



# Town of Duxbury Massachusetts Planning Board

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## Minutes 02/10/16

The Planning Board met on Monday, February 10, 2016 at 7:00 PM at the Duxbury Town Hall, Mural Room. This meeting was posted as the back-up snow date for the regularly scheduled Planning Board meeting on February 8, 2016 which was cancelled due to inclement weather.

Present: George Wadsworth, Chairman; Brian Glennon, Vice Chairman; Cynthia Ladd Fiorini, Clerk; John Bear, Scott Casagrande, and David Uitti.

Absent: Jennifer Turcotte.

Staff: Valerie Massard, Planning Director; and Diane Grant, Administrative Assistant.

Mr. Wadsworth called the meeting to order at 7:01 PM.

### OPEN FORUM

Economic Advisory Committee (EAC): Mr. Bear reported that two articles are on the Annual Town Meeting 2016 warrant related to the invigoration of Hall's Corner. One article sponsored by the Planning Board to survey the road layout has been recommended for approval by the Finance Committee and Board of Selectmen. The other article sponsored by the EAC for a consultant to help consider potential Zoning Bylaw changes has been not recommended by the Finance Committee and was recommended by the Board of Selectmen.

Community Preservation Committee (CPC): Ms. Ladd Fiorini reported that the CPC is sponsoring two articles: one for Special Town Meeting to pay administrative costs related to the Merry property purchase; and the other for Annual Town Meeting to fund the binding of archival records at the Town Clerk's office.

Storm Reporting: Mr. Wadsworth noted that during the recent snowstorm it was difficult to obtain information regarding the closing of Town Hall and the cancellation of the Planning Board meeting and other government meetings. He recommended that the communication system during inclement weather should be improved.

Planning Board Meeting Schedule: Ms. Grant reported that the Planning Board will change its meeting night to the second and fourth Wednesdays of each month in order to meet in the Mural Room beginning February 24, 2016, and meetings will be broadcast live on PACTV.

### PUBLIC MEETING, ADMINISTRATIVE SITE PLAN REVIEW: MILLBROOK AUTO SALES, 1474 TREMONT STREET / BOYD

Mr. Wadsworth opened the public meeting at 7:05 PM for this Administrative Site Plan Review (ASPR) application to operate an auto sales business, with no change to the footprint of the existing structure and no additional parking spaces. Present for the discussion was the applicant, Mr. Shawn Boyd. Planning Board members reviewed As-Built plans submitted to the Planning Office on January 12, 2016.

Ms. Massard stated that the applicant has concurrently filed for a special permit for change in use. The previously existing business had also been an auto sales operation but that business had been abandoned for several years. She noted that the Fire Department had no objection to the proposed use.

Mr. Bear stated that there are still some operations going on at the location, and Mr. Boyd confirmed that there is an existing auto detailing and repair business. Mr. Glennon asked for the number of cars approved in a Class 2 license, and Mr. Boyd replied that it is licensed for 22 automobiles.

Mr. Glennon asked if Mr. Boyd plans to do any auto repairs, and Mr. Boyd replied that he plans to use off-site repair shops as needed and his operation will only be sales.

Mr. Wadsworth asked if the parking would utilize only the existing pavement, and Mr. Boyd responded that it would. Mr. Bear noted that the owner typically allocates parking spaces and there are multiple tenants. He asked if the owner should be involved in the Site Plan Review application. Ms. Massard responded that the Building Inspector, Mr. Scott Lambiase, has stated that the parking is adequate for the proposed use as shown on the site plan. She noted that if there are any changes the applicant would be asked to come back to the Planning Board for further review. Mr. Casagrande stated that typically the lease would specify which part of the parking lot could be used by each tenant. He asked if Mr. Boyd would be using the parking in front and to the side of the showroom, and Mr. Boyd replied that he would.

**MOTION:** Mr. Bear made a motion, and Mr. Casagrande provided a second, to approve an Administrative Site Plan Review decision for 1474 Tremont Street / Millbrook Auto Sales (Boyd) as drafted by staff.

**DISCUSSION:** Ms. Massard noted that this is her first ASPR decision as Planning Director in Duxbury and she used a template from a similar decision. She noted that the decision approves 25 parking spaces as shown on the site plan. Mr. Boyd would be responsible for maintaining fencing, signs and no loading equipment would be allowed on Tremont Street. She noted that any change in tenancy or parking would require the applicant to return to the Planning Board. The applicant is responsible for maintaining landscaping and parking lot striping.

