citizen petition in order to provide a continued practice to the Building Inspector that would be clear and without ambiguity to avoid appeals. It continues a practice that has been done for years. Ms. Williams made the following personal observations:

- According to Building Inspector, Mr. James Dowd, the proposal provides what the Building Department has permitted for twenty years.
- Although the article includes her name, it is not just her article alone. The intent is to help clarify the bylaw for the Building Inspector.
- Although double density has been allowed for the past forty years, there has been no issue with it and there is no reason to believe it will be an issue in the future.
- She recommended that the Board consider withdrawing its article and recommending the citizen petition instead.

Ms. Diane Bartlett of 200 Franklin Street agreed with Ms. Williams recommendation, stating that the citizen petition is less confusing and would allow a property owner to enjoy his/her property.

Mr. Scott Casagrande of 500 Washington Street rebuked a statement by Ms. MacNab at last week's public hearing that the citizen petition may unintentionally allow a motel or motor inn, stating that they are only allowed in commercial districts so would not be allowed in the Residential Compatibility district. Mr. Wadsworth noted that there are many dwellings on Cape Cod with a cottage in the back that is rented out seasonally. It is a concern and he is not sure the proposed article would resolve the potential issue.

Mr. John MacCallum of 7 Winter Street stated that property owners have rights, and asked what evidence the Board has that a problem exists. Ms. Ladd Fiorini responded that the Board is not predicting a doomsday scenario but is simply trying to provide clarity to the Zoning Bylaws.

Ms. Williams stated that the proposed citizen petition does not create double density. There is no issue in Duxbury with motor lodges, as local inns can accommodate seasonal visitors.

Mr. Halligan stated his issue with the current proposal is the term 'dwelling unit' because it implies a stove, refrigerator and sink. He stated that the citizen petition is well written. Without a stove an accessory structure is not a dwelling unit.

Ms. Williams responded that just because a hotplate is placed into guest quarters it does not necessarily mean that someone is living permanently there. If someone is attempting to rent out guest quarters they are breaking the law. It should not be assumed that residents are going to cheat. The town does not have cheaters, just people who want guest quarters, even if it includes a hot plate.

Mr. Halligan responded that the Board also does not presume that cheaters exist but is only trying to clarify existing Zoning Bylaws. Also, the definition of 'dwelling unit' clearly refers to a stove. The Board looks at the big picture. Mr. Halligan suggested that the definitions of 'dwelling' and 'dwelling unit' may need to be reviewed for potential flaws.

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MOTION: Mr. Glennon made a motion, and Ms. Ladd Fiorini provided a second, to close the public hearing for an article to see if the town will vote to amend the Duxbury Protective Bylaw under Section 302 "Definitions" in order to change the definition of "accessory structure" (submitted by citizen petition).

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VOTE: The motion passed unanimously, 5-0.

D. AN ARTICLE TO SEE IF THE TOWN WILL VOTE TO AMEND THE DUXBURY PROTECTIVE BYLAW UNDER ARTICLE 400 (USE, INTENSITY, DIMENSIONAL AND COVERAGE REGULATIONS FOR ALL DISTRICTS), SECTION 425 "INTENSITY AND DIMENSIONAL REGULATIONS FOR ALL NEIGHBORHOOD BUSINESS DISTRICTS" IN ORDER TO CHANGE INTENSITY REQUIREMENTS FOR SITE COVERAGE AND TO ADD REQUIREMENTS FOR OPEN SPACE AND BUILDING COVERAGE (SUBMITTED BY THE PLANNING BOARD)

Mr. Wadsworth noted that the Board wanted to review a StormSmart DVD recommended by Ms. Sara Wilson at last week's public hearing. Staff distributed copies of the DVD to Board members.

