



Town of Duxbury Massachusetts Planning Board

Approved 02/28/2011

TOWN CLERK
11 MAR -3 AM 11:33
DUXBURY, MASS.

Minutes 02/14/11

The Planning Board met at the Duxbury Town Hall, Small Conference Room, lower level, on Monday, February 14, 2011 at 7:00 PM.

Present: Amy MacNab, Chairman; George Wadsworth, Vice-Chairman; Cynthia Ladd Fiorini, Clerk; Josh Cutler, Brian Glennon and Brendan Halligan.

Absent: John Bear.

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

Ms. MacNab called the meeting to order at 7:03 PM.

OPEN FORUM

Alternative Energy Committee: Mr. Cutler reported that the Alternative Energy Committee is looking into the possibility of installing a solar array on the capped landfill. A site visit was held last week. Although it is in the early stages, it may be feasible although it is on the smaller side. Administrative Site Plan Review would be required.

Affordable Housing Trust: Ms. Ladd Fiorini noted that she had been officially appointed to the Affordable Housing Trust, and she is stepping down from the Open Space and Recreation Committee in order to make time for her new appointment. Ms. MacNab asked Board members to consider their potential interest in appointment to the Open Space Committee when appointments are discussed after town elections.

Proposed Town Government Study: Ms. MacNab stated that she would like to attend the Board of Selectmen's meeting tonight regarding this agenda item which is proposing to study, among other topics, whether the Planning Board should be appointed rather than elected, and whether the Planning Director should be appointed by Town Manager rather than by the Planning Board. She invited other Board members to attend.

Mr. Wadsworth noted that he had served on a previous Town Government Study Committee which reported to Annual Town Meeting 2006 and that study was broad-based. The current proposal appears to be flawed because it is narrow in scope, focusing on only a few items.

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. Broadrick reported that Mr. Patrick Brennan of Amory Engineers, the town consulting engineer, was unable to attend but had submitted a review letter dated February 11, 2011 based on As-Built plans dated February 7, 2011. Mr. Broadrick reminded Board members that tonight's discussion should focus only on As-Built review to determine if plans presented are consistent with approved Definitive Subdivision plans, and not Street

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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.

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Acceptance, which is a citizen petition proposal for Annual Town Meeting 2011. Street Acceptance will be reviewed by the Board of Selectmen at its February 28, 2011 meeting.

Mr. Broadrick reported that Mr. Brennan's review letter states that all outstanding issues have been completed, recommending that \$2,000.00 be retained from the performance bond to ensure that shade trees are healthy and grass shoulders are fully vegetated and free of plow damage.

Mr. Wadsworth asked about vegetation around drainage areas, noting that one area in particular appears to be overgrown. He also asked if sand had been cleared from structures that feed into drainage basins. Mr. Casey responded that all drainage basins are clean, and Mr. Broadrick noted that he had specifically requested Mr. Brennan to look at the outfalls and Mr. Brennan had not cited any issues.

Ms. MacNab confirmed that utilities are shown below ground. She noted that typically a subdivision has been completed before As-Built approval. In this case only six out of seventeen lots have been built upon. She asked if any changes to underground utilities are anticipated for future construction, and Mr. Broadrick responded that construction contractors are required to follow proper procedures to contact DigSafe. Ms. MacNab expressed concern for heavy equipment on the road with future construction, and Mr. Broadrick responded that this could be an issue for Street Acceptance, not the As-Built review.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Halligan provided a second, to approve As-Built plans for Freeman Farms Definitive Subdivision entitled, "Freeman Farms, Duxbury, Mass., a Definitive Subdivision "As-Built" Plan," seven sheets, dated February 7, 2011, prepared by South Shore Survey Consultants, Inc. 167R Summer Street, Kingston, MA 02364, sheets 1 through 4 stamped and signed by Shane M. Mallon, RPLS on February 13, 2011, and sheets 5 through 7 stamped and signed by Gary Russell, PE, on February 10, 2011.

VOTE: The motion carried unanimously, 6-0.