Mr. Bear noted that the owner would be subject to some of these conditions and the owner is not part of the application. Mr. Glennon noted that the owner did sign the ASPR application. Ms. Massard stated that the owner is aware and the tenant is taking on the obligations. Mr. Bear requested that the owner be included in the distribution of the decision.

**VOTE:** The motion carried unanimously, 6-0.

**ZBA REFERRAL, SPECIAL PERMIT: MILLBROOK AUTO SALES, 1474 TREMONT STREET / BOYD**

Planning Board members reviewed this special permit application to operate an auto sales business, with no change to the footprint of the existing structure and no additional parking spaces. Ms. Massard stated that the proposed use is the same as a former use, and the Fire Department has no issues with the proposal.

**MOTION:** Mr. Bear made a motion, and Mr. Casagrande provided a second, to recommend APPROVAL to the Zoning Board of Appeals regarding Special Permit #2016-2 1474 Tremont Street / Boyd, with a copy of this recommendation to be forwarded to the property owner.

**VOTE:** The motion carried unanimously, 6-0.

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**CONTINUED CONSOLIDATED PUBLIC HEARING, DUXBURY PLANNING BOARD AND TREE WARDEN: STANDISH STREET / MCARDLE**

Mr. Wadsworth opened the continued public hearing at 7:17 PM. He asked if the Tree Warden was present, and Ms. Massard responded that the Tree Warden was planning to attend the Planning Board meeting on Monday, February 8, but because the meeting was rescheduled he could not attend tonight due to a conflict.

Ms. Massard provided an updated overview of the proposal. She stated that the 18 shade trees subject to the tree hearing are located on a scenic road, and some of them will be trimmed and some potentially would be cut down within the public layout. She noted that a chestnut tree that is of interest to save would have one limb trimmed and would not be cut down. The purpose of the tree trimming/removal is to move an historic structure. Ms. Massard stated that some neighbors are concerned and wanted the applicant to pursue alternatives that would not require tree work, such as temporarily bringing down power lines or cutting the structure in half. She noted that a letter of objection was submitted by a property owner on Standish Street, Dr. and Mrs. Mahmud, which requires the matter to go to the Board of Selectmen. The Planning Board is no longer the deciding board per state statute.

Mr. Uitti asked if the Board of Selectmen had issued a decision, and Ms. Massard replied that it has not because the Board of Selectmen is allowing the Planning Board to close its public hearing and provide a recommendation to the Board of Selectmen. Mr. Wadsworth noted that the Board of Selectmen can issue a decision without going through a public hearing process.

Mr. Glennon recalled that it was suggested that the applicant, Mr. William McArdle get together with the Mahmuds and try to resolve their issues, and asked if there had been any development on that front. Ms. Massard stated that she had discouraged that because both parties had walked the site at an earlier time prior to the public hearing and she instructed each party to communicate through her because it had become a highly charged situation. Ms. Massard distributed a letter dated February 4, 2016 from the Mahmuds's attorney, Julie Pruitt Barry of Prince Lobel in Boston, with requests for Mr. McArdle to provide the Planning Board with further information from a certified arborist with the cost of removing the trees and restoring the property, a written plan and estimate for replanting, evidence of Mr. McArdle's ability to pay for the removal and replacement of trees, a written plan for enforcement of the removal and replacement, and evidence of Mr. McArdle's insurance coverage that would compensate for any liability resulting from the removal and replacement of trees.

Mr. Wadsworth asked Atty. Barry if she had any further comments, and Atty. Barry stated that the trees provide benefit to the property owners and surrounding properties. She stated that her clients, the Mahmuds, do not have any issue with moving the structure but believe that there are other ways to move it that do not require replacing trees.

Mr. Glennon asked if the Mahmuds dispute that the trees belong to the Town of Duxbury and not the property owners, and Atty. Barry replied that the Mahmuds agree that the trees are not on their property, although she stated that they believe that the proposed work may have an impact on the trees on their property.

Mr. Bear asked if Mr. McArdle had provided any paperwork on restorative efforts, and Ms. Massard stated that Mr. McArdle and the Mahmuds were asked independently to speak to the Tree Warden about replanting, but to date no one has contacted the Tree Warden. She noted that the Mahmuds indicated that they may pull back some arborvitae that they had planted within the public layout and the Tree Warden is waiting to hear back from them. She stated that no trees will be touched until it is certain that the structure is able to be moved, according to Mr. McArdle.

