



# Town of Duxbury Massachusetts Planning Board

TOWN CLERK  
15 MAR 26 AM 10:09  
DUXBURY, MASS.

## Minutes 02/23/15

The Planning Board met on Monday, February 23, 2015 at 7:00 PM at the Duxbury Middle School / High School Library, 71 Alden Street, 3<sup>rd</sup> floor.

Present: George Wadsworth, Chairman; Brian Glennon, Vice Chairman; Scott Casagrande and David Uitti.

Absent: Cynthia Ladd Fiorini, Clerk; John Bear and Jennifer Turcotte.

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

Mr. Wadsworth called the meeting to order at 7:20 PM.

### OPEN FORUM

Open Space Committee: Mr. Glennon reported that the Open Space Committee has withdrawn its proposed Tree Bylaw, a general bylaw that would have required a permit for cutting trees of a certain dimension within residential lot setbacks.

### ANNOUNCEMENT: PROPOSED PLANNING BOARD MEETING LOCATION CHANGE FOR MARCH 9 AND MARCH 23 TO ALDEN SCHOOL, 75 ALDEN STREET, ROOM 104 (SCHOOL COMMITTEE MEETING ROOM)

Mr. Broadrick stated that the School Department staff has recommended that the Planning Board consider meeting in the School Committee meeting room at the Alden School instead of the DMS/DHS School Library. Alden School Room 104 has easy access on the first floor, with ample parking and the Planning Board may be able to stay later than the 9:00 PM limit in the school library. In addition, no custodial staff time would be required in the School Committee room because it is a dedicated meeting space.

Mr. Broadrick stated that he would like to advocate for the Planning Board to consider meeting in the Mural Room on Wednesday nights in the future. The Mural Room is available on the second and fourth Wednesdays and it would allow PAC-TV to broadcast meetings live as well as record them for on-demand viewing. He added that staff is willing to go wherever the Planning Board decides to meet. He stated that Planning Board members signed on to meet on Mondays so he understands that it might be difficult to change meeting nights; however, this idea presents another option for the Planning Board to consider.

Mr. Glennon stated that he would prefer to reserve judgment until the full board is present to discuss the matter.

Ms. Susan Curtis of 110 High Street stated that it is important for the Planning Board to have its meetings recorded. She stated that several other boards/committees have their meetings recorded and it is important for the Planning Board meetings to be televised.

**PUBLIC HEARINGS FOR ANNUAL TOWN MEETING ZONING ARTICLE:  
RE-ZONE OF 0 CONGRESS STREET (070-005-001) TO MODIFY WETLANDS  
PROTECTION OVERLAY DISTRICT (CITIZEN PETITION)**

Mr. Wadsworth opened the continued public hearing at 7:27 PM. Mr. Uitti, Acting Clerk, read the public hearing notice and correspondence list into the public record:

- Email from T. Broadrick to R.W. Galvin et al. dated 05/21/14
- Citizen petition submitted to Board of Selectmen and filed with Town Clerk on 01/13/15
- Emails between R. Read, K. Batt and T. Broadrick et al. dated 01/13/15 – 01/23/15 re: Notification of citizen petition
- Emails between R. Galvin to R. Lacey, K. Batt, R. Read et al. dated 01/12/15 – 01/13/15 re: ATM warrant language for citizen petition
- Public hearing notice filed with Town Clerk and mailed to the property owner, abutters, the Department of Housing Community Development, the Metropolitan Area Planning Council, the Old Colony Planning Council, and the Planning Boards of Kingston, Marshfield, Pembroke and Plymouth on 02/03/15; and published in the *Duxbury Clipper* on 02/04/14, and 02/11/15
- Email from T. Broadrick to R. Read dated 02/12/15 re: Zoning article timing
- Emails between N. Doherty, D. Grant and T. Broadrick dated 02/13/15 re: Zoning article timing
- Letter from N. Doherty to PB dated 02/15/15 re: Opposition to warrant article.

Present for the discussion was the proponent, Mr. Garth Hoffman. Mr. Wadsworth asked if Mr. Hoffman's representative, Atty. Robert W. Galvin, would be present to discuss the petition, and Mr. Hoffman replied that Atty. Galvin would not be present because he had to attend a meeting in another town. Mr. Wadsworth invited Mr. Hoffman to present the petition.