**REQUEST FOR RELEASE OF PERFORMANCE BOND: FREEMAN FARMS
DEFINITIVE SUBDIVISION / ELM STREET REALTY TRUST**

Board members reviewed an email dated December 16, 2010 from the applicant's representative, Mr. Mark Casey of South Shore Survey, requesting release of a performance bond held until completion of the roadway. Mr. Casey was also present for the discussion.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Cutler provided a second, to release funds from a performance bond of \$150,000.00 established in 2003, retaining a total of \$2,000.00 to ensure that shade trees are healthy and grass shoulders are fully vegetated and free of plow damage.

VOTE: The motion carried unanimously, 6-0.

**PLANNING BOARD RECOMMENDATIONS ON ANNUAL TOWN MEETING
ZONING ARTICLES**

Mr. Broadrick reminded Board members that all zoning article public hearings have been closed. The Board must make recommendations prior to Annual Town Meeting on those zoning articles. Ms. MacNab explained that the Clerk submits a report to Town Moderator and Town Clerk, and also gives a report on each article at Annual Town Meeting (ATM). In addition, staff or other Board members may provide an explanation. Mr. Halligan noted that any proposed amendments to wording in the ATM warrant should be provided to the Town

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Moderator and Town Clerk along with an explanation. This will be Mr. Friend Weiler's first year as Moderator.

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Board members reviewed a list of articles from the public hearing notice. The first article, titled 'A' on the public hearing notice, which was a proposal to change the term 'Guest House' to 'Bed and Breakfast,' already had been recommended for approval at the Board meeting of January 10, 2011.

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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)

Board members discussed a potential amendment brought up at the public hearing on January 31, 2011 to add 'without limitation' to a list of possible uses for an accessory structure. Mr. Halligan, who proposed the amendment, noted that although he believes the original wording is clear that a definitive list of uses is not intended, he had proposed the amendment because it apparently was not clear to those members of the public in attendance. Ms. MacNab, who was not present for the previous meeting, noted that the working group that met over the last year to study the definition of Accessory Structure had recommended the phrase 'such as,' and commented that it appears to have the same meaning as 'without limitation.' After discussion, Board members agreed that the phrase 'such as' should not be amended because it is clear that it does not imply an exclusive list of uses.

MOTION: Mr. Wadsworth made a motion, and Mr. Cutler provided a second, to recommend APPROVAL of 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).

VOTE: The motion carried unanimously, 6-0.

C. 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)

Mr. Cutler asked if the Board's proposed article on the definition of Accessory Structure does not pass, should the Board consider amending this proposed citizen petition. Ms. Ladd Fiorini recommended that the Board should "go back to the drawing board" if the Board's proposal does not pass. Mr. Broadrick pointed out that under the current draft of the Annual Town Meeting warrant, the citizen petition comes before the Board's proposal. Mr. Wadsworth recommended denial of the citizen petition.

Ms. MacNab noted that the term 'dwelling unit' is defined in current Zoning Bylaws as a living space that contains a stove plus a refrigerator and/or sink. In the citizen petition, therefore, a stove would not be allowed. Mr. Wadsworth noted that the terms 'dwelling' and 'dwelling unit' are being confused. He also cautioned that there may be an unintended consequence of this proposal that may allow motels. Ms. MacNab noted that the proposal does not exclude bedrooms.

MOTION: Mr. Cutler made a motion, and Mr. Wadsworth provided a second, to recommend DENIAL of 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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DISCUSSION: Ms. MacNab asked if the Board should enumerate the reasons behind its decisions. Mr. Halligan suggested that Board members not use the term 'double density' if they speak on this proposal at Annual Town Meeting.

VOTE: The motion passed unanimously, 6-0.

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. Broadrick noted that Board member Mr. John Bear, the main proponent of the Board's proposal for 70 % allowable Lot Coverage in Neighborhood Business Districts, is away until after Annual Town Meeting. Ms. MacNab noted that the working group that studied the issue recommended 60% Lot Coverage. The current allowable lot coverage is 50% with gravel allowed to count as a pervious surface. Ms. Ladd Fiorini offered to speak in favor of the article on behalf of the Board at Annual Town Meeting.

Mr. Broadrick noted that he had attended a Massachusetts Association of Planning Directors (MAPD) event the previous week and had asked other planners and state officials about lot coverage in commercial districts, and the response was to move toward "less coverage." He stated that this may be more applicable to a town like Somerville, where site coverage is more of an issue and should be reduced.

