



# Town of Duxbury Massachusetts Planning Board

Approved 12/10/2012

TOWN CLERK

12 DEC 18 AM 11:42

DUXBURY, MASS.

## Executive Session Minutes 09/26/11

The Planning Board met in Executive Session at the Duxbury Town Hall, Small Conference Room, on Monday, September 26, 2011.

Present: George Wadsworth, Vice-Chairman; John Bear, Josh Cutler, and Brian Glennon.

Absent: Amy MacNab, Chairman; Cynthia Ladd Fiorini, Clerk; and Jennifer Turcotte.

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

Town Counsel, Atty. Robert S. Troy, and his associate, Atty. Craig Jordan arrived at the Planning Board meeting at 7:16 PM.

### EXECUTIVE SESSION OPENED

**MOTION:** Mr. Cutler made a motion to recess the Planning Board meeting Open Session and enter Executive Session for the purpose of discussing pending litigation. Mr. Bear provided a second. Mr. Wadsworth agreed that Executive Session was called for.

**VOTE:** A roll call vote was taken, with members voting unanimously in favor of the motion (4-0).

Therefore, Open Session was recessed and Executive Session opened at 7:18 PM.

### 1053 TREMONT STREET / DACEY

Present for the discussion were Town Counsel, Atty. Robert S. Troy, and his associate, Atty. Craig Jordan. Atty. Troy noted that three cases against the town are under litigation by the homeowner. He provided background, stating that the homeowner originally applied to the Planning Board, Zoning Board of Appeals, and Conservation Commission for a Definitive Subdivision on a property partially located in the Wetlands Protection Overlay District (WPOD). Each application was denied and the homeowner has appealed all three decisions. Now they have submitted a landowner petition for Special Town Meeting to change the WPOD line. If the petition passes at Special Town Meeting on October 29, 2011, the lawsuits would be withdrawn.

Atty. Troy stated that in the proposed zoning article, he is concerned with "spot zoning" because one parcel is being singled out for a change in zoning with no apparent public benefit. He stated that the rules cannot be changed just for one lot. Mr. Broadrick noted that proponents state that there is a benefit to the town in additional revenue from property taxes. Mr. Wadsworth pointed out that new residential construction brings new families and increased costs to the town. Atty. Troy noted that if the Special Town Meeting article passes, the Planning Board will still need to review the proposed subdivision.

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

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Mr. Glennon stated that he had originally questioned the rationale for the WPOD line, but now understands that it is designed to protect the watershed surrounding wetlands as well as the wetlands alone. Atty. Troy stated that although the owners have scientific evidence that the property is not in the wetlands, Zoning Bylaws do not take that evidence into consideration. Moving the WPOD line is rezoning and could be interpreted as spot zoning. The Planning Board's recommendation to Town Meeting is critical.

Mr. Glennon noted that the Planning Board's role is to consider public safety, health and welfare. He asked how the landowner petition fosters those goals, pointing out that the Board needs to protect the wetlands and watershed areas.

Mr. Glennon asked about the next court date, and Atty. Troy responded that the date has not been scheduled yet. Mr. Wadsworth asked if the Planning Board case is winnable, and Atty. Troy replied, "Yes." Atty. Troy stated that it is his job as Town Counsel to defend the client's position. If the Board of Selectmen instructs him to settle the case, then he will.

Mr. Bear asked if it the Board of Selectmen is obligated to accept a landowner petition for Special Town Meeting, and Atty. Troy responded that he researched the matter and they are required to accept it.

### **PRATT CIRCLE LITIGATION**

Atty. Troy noted that the town lost this case but the judgment was correct. He stated that the Planning Board should not have released lots before the homeowners' association was recorded. The Planning Board had been withholding a surety until the proof of recording was submitted. Mr. Wadsworth noted that the applicant told Board members that it had been recorded. Atty. Troy noted that the former Planning Director had deposited the surety for the express purpose of "roadway construction." The money needs to be turned back to the applicant. Atty. Troy does not recommend an appeal.

Mr. Broadrick asked if the applicant needs to submit a request for return of funds, and Atty. Troy responded that once the judgment is issued, the funds should be released within thirty days.

Mr. Glennon noted that although the case has been resolved, an underlying issue still exists: the homeowners' association has not been recorded. Atty. Troy's recommended solution is for the homeowners to file for street acceptance of the road.

### **MEETING MINUTES**

Board members deferred acceptance of Executive Session meeting minutes dated September 13, 2010 until a future Executive Session.

### **EXECUTIVE SESSION CLOSED**

**MOTION:** Mr. Glennon made a motion to close the Executive Session and resume the Open Session of the Planning Board meeting. Mr. Cutler provided a second.

**VOTE:** A roll call vote was taken, with members voting unanimously in favor of the motion (4-0).

Therefore, Executive Session closed and Open Session resumed at 8:18 PM.

PLANNING BOARD EXECUTIVE SESSION MINUTES

Date: September 26, 2011

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**DOCUMENTS REVIEWED**

- Landowner petition submitted to Board of Selectmen on 09/16/11 re: 1053 Tremont Street / Dacey
- Executive Session minutes dated 09/13/10 re: Pratt Circle litigation

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