



# Town of Duxbury Massachusetts Planning Board

Approved 01/14/2013

TOWN CLERK  
13 JAN 15 AM 10:57  
DUXBURY, MASS.

## Minutes 12/10/12

The Planning Board met at the Duxbury Town Hall, Small Conference Room, on Monday, December 10, 2012 at 7:00 PM.

Present: George Wadsworth, Chairman; Brian Glennon, Vice Chairman; Cynthia Ladd Fiorini, Clerk; John Bear, Scott Casagrande, Josh Cutler, and Jennifer Turcotte.

Absent: No one was absent.

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

Mr. Wadsworth called the meeting to order at 7:00 PM.

### OPEN FORUM

Community Preservation Committee (CPC): Mr. Bear, who serves as the Board representative and chair of the CPC, reported that of eight applications originally submitted, five will move forward to Annual Town Meeting while the other three have been withdrawn. Mr. Bear described the five projects.

Ingall's Grove, off Bay Road: Mr. Wadsworth reported that he had visited the site which was on the November 26, 2012 Board agenda and is also scheduled for January 14, 2013. The property owner's engineer was also present for the site walk which occurred on a rainy day so they were able to witness where the water was travelling.

Tree Bylaw: Mr. Wadsworth later re-opened Open Forum because a group representing the Open Space Committee had come to speak about a potential Tree Bylaw. Present for the discussion were Mr. Paul Costello, chair of the Open Space Committee, and Ms. Lorrie Hall and Ms. Kathy Palmer, members of the Open Space Committee. Mr. Glennon also serves as Board representative to the Open Space Committee. Mr. Costello stated that Ms. Hall has done a lot of research on a bylaw that would require a buffer within an established setback for properties in the Residential Compatibility District. Mr. Wadsworth noted that the Board had discussed this bylaw during its November meeting, but had concluded that it is too late for Annual Town Meeting 2013. He invited the Open Space Committee to return under the Board's January 14, 2013 agenda. Mr. Cutler pointed out that the Board had previously discussed the Open Space Committee taking the lead on developing this bylaw.

### ANR PLAN OF LAND: 705 TEMPLE STREET / MERRY

Present for the discussion was the applicant's representative, Mr. Alan Vautrinot of Vautrinot Surveying, Inc. in Plympton. Board members reviewed an ANR plan proposing to reduce the land surrounding a dwelling lot, with the remaining land -- including two bogs and a barn -- to become a separate unbuildable parcel. Mr. Glennon and Mr. Casagrande had not yet arrived at the meeting.

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

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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**MOTION:** Ms. Ladd Fiorini made a motion, and Mr. Cutler provided a second, to endorse an ANR Plan of Land entitled, "Plan of Land, Prepared for Merry Realty Trust," dated November 13, 2012, prepared by Vautrinot Surveying, Inc., PO Box 144, Plympton, MA, stamped and signed by Robert A. Junior, RLS on November 28, 2012, as not requiring approval under Subdivision Control Law. DUXBURY, MASS.

**VOTE:** The motion carried unanimously, 5-0.

Board members endorsed the ANR mylar for Mr. Vautrinot to pick up at the Planning Office the next day.

### **ANR PLAN OF LAND: 30 BRADFORD ROAD / CASO**

No one was present to represent the application. Mr. Glennon and Mr. Casagrande had not yet arrived at the meeting. Mr. Broadrick explained that the applicants propose to convey a 2,058 square-foot parcel of land (Lot 2B) to an abutter in a way that balances yard and frontage requirements. He explained that the owners of 30 Bradford Road wish to have more of a yard. An additional 1,381 square-foot portion of land between Lot 2B and Bradford Road, a private way, will be retained by the owner of 35 Bradford Road but utilized by the owner of 30 Bradford Road through an easement. That small portion of land was retained by the original owner in order to meet lot shape requirements. Both properties would retain at least 200 feet of frontage on Bradford Road.

**MOTION:** Ms. Ladd Fiorini made a motion, and Mr. Cutler provided a second, to endorse an ANR Plan of Land entitled, "Plan of Land, 35 Bradford Road, Duxbury, Mass.," prepared by Millbrook Survey, 401 Parsonage Street, Marshfield, MA 02050, stamped and signed by Thomas John Sullivan, RLS, as not requiring approval under Subdivision Control Law.

**VOTE:** The motion carried unanimously, 5-0.

Board members endorsed the ANR mylar for the applicants to pick up at the Planning Office at a later date.

### **DISCUSSION OF MACFARLANE FARMS DEFINITIVE SUBDIVISION**

Present for the discussion were the applicant, Mr. John Baldwin, and his representative, Atty. Richard Serkey. Also present were the property owner, Mr. Raymond MacFarlane, and his representative, Atty. James Pye. Mr. Glennon and Mr. Casagrande arrived at the meeting just as the discussion started. Mr. Wadsworth noted that although no application is before the Board, the applicant had requested to meet. The Board had approved this three-lot Definitive Subdivision in 2010 but it has not been constructed. Mr. Wadsworth invited Atty. Serkey to address the Board.