Mr. Wadsworth reminded Board members that at the public hearing of January 31, 2011, Mr. Broadrick had quoted state officials as recommending a reduction in allowable lot coverage in business districts, although there is no state standard percentage guideline. Mr. Wadsworth suggested that stormwater treatment guidelines could be added to Subdivision Rules and Regulations to include recommendations from the state's SmartGrowth Toolkit DVD on stormwater design and the hardware required for Best Management Practices. Mr. Broadrick agreed that a stormwater bylaw is needed, but advised that Annual Town Meeting is near and a project like this requires time and effort to establish a threshold of review and required treatment parameters.

MOTION: Mr. Cutler made a motion, and Mr. Glennon provided a second, to recommend APPROVAL of 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).

DISCUSSION: Mr. Wadsworth asked if Board members were satisfied with current standards for stormwater treatment, and Ms. MacNab responded that it is too late to add further guidelines. Ms. Ladd Fiorini noted that Best Management Practices are included in the proposed Parking bylaw.

Ms. MacNab stated that she does not support the article as proposed at 70% lot coverage because she is not convinced it is the best direction for the town. She stated that she would have supported 60% lot coverage because it was the recommendation of the working group and she believes that the process should be supported. She stated that it is easier to become less restrictive but very difficult to become more restrictive. Ms. Ladd Fiorini stated that allowing 60% coverage with no gravel would be more

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restrictive than current practices with gravel. Mr. Wadsworth also stated that he would have recommended 60% lot coverage but cannot support 70% without stormwater treatment using Low Impact Design (LID). Mr. Broadrick noted that today's Best Management Practices, which are recommended in the proposed new Parking bylaw, use LID. He stated that 50% coverage does not exist in commercial properties in Duxbury today. He noted that the proposed 70% coverage would require stormwater runoff treatment. The first flush is collected using 25-year storm standards.

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Mr. Cutler called the question.

VOTE: The motion failed with a tie vote, 3-3, with Ms. Ladd Fiorini, Mr. Cutler and Mr. Glennon voting for, and Ms. MacNab, Mr. Wadsworth, and Mr. Halligan voting against.

Mr. Broadrick noted that the Board could choose to re-vote at a later date, and choose to vote on an amendment to 60% maximum lot coverage. Ms. MacNab recommended that Mr. Bear be informed of the result of tonight's discussion and vote.

E. AN ARTICLE TO SEE IF THE TOWN WILL VOTE TO AMEND THE DUXBURY PROTECTIVE BYLAW UNDER SECTION 302 "DEFINITIONS" IN ORDER TO ADD THE DEFINITION OF "OPEN SPACE" (SUBMITTED BY THE PLANNING BOARD)

MOTION: Mr. Cutler made a motion, and Mr. Glennon provided a second, to recommend APPROVAL of an article to see if the town will vote to amend the Duxbury Protective Bylaw under Section 302 "Definitions" in order to add the definition of "Open Space" (submitted by the Planning Board).

VOTE: The motion carried unanimously, 6-0.

F. AN ARTICLE TO SEE IF THE TOWN WILL VOTE TO AMEND THE DUXBURY PROTECTIVE BYLAW UNDER ARTICLE 600 (SPECIAL REGULATIONS) TO DELETE SECTION 603 "PARKING REGULATIONS" IN ITS ENTIRETY AND TO REPLACE IT WITH A NEW SECTION 603 "PARKING REGULATIONS" IN ORDER TO UPDATE PARKING REGULATIONS (SUBMITTED BY THE PLANNING BOARD)

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Wadsworth provided a second, to recommend APPROVAL of an article to see if the town will vote to amend the Duxbury Protective Bylaw under Article 600 (special regulations) to delete Section 603 "Parking Regulations" in its entirety and to replace it with a new Section 603 "Parking Regulations" in order to update parking regulations (submitted by the Planning Board).

VOTE: The motion carried unanimously, 6-0.

G. AN ARTICLE TO SEE IF THE TOWN WILL VOTE TO AMEND THE DUXBURY PROTECTIVE BYLAW UNDER SECTION 906.3 "VARIANCES" IN ORDER TO REMOVE USE VARIANCES FROM ALLOWED VARIANCES (SUBMITTED BY THE PLANNING BOARD)

MOTION: Mr. Cutler made a motion, and Mr. Glennon provided a second, to recommend APPROVAL of an article to see if the town will vote to amend the Duxbury Protective Bylaw under

Section 906.3 "Variances" in order to remove use variances from allowed variances (submitted by the Planning Board).