Mr. Hoffman stated that the proposal is to relocate the Wetlands Protection Overlay District (WPOD) line. He stated that the line was set in 1971 using United States Geological Survey maps and the best practices at the time. He distributed copies of an "On-Site Soil Investigations Report" dated November 14, 2014 and prepared by Peter C. Fletcher, Certified Professional Soil Scientist.

Mr. Hoffman stated that he is proposing to modify the WPOD zone along the 50-foot "no disturb" line outside the wetlands. He stated that he is not asking to include any wetlands in the WPOD, noting that this petition is similar to the Dacey and Driver petitions approved at earlier Town Meetings.

Mr. Casagrande asked if Mr. Hoffman had gone to the Conservation Commission yet, and Mr. Hoffman replied that he is scheduled with the Conservation Commission tomorrow night for this zoning article.

Mr. Broadrick explained that the Planning Board is required to make a report to Annual Town Meeting regarding each zoning article, and the Planning Board could choose to support, not to support, or make no recommendation regarding each zoning article. He stated that if the Planning Board makes no report, then Town Meeting cannot act on the zoning article until 21 days after the public hearing closes. Mr. Broadrick stated that the Planning Board has historically made a recommendation on every zoning article, in particular the articles for which the Planning Board holds public hearings as required by Massachusetts General Law. These recommendations are not adjudicatory, they are simply reports to Annual Town Meeting.

Mr. Casagrande asked if there is existing access to the property, and Mr. Hoffman replied, "Yes."

Mr. Wadsworth stated that the proposed WPOD zone line appears to cross into the FEMA flood zone line and seems to be within 50 feet of wetlands on the map distributed by Mr. Hoffman. Mr. Hoffman stated that he believes the new WPOD land is entirely upland.

Mr. Broadrick asked about the relevance of the 50-foot delineation, noting that both of the North Street parcels with proposed WPOD modifications use the same 50-foot delineation. He noted that in the Dacey and Driver citizen petitions, the Conservation Commission established a proposed 50-foot buffer as a "new" WPOD line. Mr. Wadsworth stated that the Congress Street property will still be subject to Orders of Condition through the Conservation Commission.

Mr. Casagrande stated that it is important to know how the Conservation Commission feels on all of the WPOD citizen petitions proposed for Annual Town Meeting 2015. Discussion on potential access will be saved for another time.

Mr. Glennon stated that he would also like to hear what the Conservation Commission says. He stated that looking at the proposed plan submitted tonight, it appears to be spot zoning because the land owner appears to be moving most of the lot from a more restrictive zoning. He stated that he would be interested to hear from Atty. Galvin why this is not spot zoning.

Mr. Broadrick recommended that the Planning Board take any public input and then they could either close the public hearing or leave it open until the next scheduled meeting, when they could make a recommendation. In the meanwhile, he could advise the Planning Board about what happened at the Conservation Commission meeting.

Mr. Neal Doherty of 8 Pheasant Hill Lane distributed copies of a color rendition of the plan submitted with the citizen petition, noting that the green line delineates the 100-foot buffer zone. He stated that the parcel has been the subject of discussion with the Conservation Commission and the Zoning Board of Appeals since last June. He stated that Mr. Hoffman intends to construct two dwellings, not one. He stated that the blue marks on the plan he submitted show where the water is. He stated that the property owner is proposing an 18-20 foot wide access with wetlands on both sides. He stated that he recommends adopting a 100 foot buffer for the WPOD line in order to reduce adverse impact from stormwater runoff, add filtration, and prevent water pollution. He stated that a 100-foot buffer line would protect his property and the active stream that runs to an aquifer well on Church Street. He stated that if the WPOD line is modified, a second dwelling would require well water because it could not use town water. He stated there may also be a zoning issue with the questionable access over a shared driveway for two lots.

Mr. Casagrande asked if the land is in the Aquifer Protection Overlay District, and Mr. Wadsworth responded that it was, noting that of the seven-acre parcel, five acres are upland.

Ms. Lorrie Hall of 175 Abrams Hill stated that three sides of the land is water, and objected to the number of trees that would need to be removed in order to develop the land. Mr. Broadrick noted that a property owner is allowed to clear less than 30,000 square feet of land without a special permit.