Atty. Serkey referenced his letter to the Board dated November 13, 2012 and read portions of that letter aloud. He explained that Mr. Baldwin owns the subdivision mylars and Mr. MacFarlane owns the land. Now the Registry will not accept the mylar because it was endorsed over six months ago. Since then a certificate was given by the Board to someone who does not own the mylars. He stated that he is not asking the Board to take any action; he just wanted to set the record straight.

Mr. Glennon stated that the Board appears to be in a dispute between the property owner and the applicant. He stated that the Planning Board has no position and wants to avoid taking a position. Ms. Turcotte stated that there is no project without the land and no project without the plans. She advised both parties to figure it out, and if they need to file for a modification with the Board, then come back. Mr. Bear noted that this appears to be a contractual issue and there is no action for the Board to take.

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**ZBA REFERRAL, SPECIAL PERMIT: 267 KING CAESAR ROAD / MUTKOSKI**

Board members reviewed application materials for this special permit to construct a new pier. Mr. Bear commented that there appear to be no planning issues.

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**MOTION:** Mr. Glennon made a motion, and Ms. Ladd Fiorini provided a second, to DEFER JUDGMENT to the Zoning Board of Appeals regarding the special permit application for Case #2012-0009 for 267 King Casesar Road / Mutkoski.

**VOTE:** The motion carried unanimously, 7-0.

**ZBA REFERRAL, SPECIAL PERMIT: DUXBURY KENNEL IN THE PINES, 500 FRANKLIN STREET / OLEKSIK**

Board members reviewed application materials for this appeal of a zoning enforcement letter dated November 26, 2012, along with a special permit to alter a nonconforming use to allow a dog day care. Mr. Broadrick noted that the operation used to be an indoor kennel with outdoor pens with runs. The new owner apparently has expanded the business to be a kennel and dog daycare facility, allowing dogs to run loose in the fenced-in yard. The zoning enforcement letter from Mr. Scott Lambiase, Director of Municipal Services, was a cease and desist order on outdoor use due to abutter complaints about barking dogs.

Mr. Wadsworth noted that the Board could choose to weigh in on both the zoning enforcement action and the special permit application.

Mr. Bear noted that the nonconforming use, a dog kennel in a Residential Compatibility District, is grandfathered but expansion of that use is not automatic. Mr. Cutler questioned whether there is any planning issue involved. Mr. Glennon noted that initially he considered it a pre-existing nonconforming use, but with the noise complaint it appears that there has been an expansion of use, which is a planning issue. He stated that he would support limiting or preventing an expansion of a pre-existing nonconforming use. Ms. Turcotte stated that it has been and continues to be a pre-existing nonconforming use. Ms. Ladd Fiorini noted that the concept of "doggy daycare" has changed over the years.

Mr. Glennon stated that he supports Mr. Lambiase's position based on his enforcement letter. Mr. Cutler preferred to defer judgment. Mr. Bear stated that it is Mr. Lambiase's job to enforce zoning regulations.

**MOTION:** Mr. Glennon made a motion, and Ms. Ladd Fiorini provided a second, to support the Director of Municipal Services letter dated November 9, 2012 insofar that his interpretation of the Zoning Bylaws is correct.

**VOTE:** The motion failed (3-3-1), with Mr. Glennon, Mr. Wadsworth and Ms. Ladd Fiorini voting in favor; Mr. Bear, Mr. Casagrande, and Ms. Turcotte voting against; and Mr. Cutler abstaining.

Mr. Bear noted that the Zoning Board of Appeals will be able to discern all the facts during the public hearing process.

**MOTION:** Mr. Glennon made a motion, and Mr. Bear provided a second, to recommend DENIAL of Special Permit Case #2012-0008 (Duxbury Kennel in the Pines, 400 Franklin Street / Oleksiak) if the Zoning Board of Appeals considers the proposal to be an expansion of a previous nonconforming use; otherwise the Planning Board DEFERS JUDGMENT to the Zoning Board of Appeals for this appeal and special permit.

**VOTE:** The motion passed (4-2-1), with Mr. Wadsworth, Mr. Glennon, Ms. Ladd Fiorini, and Mr. Bear voting in favor; Mr. Casagrande and Ms. Turcotte voting against; and Mr. Cutler abstaining.

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## PLAN ENDORSEMENT

Board members signed Administrative Site Plan Review mylars for the Village at Duxbury and the solar array at the capped landfill on Mayflower Street. They also signed a Land Court signature page for any future plans submitted to the Land Court.