VOTE: The motion carried unanimously, 6-0.

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H. 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 410.6 "ACCESSORY APARTMENT SPECIAL PERMIT REGULATIONS AND RESTRICTIONS" IN ORDER TO CHANGE THE LIMIT OF ADDITIONS OR ALTERATIONS TO CREATE ADDITIONAL LIVING SPACE FROM FIVE (5) YEARS TO ONE (1) YEAR (SUBMITTED BY THE LOCAL HOUSING PARTNERSHIP)

MOTION: Mr. Wadsworth made a motion, and Mr. Cutler provided a second, to recommend APPROVAL of 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 410.6 "Accessory Apartment Special Permit Regulations and Restrictions" in order to change the limit of additions or alterations to create additional living space from five (5) years to one (1) year (submitted by the Local Housing Partnership).

DISCUSSION: Mr. Cutler noted that only a modest change is proposed to the bylaw.

VOTE: The motion carried unanimously, 6-0.

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 noted that the Board is awaiting the results of a recommendation requested by the Board from the Conservation Commission. Although the public hearing has closed, the Board is allowed to seek information internally. A recommendation will be made at a future Board meeting.

ZBA REFERRAL: 5 SPRING STREET / CARLSON

Board members reviewed a special permit application to renovate and enlarge a pre-existing nonconforming structure. Mr. Broadrick noted that the plot plan shows 16% existing site coverage. Mr. Glennon pointed out Zoning Bylaws Section 401.2, "Nonconforming Uses." Number 4.a) in that section states that alteration is allowed only if it does not intensify nonconformities. Board members agreed that the proposed special permit application does not meet those standards.

MOTION: Mr. Wadsworth made a motion, and Mr. Cutler provided a second, to recommend DENIAL of a special permit application for 5 Spring Street / Carlson, noting that the application requires a variance pursuant to Zoning Bylaws Section 401.2.4 (Nonconforming Uses: Alteration, Extension or Structural Changes to Pre-Existing Nonconforming Single and Two-Family Residential Structures).

DISCUSSION: Ms. MacNab noted that the alterations are substantial, with a new detached garage and a new farmer's porch proposed. She questioned the validity of site coverage calculations.

VOTE: The motion carried unanimously, 6-0.

ZBA REFERRAL: 5 CHESTNUT STREET / VERCOLLONE (DUNKIN DONUTS)

Mr. Glennon recused himself from the discussion. The remaining Board members reviewed a special permit application to replace five existing awnings on the Dunkin Donuts building. Ms. MacNab noted that the awnings had been a point of discussion during the original special permit process. She stated that the Board should be sensitive to the conditions of the original special permit. Mr. Broadrick quoted a letter from Mr. Scott Lambiase to the applicant dated January 21, 2011, stating that, "[t]he Special Permit under which Dunkin Donuts was permitted specifically conditions that 'the awning material will be solid, non-illuminating, dark gray and the awning edge will be 12 [inches] high and transparent white in color.'"

MOTION: Mr. Cutler made a motion, and Mr. Wadsworth provided a second, to recommend DENIAL of a special permit application for 5 Chestnut Street / Vercollone.

DISCUSSION: Ms. MacNab noted that the Board should honor the spirit of the original special permit. Mr. Cutler noted that no reason to change had been presented by the applicants.

VOTE: The motion carried unanimously, 5-0.

Mr. Glennon rejoined the Board.

REQUEST FOR RETURN OF APPLICATION FEE, MCLEAN'S WAY, 56 & 70 BOW STREET / BAYSIDE PROPERTIES (REINHALTER)

Mr. Broadrick noted that when this topic was discussed at the Board meeting of January 10, 2011, Board members had requested further information regarding actual expenses. Board members reviewed a spreadsheet prepared by staff listing costs totaling \$393.37, not including staff time. Mr. Wadsworth stated that the application fee should not be returned. Ms. Ladd Fiorini asked if it is the Board's practice not to return application fees, why is it being considered this time? Mr. Cutler noted that a Definitive Subdivision was filed when a Residential Conservation Cluster / Preliminary Subdivision should have been filed. Ms. MacNab noted that the applicant should have known to file the correct application.