Mr. Wadsworth suggested that the Planning Board continue the public hearing. Mr. Glennon added that he would like to hear from Atty. Galvin regarding the spot zoning question. Mr. Uitti asked if there would be time for the Planning Board to make a recommendation prior to Annual Town Meeting, and Mr. Broadrick responded that there would. The next Planning Board meeting is March 9 and Annual Town Meeting is March 14. Mr. Uitti stated that he did not see any harm in continuing the public hearing.

**MOTION:** Mr. Uitti made a motion, and Mr. Glennon provided a second, to continue the public hearing for a citizen petition to modify the Wetlands Protection Overlay District for 0 Congress Street (070-005-001) to March 9, 2015 at 7:05 PM.

**VOTE:** The motion carried unanimously, 4-0.

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**ANR PLAN OF LAND: 293 MAYFLOWER STREET / RICKER**

Present for the discussion were the applicant, Mr. Earle Ricker, and his representative, Mr. Joseph Webby of Webby Engineering. Mr. Wadsworth asked Mr. Webby to present the plan. Mr. Webby stated that in 1981 the applicant cut out a 40,000 square foot lot that was approved by the Planning Board. Now the applicant would like to sell the lot but the lot is in the Aquifer Protection Overlay District (APOD). The plan shows that two small parcels of land have been added to the original lot to come up with the required 60,000 square feet of land. The new parcel has 287 feet of frontage on Mayflower Street.

Mr. Glennon asked if there would be any possibility to expand the frontage so that the lot would be more rectangular in shape. Mr. Webby stated that the applicant did not want to interfere with an existing cart path and gate that provide access to cranberry bogs. He noted that 200 feet of frontage is required and the ANR plan shows an additional 87 feet of frontage has already been provided. The plan also shows the 150-foot diameter circle as required.

Mr. Glennon requested that tie marks be added to the ANR plan to demonstrate which parcels will be combined. Mr. Webby added tie marks to the mylar as requested.

**MOTION:** Mr. Glennon made a motion, and Mr. Uitti provided a second, to endorse an ANR plan entitled, "Plan of Land in Duxbury, Mass. Prepared for Earle Ricker," dated 01/20/15, drawn by Webby Engineering Associates, Inc. 180 County Road, Plympton, MA 02367, stamped and signed by Joseph E. Webby, Jr., RPLS, scale 1" = 150,' one sheet, as not requiring approval under Subdivision Control Law.

**VOTE:** The motion carried unanimously, 4-0.

Planning Board members signed the mylar and Mr. Webby departed with it.

**CONTINUED PUBLIC HEARING, DEFINITIVE SUBDIVISION: LITTLETOWN WAY, OFF TREMONT STREET / NASS & ALFIERI**

Present for the discussion were Atty. Lee Alfieri and his representative, Mr. Daniel Orwig of Orwig Associates. Mr. Broadrick stated that the public hearing could open because a quorum of four eligible Planning Board members is present. However, he stated that the applicant may wish to continue the public hearing to the next scheduled Planning Board meeting when more members could be present. Atty. Alfieri requested an extension to continue the public hearing.

**MOTION:** Mr. Glennon made a motion, and Mr. Casagrande provided a second, to continue the public hearing for Littletown Way Definitive Subdivision to March 9, 2015 at 7:10 PM, with a decision deadline extended to March 31, 2015.

**VOTE:** The motion carried unanimously, 4-0.

Planning Board members and Atty. Alfieri signed an extension form to be stamped with Town Clerk

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**ANR PLAN OF LAND: 180 TREMONT STREET / NORTON**

No one was present to represent the application. Board members reviewed an email from the applicant's representative, Ms. Tara Calabrese, dated February 10, 2015 requesting withdrawal of the ANR application.

**MOTION:** Mr. Uitti made a motion, and Mr. Casagrande provided a second, to accept without prejudice withdrawal of an ANR Plan of Land entitled, "Plan of Land in Duxbury, Mass. Assn's #150-010-001," dated October 28, 1998, prepared by South Shore Survey Consultants, Inc., 167R Summer Street, Kingston, MA 02364, stamped and signed by William P. Sylvia, PLS, one sheet

**VOTE:** The motion carried unanimously, 4-0.

**CONTINUED PUBLIC HEARING FOR ANNUAL TOWN MEETING ZONING ARTICLE: RE-ZONE OF 0 NORTH STREET (023-010-001) TO MODIFY WETLANDS PROTECTION OVERLAY DISTRICT (CITIZEN PETITION)**

Mr. Wadsworth opened the continued public hearing at 8:15 PM. Mr. Uitti, Acting Clerk, read the correspondence list into the record:

- Emails dated 02/04/15 – 02/10/15 between D. Grant, P. Brogna and B. Holmes re: PB meeting cancellations
- Emails between P. Brogna and T. Broadrick dated 02/18/15 re: revised plan (*plan not distributed to PB*).