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Ms. Lori Mahmud of 221 Standish Street stated that she was never told to contact the DPW Director. She stated that Mr. McArdle had told her that he will try to bend back the arborvitae when the structure is moved; however she expressed concern that if the trees are bent they will break and they would cost \$900 each to replace. Mr. Wadsworth reminded Ms. Mahmud that the trees were planted on town property, and Ms. Mahmud stated that her first notice of that was from Ms. Massard.

Ms. Massard stated that the Planning Board could make a recommendation to the Board of Selectmen that would include that the applicant should meet with the Tree Warden to discuss what could be planted in the event that the structure could be moved.

Mr. Wadsworth invited public comment. Ms. Sylvia Zurlo of 223 Powder Point Avenue stated that she has two passions: trees and houses. She encouraged the Planning Board members to save the trees.

Mr. Mark Barry of 275 Marshall Street asked if the Planning Board had seen his letter dated January 29, 2016, and Ms. Ladd Fiorini replied that they had. He stated that as a matter of public policy the trees are not as important and the dwelling structure is exceptional, with only 317 houses remaining in the Town of Duxbury that are that old.

Atty. Barry stated that it would be within the Planning Board's purview to recommend that the Mahmuds' questions be addressed. She stated that tree stumps do not comport with a scenic road and no alternatives have been presented yet by Mr. McArdle.

Atty. Brian Cook of 105 Saint George Street stated that nearly twenty years ago he moved an historic structure on a lot by cutting it in half in order to save trees and the trees and the house are still standing.

Mr. Casagrande stated that he would like to see the house get moved and the parties involved should be able to come up with a mitigation plan. He noted that most of the trees listed on the application could not be replaced because they are invasive species, but they could plant something more appropriate like a maple tree. He pointed out that the public way narrows in front of the Mahmuds' property, and in a snowstorm or if the town decides to widen the road the trees could be removed anyway.

Mr. Uitti stated that he was hoping that the parties would have followed his recommendation to come up with a pragmatic solution. He noted that he has no more information to base a decision on than he had before. He urged the Planning Board members to recommend to save the house because of its historic significance and to ask the parties to get together and provide information to help the Board of Selectmen make its decision.

Mr. McArdle, the applicant, stated that he had started to look into options like dismantling the historic dwelling but decided that he would not want to do that. He stated that he is trying to preserve the structure as is with the chimneys included, and it would be cost-prohibitive to do that. He stated that he had received a verbal estimate of \$15,000 – 25,000 to cut the house in half to move it, but there is a risk that it would compromise the structure. He stated that Eversource, the power company, has a 20-day waiting period plus a 30-day response time to provide an answer on temporarily removing the power lines.

Atty. Barry stated that there is still room for discussion and the onus is on the applicant to take the initiative to work it out. She stated that the applicant should provide evidence that it would be grossly prohibitive to follow the alternative options to removing the trees in order to move the dwelling structure.

Mr. Bear stated that he was disappointed that the Tree Warden could not attend tonight's Planning Board meeting because he can address some of the issues raised tonight. He stated that the Planning Board has no new information and the trees are not particularly valuable.

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Ms. Massard referenced her staff report, suggesting that the Planning Board members consider recommending that the Board of Selectmen ask Mr. McArdle for written estimates on the cost and timing on alternatives to removing the trees. She recommended that the Tree Warden's process for replanting should be clarified with the Tree Warden to find out if a surety would be required. She also recommended that a replanting plan be fleshed out with the applicant working with the Tree Warden. Mr. McArdle stated that he does have written estimates for the tree removal.

Atty. Barry asked who would pay for the replanting; Mr. McArdle or the Town of Duxbury? Ms. Massard replied that it could be a mix because there are some trees that the town can provide.

**MOTION:** Mr. Glennon made a motion, and Ms. Ladd Fiorini provided a second, to close the consolidated Scenic Road and Shade Tree hearing for Standish Street / McArdle.

**VOTE:** The motion carried unanimously, 6-0.

Mr. Bear stated that the Planning Board's choices are approval or deferring judgment because disapproval is not an option. Ms. Ladd Fiorini asked why the Planning Board would defer judgment. She suggested that the Planning Board could state that it is in agreement with the proposed tree cutting with the information available at this time.