MOTION: Mr. Glennon made a motion, and Mr. Halligan provided a second, to retain an application fee of \$2,800.00 for McLean's Way, 56 & 70 Bow Street / Bayside Properties.

DISCUSSION: Mr. Wadsworth suggested that the Board consider refunding a portion of the application fee, and Mr. Cutler agreed. Mr. Wadsworth then reconsidered, noting the cost of staff time may exceed the application fee. Mr. Broadrick cautioned the Board not to start refunding application fees when the applicants are not satisfied with the outcome. Ms. MacNab noted that the Board acted in good faith during the entire process. Mr. Broadrick noted that the special permit fee was waived and the applicants were told that a Residential Conservation Cluster application fee would be waived as well, but the applicants chose to withdraw instead. Mr. Wadsworth noted that the application fee was deposited into the town's General Fund, and any refund would need to be taken from the Planning Department budget.

VOTE: The motion carried, 5-1, with Mr. Cutler voting against.

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DISTRICT LOCAL TECHNICAL ASSISTANCE (DLTA) GRANT PROPOSAL TO METROPOLITAN AREA PLANNING COUNCIL (MAPC)

Mr. Broadrick advised the Board that Mr. Paul Halkiotis, Marshfield Planning Director (formerly Duxbury Planning Director) has requested the Town of Duxbury to join in a grant application with Marshfield and Scituate for funding to help mitigate shoreline flooding. With the threat of global warming consequences looming, towns should start planning. This study would provide a baseline along with projections for the future. It would also recommend solutions for mitigating shoreline flooding. Board members reviewed a draft letter of recommendation.

MOTION: Mr. Cutler made a motion, and Mr. Halligan provided a second, to approve a draft letter of Planning Board support for the District Local Technical Assistance (DLTA) grant application for the towns of Duxbury, Marshfield and Scituate to study sea level rise adaptation strategies.

VOTE: The motion carried unanimously, 6-0.

MEETING RECESS

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Glennon provided a second, to recess the Planning Board meeting in order to attend a portion of a Board of Selectmen's meeting in the Mural Room.

VOTE: The motion carried unanimously, 6-0.

The Board meeting was recessed at 8:50 PM.

MEETING RECONVENING

MOTION: Mr. Wadsworth made a motion, and Ms. Ladd Fiorini provided a second, to reconvene the Planning Board meeting.

VOTE: The motion carried unanimously, 6-0.

The Board meeting was re-convened at 9:32 PM.

OTHER BUSINESS

Meeting Minutes:

MOTION: Mr. Wadsworth made a motion, and Mr. Halligan provided a second, to approve meeting minutes of January 24, 2011 as amended.

VOTE: The motion carried unanimously, 6-0.

ZBA Decision Re: 21 River Lane: Board members reviewed a decision dated February 14, 2011 in which the Zoning Enforcement Officer's (ZEO) decision was affirmed in part and reversed in part. The Board had appealed the ZEO's refusal to enforce Zoning Bylaws regarding construction of an accessory dwelling at 21 River Lane. Ms. Ladd Fiorini noted that the decision was well-written. Mr. Wadsworth noted that the decision pointed out many mistakes made by the Department of Inspectional Services. He also noted that the Zoning Board of Appeals (ZBA) does not want to see a bedroom in an accessory structure. Ms. MacNab noted that the decision was a win for the Board overall.

EXECUTIVE SESSION RE: PENDING LITIGATION

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MOTION: Ms. Ladd Fiorini made a motion, and Mr. Wadsworth provided a second, for the Planning Board to enter Executive Session for matters of pending litigation, not to reconvene in Open Session.

VOTE: A roll call vote was taken. Mr. Cutler, Mr. Halligan, Mr. Glennon, Mr. Wadsworth, Ms. MacNab, and Ms. Ladd Fiorini all voted in favor of the motion.

Therefore, the Open Session of the Board meeting was adjourned and Executive Session was opened at 9:42 PM.

OPEN SESSION ADJOURNMENT

The Open Session of the Planning Board meeting adjourned at 9:42 PM. The next meeting of the Planning Board will take place on Monday, February 28, 2011 at 7:00 PM at Duxbury Town Hall, Small Conference Room, lower level.