Mr. Wadsworth asked Mr. Broadrick if Town Counsel had offered an opinion on this petition, and Mr. Broadrick responded that Town Counsel, Atty. Arthur Kreiger, was present at a Board of Selectmen meeting on February 12, 2015 during a discussion of the Board of Selectmen's recommendation on this Annual Town Meeting warrant article. Mr. Broadrick reported that Mr. Shawn Dahlen, Chairman of the Board of Selectmen, had asked Town Counsel's opinion because the plan stamped with Town Clerk with the original citizen petition did not show delineation of the proposed Wetlands Protection Overlay District (WPOD). Mr. Broadrick reported that Atty. Kreiger stated that there may have not been proper notice of what the proponents plan to do. Mr. Broadrick stated that Mr. Brogna was not present for the Board of Selectmen's meeting, and Mr. Broadrick had subsequently emailed Mr. Brogna to alert him of the issue and advise him to contact Town Manager, Mr. René Read. Mr. Broadrick stated that he wanted to make the Planning Board aware of this issue.

Mr. Broadrick stated that any revised plan submitted would not be under consideration unless Town Clerk had accepted it. Mr. Brogna stated that he had brought revised plans to the Planning Department on February 18, 2015 but had been told that it was too late because the Planning Board packets had already been sent out.

**MOTION:** Mr. Casagrande made a motion, and Mr. Uitti provided a second, to continue the public hearing for a citizen petition to modify the Wetlands Protection Overlay District on 0 North Street (023-010-001) to March 9, 2015 at 7:15 PM at the Alden School, Room 104.

**DISCUSSION:** Mr. Brogna stated that he had spoken with Ms. Betsy Sullivan, Chairman of the Finance Committee, and he will meet next week with the Conservation Commission and with the Board of Selectmen again. He stated that he will be prepared to present a plan prior to Annual Town Meeting. Mr. Glennon asked if Mr. Brogna would like to make a brief presentation, and Mr. Brogna replied that he would like to.

**MOTION WITHDRAWN:** Mr. Casagrande withdrew his motion, and Mr. Uitti withdrew his second.

Mr. Wadsworth invited Mr. Brogna to present his plan. Mr. Brogan stated that currently the land is a large open field. They have done 12 or 13 test pits and there are restrictions on the land due to wetlands. The citizen

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petition is to modify the WPOD line, showing a plan with hatched lines depicting 3,000 square feet out of a 40,000 square foot area to be adjusted. He stated that the proposed modification does not affect the buildability of the lot.

Mr. Glennon asked if this is the first plan the Planning Board has seen that shows the proposed WPOD modification, and Mr. Brogna replied, "Yes."

Mr. Broadrick asked if the proponents plan to move the WPOD line to match the 50-foot buffer from delineated wetlands line, and Mr. Brogna replied, "Yes."

Mr. Broadrick suggested that the Planning Board consider recommending at Annual Town Meeting that the town should perform a comprehensive study of the Wetlands Protection Overlay District and determine for a future Town Meeting vote the number of acres to be added or removed, or else determine that the entire WPOD should be removed. Mr. Broadrick stated that the WPOD zoning was established as double protection to protect wetlands and uplands surrounding wetlands as land that is not available for development. He stated that perhaps the town's attitude has changed but the 1999 Comprehensive Plan upheld the WPOD zoning and clearly supported to continuing to preserve that land at the time.

**MOTION:** Mr. Casagrande made a motion, and Mr. Uitti provided a second, to continue the public hearing for a citizen petition to modify the Wetlands Protection Overlay District on 0 North Street (023-010-001) to March 9, 2015 at 7:15 PM at the Alden School, Room 104.

**VOTE:** The motion carried unanimously, 4-0.

Mr. Wadsworth advised Mr. Brogna that any revised plans or materials would be due by March 2, 2015.