Mr. Glennon noted that the Planning Board is lacking important information such as whether or not the dwelling structure can come apart or not. He stated that there could be an opportunity for both parties to work together but the Planning Board does not have that option available.

**MOTION:** Mr. Uitti made a motion, and Ms. Ladd Fiorini provided a second, that the Planning Board recommend that the Board of Selectmen approve the request of Mr. William McArdle to cut or trim 18 trees on Standish Street as proposed, subject to the following conditions to be met to the satisfaction of the Board of Selectmen:

- That the applicant provide an estimate of the cost to dismantle the historic structure and rebuild it as an alternative to moving the structure whole
- That the Tree Warden outlines the process for the oversight of the tree removal and replanting, including determination of whether any bond or escrow account should be established
- That the applicant propose a replanting plan after consulting with the Tree Warden and Department of Public Works that is to be shared with the property owners affected by the tree removal/trimming for comment. Said plan shall include information on the public sector cost to replant and establish the new plantings, if any.

**DISCUSSION:** Ms. Massard advised that the applicant could obtain estimates from the moving contractor, noting that no tree work would be done if the dwelling structure could not be moved. She suggested that the applicant's fiscal feasibility should not be part of any further discussion. Ms. Ladd Fiorini stated that the applicant has already provided the estimate to move the dwelling structure. Mr. Bear agreed, noting that the alternatives are onerous to the applicant. He advised that the parties should meet with the Tree Warden.

Mr. Uitti stated that the first condition could be a benefit to Mr. McArdle in order to satisfy abutters' concerns. Ms. Ladd Fiorini stated that the applicant may choose not to move the dwelling structure if the trees cannot be trimmed or cut.

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

Mr. Glennon stated that he would have preferred to defer judgment to the Board of Selectmen.

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**CONTINUED PUBLIC HEARING FOR ANNUAL TOWN MEETING 2016 ZONING ARTICLE: PROPOSED AMENDMENTS REGARDING NONCONFORMING USES AND STRUCTURES (ZBRC)**

Mr. Wadsworth opened the continued public hearing at 8:28 PM. Ms. Ladd Fiorini read the correspondence list into the public record:

- Proposed bylaw as of draft ATM warrant dated 02/01/16
- Staff report dated 02/03/16.

Ms. Massard reported that staff had requested further information regarding language in the proposed article on footprint size. She stated that the wording in question had been deleted because it had been mistakenly included in the warrant article. She noted that there had been no further question in respect to the article language, and the warrant will be corrected.

Mr. Wadsworth invited public comment and there was none.

**MOTION:** Mr. Glennon made a motion, and Mr. Casagrande provided a second, to close the public hearing for an Annual Town Meeting warrant article proposed by the Zoning Bylaw Review Committee to amend the Protective (Zoning) Bylaw Section 401.2 (Nonconforming Uses and Structures) as proposed.

**VOTE:** The motion carried unanimously, 6-0.

Therefore the public hearing was closed at 8:30 PM.

Ms. Massard reported that the Finance Committee had voted in favor of the proposed article.

**MOTION:** Mr. Casagrande made a motion, and Mr. Bear provided a second, that the Planning Board recommend APPROVAL of an Annual Town Meeting warrant article proposed by the Zoning Bylaw Review Committee to amend the Protective (Zoning) Bylaw Section 401.2 (Nonconforming Uses and Structures) as proposed.

**VOTE:** The motion carried unanimously, 6-0.

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**CONTINUED PUBLIC HEARING FOR ANNUAL TOWN MEETING 2016 ZONING ARTICLE: PROPOSED AMENDMENTS REGARDING RESIDENTIAL CONSERVATION CLUSTERS (ZBRC)**

Mr. Wadsworth opened the continued public hearing at 8:30 PM. Ms. Ladd Fiorini read the correspondence list into the public record:

- Proposed bylaw as of draft ATM warrant dated 02/05/16
- Proposed bylaw language received from Town Counsel on 02/10/16.

Ms. Massard distributed revised language received today from the Zoning Bylaw Review Committee's (ZBRC) consultant, Atty. George Hall of Anderson & Krieger in Cambridge, also the Town Counsel for the Town of Duxbury. She noted that Atty. Hall redlined any revisions and they are housekeeping issues. She noted that the ZBRC had not reviewed the changes yet but the chairperson, Ms. Judi Barrett, defers to Town Counsel's opinion. Planning Board members reviewed the proposed changes.