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## OTHER BUSINESS

### Engineering Invoices:

**MOTION:** Ms. Ladd Fiorini made a motion, and Mr. Cutler provided a second, to approve the following Amory Engineer invoices:

- Invoice #13909A dated November 23, 2012 in the amount of \$2,040.00 for services related to Fisher Ridge
- Invoice #13909B dated November 23, 2012 in the amount of \$2,710.00 for services related to the Village at Duxbury (invoice to be turned over to Zoning Board of Appeals).

**VOTE:** The motion carried unanimously, 7-0.

Old Colony Planning Council (OCPC) Planning Board Appointment: Mr. Broadrick reported that Town Manager Mr. Richard MacDonald had signed a letter appointing Mr. Broadrick as a delegate to attend OCPC monthly meetings. Mr. Broadrick suggested that the Board could appoint a Board member as an alternate; however, Mr. Broadrick intends to continue as delegate.

**MOTON:** Mr. Cutler made a motion, and Mr. Glennon provided a second, to nominate Mr. Broadrick as Old Colony Planning Council delegate, with Mr. Casagrande as delegate alternative. Both parties accepted the nomination.

**VOTE:** The motion carried unanimously, 7-0.

Comprehensive Plan Update: Mr. Broadrick reported that Ms. Judi Barrett is working on a strategic plan for the Board of Selectmen, and Mr. Broadrick would like to see the results of the strategic plan for possible inclusion in the updated Comprehensive Plan. In addition, he is meeting with Mr. Barry Keppard, Regional Planner for the Metropolitan Area Planning Council (MAPC), to work on incorporating the latest census figures for the updated Comprehensive Plan.

Medical Marijuana Zoning: Mr. Broadrick referenced emails from a Planning Directors list-serve regarding how other towns are approaching medical marijuana zoning in light of a recent ballot approval of medical marijuana in Massachusetts. Mr. Broadrick pointed out that the list-serve comments approached medical marijuana as similar to other prescription drugs. He recommended that no overlay district should be proposed.

Planning Board Meeting Schedule: Mr. Broadrick reported that Mr. Richard MacDonald, Town Manager, has approved the PAC-TV recording of Planning Board meetings on Mondays, so no change in meeting day is needed. Meetings will not be broadcast live but will be taped for future airing on the local cable channel.

Construction Cost Estimates, November 2012: Mr. Glennon noted that the school construction projects are on the permit list, with the co-located middle school/high school at \$98.6 million and the field house at \$5.1 million.

Duxbury Coastal Water Quality Grant: Mr. Broadrick reported that the Town of Duxbury was awarded a Coastal Pollution Remediation grant by the Massachusetts Energy and Environmental Affairs office in November 2012 to continue installation of state-of-the-art catch basins for pre-treatment of stormwater into Duxbury Bay. The grant application was submitted by Mr. Joseph Grady, Conservation Administrator. Board members gave Mr. Grady's efforts a "bravo."

## ADJOURNMENT OF OPEN SESSION

The Open Session of the Planning Board meeting adjourned at 8:35 PM so that the Board could enter Executive Session. The next Planning Board meeting will take place on Monday, January 14, 2013 at 7:00 PM at the Duxbury Town Hall.

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## MATERIALS REVIEWED

### ANR PLAN OF LAND: 705 TEMPLE STREET / MERRY

- ANR application and plan submitted 11/29/12
- Vision GIS map, aerial photo and property card; and Pictometry orthophoto

### ANR PLAN OF LAND: 35 BRADFORD ROAD / CASO

- ANR application and plan submitted 12/03/12
- Vision GIS map, aerial photo and property card; and Pictometry orthophoto

### DISCUSSION RE: MACFARLANE FARMS DEFINITIVE SUBDIVISION

- Letter from R. Serkey dated 11/13/12 (*no Exhibits submitted*)
- Original Certificate of Notification dated 08/27/10
- Memo from T. Broadrick to N. Oates dated 06/26/12 re: certification of plan endorsement
- PB minutes of 06/25/12 and 07/09/12

### ZBA REFERRAL: 267 KING CAESAR ROAD / MUTKOSKI

- ZBA referral materials
- Vision GIS map, aerial photo and property card; and Pictometry orthophoto

### ZBA REFERRAL: DUXBURY KENNEL IN THE PINES, 500 FRANKLIN STREET / OLEKSIK

- ZBA referral materials submitted on 11/26/12
- Vision GIS map, aerial photo and property card; and Pictometry orthophoto

### OTHER BUSINESS

- Medical marijuana zoning planners listserve emails
- PB meeting schedule 2013
- ZBA decision, 21 Chestnut Street / Griffin
- Construction Cost Estimates for November 2012
- Announcement of Duxbury coastal water quality grant dated 11/20/12