The public hearing discussion ended at 8:28 PM.

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**DISCUSSION: TOWN MEETING SCHEDULE AND OTHER TOWN MEETING ARTICLES**

Economic Advisory Committee (EAC): Mr. Broadrick reported that he attends the EAC meetings and often they have had a difficult time making quorum because representatives from the Board of Selectmen and Zoning Board of Appeals cannot attend at the meeting time of Wednesday at 8:00 AM, a time that is convenient for the business owners who serve on the EAC. Mr. Broadrick stated that Mr. Bear, who was not present, had introduced the article and would appreciate the Planning Board's support.

**MOTION:** Mr. Casagrande made a motion, and Mr. Glennon provided a second, for the Planning Board to recommend approval of an Annual Town Meeting article to reduce the number of members appointed to the Economic Advisory Committee from nine to seven.

**VOTE:** The motion carried unanimously, 4-0.

Affordable Housing Bylaw: Mr. Broadrick stated that the Duxbury Affordable Housing Trust is expected to recommend indefinite postponement of this ATM warrant article.

**MOTION:** Mr. Glennon made a motion, and Mr. Uitti provided a second, for the Planning Board to recommend approval of an Annual Town Meeting article to amend ZBL Section 570 (Affordable Housing) to change requirements for affordable housing units on qualified pre-existing nonconforming lots.

**DISCUSSION:** Mr. Wadsworth stated that he was concerned with the proposal to change the minimum lot size from 10,000 square feet to 5,000 square feet.

**VOTE:** The motion failed unanimously, 0-4, with a resulting recommendation to DISAPPROVE the proposed warrant article.

CPC Land Purchase of Merry Land: Board members reviewed the proposed draft warrant article.

**APPROVAL OF CONSULTING ENGINEER FOR PROPOSED DEFINITIVE SUBDIVISION: MCLEAN'S WAY, OFF BOW STREET / REINHALTER**

Planning Board members reviewed a Merrill Corporation rate schedule dated 2015. Mr. Broadrick stated that he wanted to make sure that the Planning Board was comfortable with the proposed rates, including an extra charge for attending night meetings. The applicant had agreed for the Planning Board to use Merrill because it is the consulting engineer for the applicant's 40B application currently before the Zoning Board of Appeals. Mr. Glennon stated that he would not accept a charge of 1.5 times the rate with a two-hour minimum as listed on the rate sheet, and Mr. Uitti stated that he agreed with Mr. Glennon. Mr. Broadrick agreed to contact the consulting engineer to discuss revising the fee structure for Planning Board review.

Ms. Susan Curtis of 180 High Street asked what the recourse is when applicants believe that the consulting engineer is overcharging. Mr. Broadrick explained that the Planning Board approves all consulting engineer invoices and requires a copy of all inspection reports and a detailed list of charges. If the applicant is unhappy with the fees charged, in the past applicants have requested an agenda topic to discuss the matter with the Planning Board.

**ZBA REFERRAL, SPECIAL PERMIT: 319 POWDER POINT AVENUE / NELSON**

Board members reviewed this special permit to construct additions to a pre-existing nonconforming structure, which would increase the allowable coverage. Mr. Broadrick stated that the proposal still exceeds permitted lot coverage but improves the overall lot coverage ratio.

Mr. Casagrande made a motion, and there was no second, for the Planning Board to recommend approval to the Zoning Board of Appeals for this special permit. Mr. Uitti asked why the Planning Board would recommend deferring judgment to the ZBA on special permit applications. Mr. Wadsworth stated that in the past the Planning Board has deferred judgment when there is not a clear majority that would recommend approval. Mr. Casagrande added that sometimes there is not enough information to make a recommendation otherwise. Mr. Glennon stated that he evaluates a special permit according to whether it fosters or deters from the intent of Zoning Bylaws. If it deters, then he would recommend disapproval. If it is unclear, he would recommend deferring judgment. If it shows a significant improvement, then he would recommend approval. Because no one provided a second to the motion, the motion failed.

Mr. Glennon made a motion, and there was no second, for the Planning Board to defer judgment to the Zoning Board of Appeals for this special permit. Because no one provided a second to the motion, the motion failed.