Mr. Wadsworth invited public comment and there was none.

**MOTION:** Mr. Glennon made a motion, and Ms. Ladd Fiorini provided a second, to close the public hearing for an Annual Town Meeting warrant article proposed by the Zoning Bylaw Review Committee to amend the Protective (Zoning) Bylaw Section 540 (Residential Conservation Cluster) as proposed.

**VOTE:** The motion carried unanimously, 6-0.

Therefore the public hearing closed at 8:35 PM.

**MOTION:** Mr. Glennon made a motion, and Ms. Ladd Fiorini provided a second, that the Planning Board recommend APPROVAL of an Annual Town Meeting warrant article proposed by the Zoning Bylaw Review Committee to amend the Protective (Zoning) Bylaw Section 540 (Residential Conservation Cluster) as proposed.

**VOTE:** The motion carried unanimously, 6-0.

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**CONTINUED PUBLIC HEARING FOR ANNUAL TOWN MEETING 2016 ZONING ARTICLE: PROPOSED REPLACEMENT OF AFFORDABLE HOUSING BYLAW (DUXBURY AFFORDABLE HOUSING TRUST)**

Mr. Wadsworth opened the continued public hearing at 8:36 PM. Ms. Ladd Fiorini read the correspondence list into the public record:

- Emails between V. Massard and D. Bartlett et. al dated 01/26/16 – 01/28/16
- Email from D. Grant to D. Bartlett et. al dated 02/09/16
- Proposed bylaw as of draft ATM warrant dated 02/01/16
- Staff report dated 02/03/16.

Ms. Massard summarized revisions to the proposed bylaw. The effective date reference has been moved to the definition of eligible lots. Also, no change in lot size is proposed at this time. Mr. Wadsworth, who also serves on the Duxbury Affordable Housing Trust (DAHT) stated that the lot size has changed back to the current 10,000 square feet.

Mr. Wadsworth invited public comment. Mr. Shawn Dahlen of the Board of Selectmen, who also serves on the DAHT, apologized on behalf of the DAHT chairperson, Ms. Diane Bartlett, whom he explained could not attend tonight’s meeting. He urged the Planning Board members to recommend approval of the proposed article, as it provides an opportunity to develop affordable housing on odd lots with Planning Board approval. He noted that the lots may be created and then donated to a charitable trust.

**MOTION:** Ms. Ladd Fiorini made a motion, and Mr. Glennon provided a second, to close the public hearing for an Annual Town Meeting warrant article proposed by the Duxbury Affordable Housing Trust to amend the Protective (Zoning) Bylaw Section 570 (Affordable Housing) as proposed.

**VOTE:** The motion carried unanimously, 6-0.

Therefore the public hearing closed at 8:40 PM.

Mr. Bear stated his opinion that the proposed bylaw offers a lot of words for little potential. Mr. Wadsworth agreed with Mr. Dahlen, stating that while it may not be economically feasible for a private owner to make a profit by developing an odd lot, it can provide a way to develop affordable housing.

**MOTION:** Ms. Ladd Fiorini made a motion, and Mr. Casagrande provided a second, that the Planning Board recommend APPROVAL of an Annual Town Meeting warrant article proposed by the Duxbury Affordable Housing Trust to amend the Protective (Zoning) Bylaw Section 570 (Affordable Housing).

**VOTE:** The motion carried unanimously, 6-0.

**CONTINUED PUBLIC HEARING FOR ANNUAL TOWN MEETING 2016 ZONING ARTICLE: PROPOSED REPLACEMENT OF DEMOLITION DELAY BYLAW (HISTORICAL COMMISSION)**

Mr. Wadsworth opened the continued public hearing at 8:42 PM. Ms. Ladd Fiorini read the correspondence list into the public record:

- Bylaw with proposed edits by S. Dahlen and D. Uitti submitted by S. Dahlen at PB meeting on 01/25/16
- Staff report dated 02/03/16 with attachments
- Email from D. Grant to T. Vose dated 02/09/16
- "Final Amended Language Approved by Historical Commission on 02/05/16" submitted to Planning Office via email on 02/10/16.

Ms. Massard stated that additional amendments from the Historical Commission received today, so the proposed language will not be included in the warrant and has not been supported by Town Counsel in its brief review. Therefore she stated that she would not recommend the language as proposed. A motion to amend the language would need to be proposed from the Town Meeting floor.