Mr. Broadrick noted that the proposed article allows greater site coverage of 70% in order to come closer to what already exists on commercial lots with packed gravel. The current proposal would require all parking to be paved to divert stormwater runoff. He stated that he and Mr. Wadsworth had reviewed the StormSmart DVD and Stormwater Regulations manual. Both recommend Low Impact Design (LID) for drainage using Best Management Practices, but no site coverage recommendations are made. Gravel, which is currently allowed as pervious coverage, does not capture stormwater. To allow no gravel and keep the existing 50% site coverage requirement would not be functional or economically viable.

Ms. Ladd Fiorini noted that the proposed amendments to the Parking bylaw have a requirement to pave all parking in commercial lots. Best Management Practices standards change frequently.

Mr. Wadsworth noted that the StormSmart DVD addresses standards as regulations, not a bylaw. It would be difficult to embed regulations into a bylaw because they are calculated in a very specific manner. He suggested that the proposed article could be revised on Annual Town Meeting floor to reference regulations.

Ms. Sara Wilson of 120 Bay Road recommended that the Board consider the principles behind the StormSmart LID recommendations, namely that impervious coverages should be reduced. That's not what the proposed bylaw does. Pervious coverage should be encouraged in order to reduce the amount of runoff that pollutes our waterways. Even a small amount of parking has an out-of-proportion effect on the bay, waterways, and salt marsh. Best Management Practices are already included in the existing Parking bylaw. It is not enough to simply say you want Best Management Practices; you need policies as well.

Mr. Wadsworth noted that an issue with currently available pervious paving materials is that they capture runoff with a structure underground and may be difficult to plow. Heavy trucks may be an issue as well. He stated that he supports treatment of runoff but recommended that it is better achieved with regulations than bylaws.

Mr. Glennon asked about the amount of land area this article would affect, and Mr. Broadrick responded that 3% of land in the town of Duxbury is zoned Neighborhood Business. The remaining 97% is residential. Mr. Broadrick noted the background of the issue is that currently 50% coverage is allowed to include gravel with no stormwater treatment. The Parking bylaw has been proposed to require paved parking so that runoff will be treated. Ms. Wilson noted that two commercial properties, Dr. Wiemeyer's

medical office at 104 Tremont and Snug Harbor Tile on Enterprise Street, both meet the 50% coverage requirement with no gravel. Ms. Ladd Fiorini noted that Snug Harbor Tile has moved out of town because they needed more parking. Ms. Wilson noted that the Keith office building at Island Creek on Tremont Street meets the 50% coverage requirements also. She stated that grass and trees are the best way to scrub, treat and return clean water to the aquifer.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Glennon provided a second, to close the public hearing for an article to see if the town will vote to amend the Duxbury Protective Bylaw under Article 400 (Use, Intensity, Dimensional and Coverage Regulations for All Districts), Section 425 "Intensity and Dimensional Regulations for All Neighborhood Business Districts" in order to change intensity requirements for site coverage and to add requirements for open space and building coverage (submitted by the Planning Board).

VOTE: The motion carried unanimously, 5-0.

I. AN ARTICLE TO SEE IF THE TOWN WILL VOTE TO REZONE THE TOWN'S WETLANDS PROTECTION OVERLAY DISTRICT TO CHANGE A PORTION OF LAND ON ASSESSOR'S LOT 020C-038-005 (CAPE VERDE TERRACE) SO THAT THE ENTIRE PARCEL IS ZONED AS RESIDENTIAL COMPATIBILITY DISTRICT, AS SHOWN ON A PLAN FILED WITH THE TOWN CLERK (SUBMITTED BY LANDOWNER PETITION)

Mr. Broadrick recommended that Board members wait to vote on a recommendation until they know the results of the Conservation Commission meeting scheduled for February 15, 2011. Staff distributed revised plans and documents that had been submitted to the Planning office earlier that day.

Mr. John Baldwin stated that he is representing the landowners, the Drivers, on Cape Verde Terrace. He stated that the Conservation Commission will be looking at the soils as the criterion for determining if the property should be included in the Wetlands Protection Overlay District (WPOD). Mr. Broadrick clarified that in 2000, Annual Town Meeting voted to change the designation as 'Wetlands and Watershed Protection Overlay District.' At next year's Annual Town Meeting he and Mr. Joseph Grady, Conservation Administrator, intend to propose to change it to 'Watershed Protection Overlay District.'