**MOTION:** Mr. Casagrande made a motion, and Mr. Uitti provided a second, for the Planning Board to recommend approval to the Zoning Board of Appeals for a special permit at 319 Powder Point Avenue / Nelson, to construct additions to a pre-existing nonconforming structure, which would increase the allowable coverage.

**VOTE:** The motion carried 3-1, with Mr. Glennon voting against.

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**OTHER BUSINESS**

There were no action items under "Other Business."

**ADJOURNMENT**

The Planning Board meeting adjourned at 9:11 PM. The next Planning Board meeting will take place on Monday, March 9, 2015 at 7:00 PM at the Alden School, Room 104, 75 Alden Street.

**MATERIALS REVIEWED**

**Public Hearing, ATM Zoning Article: Re-Zone of 0 Congress Street (070-005-001) to Modify WPOD (Citizen Petition)**

- Public hearing notice posted 02/03/15
- Cover letter, citizen petition, and plan dated 01/12/15 submitted by R.W. Galvin on 01/13/15
- Vision GIS map, aerial orthophoto, and Assessor's property card
- Email from T. Broadrick to R.W. Galvin dated 05/21/14
- Letter from N. Doherty dated 02/15/15

**ANR Plan of Land: 293 Mayflower Street / Ricker**

- ANR application and plans submitted on 02/05/15
- Vision GIS map, aerial orthophoto, and Assessor's property card

**Continued Public Hearing, Definitive Subdivision: Littletown Way, off Tremont Street / Nass & Alfieri  
PB minutes of 11/10/14**

- No new materials were reviewed because the applicant requested the public hearing to be continued without discussion.

**ANR Plan of Land: 180 Tremont Street / Norton**

- Email from T. Calabrese dated 02/10/15

**Continued Public Hearing, ATM Zoning Article: Re-Zone of 0 North Street (023-010-001) to Modify WPOD (Citizen Petition)**

- No new materials were reviewed.

**Discussion of Other Town Meeting Articles**

- ATM warrant as of 02/17/15
- Planning Board Votes ATM 2015 dated 02/17/15

**Approval of Consulting Engineer for Proposed Definitive Subdivision: McLean's Way, off Bow Street / Reinhalter**

- Merrill Corporation Rate Schedule 2015 submitted 02/11/15
- Email from P. Palmieri of Merrill to D. Grant dated 02/10/15

**ZBA Referral, Special Permit: 319 Powder Point Avenue / Nelson**

- ZBA application and materials submitted on 02/06/15
- Vision GIS map, aerial orthophoto, and Assessor's property card

**Other Business**

- "AG: Marshfield Office Violated Open Meeting Law," *Patriot Ledger* article dated 02/03/15
- Construct Cost Estimates for January 2015

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Duxbury Planning Board  
February 23, 2015, 7:00 PM

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- Public Hearing for Annual Town Meeting Zoning Article: Re-Zone of 0 Congress Street (070-005-001)
- Continued Public Hearing, Definitive Subdivision: Littleton Way, off Tremont Street / Alfieri & Nass
- Continued Public Hearing for Annual Town Meeting Zoning Article: Re-Zone of 0 North Street (023-010-001)

*Please print your name and address for our records:*

Name

Address:

NEAL DOHERTY

8 PHEASANT HILL LN

Susan Curtis

110 High Street

Dan Orwig

9 S. Pasture Ln

Lee Alfieri

Ply, Ma.

George Berger

459 Washington St

Tom Sullivan

MILLBROOK SURVEY

Earl Rickett

293 Mayflower St

Michael Quindlen

10 PHEASANT HILL LN

Louise Hall

175 Abrams Hill

Pat Capadella

4 Pheasant Hill

Sandra Hoffmann

5 S. PASTURE LN.

Albert Schomp

875 Tremont St

Cathy + Joel Stein

879 Tremont St

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**Duxbury Planning Board  
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- Public Hearing for Annual Town Meeting Zoning Article: Re-Zone of 0 Congress Street (070-005-001)
- Continued Public Hearing, Definitive Subdivision: Littleton Way, off Tremont Street / Alfieri & Nass
- Continued Public Hearing for Annual Town Meeting Zoning Article: Re-Zone of 0 North Street (023-010-001)

*Please print your name and address for our records:*

**Name**

Patricia Anania

**Address:**

521 West St #7

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