Mr. Glennon expressed concern for the appearance of spot zoning, although he agreed that at times district lines do need to be redrawn.

Mr. Frank Kouble of 924 Franklin Street, an abutter, asked what the access would be for a subdivision.

Mr. Scott Pons of 944 Franklin Street, an abutter, asked if the owners could not build on wetlands when the lot was created in 2000, what has changed? He reported that the land is for sale and he is not aware of plans for the lot.

Mr. Wadsworth noted that no subdivision application has been submitted to the Planning Board, only a change in zoning that may allow a future subdivision.

Mr. Baldwin pointed out an article from a 1976 *Duxbury Clipper* which states that a landowner can apply to amend the WPOD map. The WPOD map was taken from United States Geographical Survey (USGS) maps, not a survey of the town. He stated that the land in question is upland.

Mr. Kouble stated that the land in his backyard is all wet. Mr. Wadsworth assured Mr. Kouble that the Conservation Commission would be discussing this topic at its February 15, 2011 meeting.

Ms. Sara Wilson of 120 Bay Road stated that she was a part of the group promoting the adoption of the WPOD map. She stated that no one at the time expected the WPOD lines to be exactly accurate. At the time landowners could and did change the WPOD line through the Zoning Board of Appeals, but the Zoning Bylaws have changed since that time. Mr. Pons asked if there are any recent examples of the WPOD line changing, and Mr. Wadsworth responded that it has not happened in at least ten to fifteen years. Mr. Glennon noted that the issue may be that the line should not have been there to begin with.

Mr. Baldwin outlined criteria for obtaining a special permit within the Wetlands Protection Overlay District, including that the use is allowed in the Residential Compatibility District, the application has been reviewed by the Conservation Commission, the Board of Health and the Planning Board, and the location is not within wetlands. The wetlands have been flagged by a botanist within 200 feet to vegetated wetlands. The area is not in a 100-year flood zone.

Mr. Broadrick pointed out that Mr. Baldwin was citing the provisions of a special permit with the Zoning Board of Appeals for construction in the WPOD rather than the requirements to remove a property from the WPOD, and is not a rationale for the current proposal. He advised Board members that the applicant has not provided a rationale for the change in zoning district other than to open the lot to further development. It may potentially allow abutting properties to do the same which would increase density.

Mr. Pons stated that the property is not in an isolated area of the WPOD map. The line runs up and down Franklin Street. Mr. Wadsworth noted that with the proposed article, 2.65 acres of land would be removed from the Wetlands Protection Overlay District and become buildable.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Glennon provided a second, to close the public hearing for an article to see if the town will vote to rezone the town's Wetlands Protection Overlay District to change a portion of land on Assessor's Lot 020C-038-005 (Cape Verde Terrace) so that the entire parcel is zoned as Residential Compatibility District, as shown on a plan filed with the Town Clerk (submitted by landowner petition).

VOTE: The motion carried unanimously, 5-0.

Board members reviewed a draft letter to be sent to the Conservation Commission requesting input on the proposed warrant article.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Glennon provided a second, to send a memorandum from the Planning Board to the Conservation Commission as amended.

DISCUSSION: Mr. Bear asked about the paragraph referencing 'spot zoning.' He recommended that it be removed, and other Board members agreed, as it may unintentionally influence the Conservation Commission.

VOTE: The motion carried unanimously, 5-0.

OTHER BUSINESS

Meeting Minutes:

MOTION: Mr. Halligan made a motion, and Mr. Glennon provided a second, to approve meeting minutes of January 10, 2011 as amended.

VOTE: The motion carried, 4-0-1, with Ms. Ladd Fiorini abstaining.

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ADJOURNMENT

The Planning Board meeting adjourned at 10:17 PM. The next meeting of the Planning Board will take place on Monday, February 14, 2011 at 7:00 PM at Duxbury Town Hall, Small Conference Room, lower level.

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