Mr. Mark Barry of the Historical Commission stated that he had submitted the revised language on Friday, February 5, 2016 at 12:52 PM. Town Hall closes on Friday at 12:30 PM and Town Hall was also closed on Monday, February 8, 2016 due to a snowstorm. He stated that he was dismayed because the Historical Commission had responded to a number of comments and was attempting to clarify the process of obtaining a demolition delay. Ms. Grant distributed copies of the Historical Commission's latest revisions for the Planning Board members and public to review.

Mr. Bear asked if the Planning Board could consider these changes made by hardworking volunteers at a later date before Town Meeting, after Town Counsel has had a chance to review and approve them. Mr. Uitti agreed with that approach.

Ms. Massard referenced her staff report, noting a number of unresolved policy issues. She reported that the Board of Selectmen would be closing the warrant tomorrow and suggested that the Planning Board may want to close its public hearing prior to the warrant closing. She stated that staff has not had adequate time to review the latest changes. Only Town Counsel has had time to review them. She noted particular concerns with a policy requiring the owner to be the applicant and non-transferability of the certificate.

Mr. Barry stated that there are two policy matters under consideration: transferability and timing. He stated that the Historical Commission would like to find out if the town is interested in a 12-month delay or not. Mr. Wadsworth recommended that the public hearing be continued to the next Planning Board meeting on February 24, 2016 in order to give staff and the Planning Board more time to review the latest revisions.

Mr. Wadsworth stated that the Historical Commission may need to distribute a handout at Annual Town Meeting with its proposed changes, and may want to reconsider the timeline for applicants as it may not be well received. Mr. Barry stated that the Historical Commission has no intention of removing its policy changes on application timelines for demolition delays. Ms. Massard noted that if the bylaw is not approved at Town Meeting, it could not be reconsidered for two years. Mr. Wadsworth noted that there may be a motion on Town

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Meeting floor to change the demolition delay from twelve months back to the current six months. Mr. Casagrande stated that there appear to be a lot of moving parts and there would be a lot of preparation needed in order to have a bylaw ready that people could understand and support. Ms. Massard stated that she, the Building Inspector and Town Manager are all uncomfortable with the current approach and the prospect of modification at Town Meeting on a complex zoning issue. Mr. Barry thanked the Planning Board for its frank feedback and said that the Historical Commission will be meeting next week.

**MOTION:** Mr. Glennon made a motion, and Ms. Ladd Fiorini provided a second, to continue the public hearing to Wednesday, February 24, 2016 at 7:10 PM for an Annual Town Meeting on the article proposed by the Historical Commission to replace the Demolition Delay Bylaw.

**VOTE:** The motion carried unanimously, 6-0.

**RECOMMENDATION TO BOARD OF SELECTMEN REGARDING ANNUAL TOWN MEETING ARTICLE FOR STREET ACCEPTANCE OF SAW MILL ROAD (CITIZEN PETITION)**

Ms. Massard noted that Atty. Brian Cook was present to speak as a representative for the citizen petition. Several residents of Saw Mill Road were also present for the discussion. Mr. Wadsworth asked Atty. Cook to present the citizen petition.

Atty. Cook stated that of 22 property owners on Saw Mill Road, twenty belong to the Homeowners' Association (HOA), and members of the HOA are required to plow and maintain Saw Mill Road, a private way. The development was permitted through the Zoning Board of Appeals and not the Planning Board. The project went through two developers and the dwelling structures were constructed substandard. Atty. Cook stated that the homeowners have been penalized because they pay the same taxes but do not get the same services from the town. He stated that the town has not put forth a request to make a private way public in ten years, and in this case it is a private way that is a pass-through road. He stated that Saw Mill Road is no different from a public way other than it has not been accepted by the town. Atty. Cook stated that the Saw Mill Road property owners were not aware of what a private way was.

Atty. Cook stated that the process for street acceptance is complicated. Plans stamped by an engineer were required to be submitted for Town Meeting. Because the development is a 40B, some of the houses are affordable units and it is expensive to pay for plowing.

Atty. Cook asked the Planning Board members to recommend acceptance of the layout to the Selectmen, noting that it was a fairness argument. He stated that he is checking with DPW Director, Mr. Peter Buttkus, about what it would cost the town, but he stated that it would cost the town less than it is costing the homeowners. Atty. Cook noted that the road meets most but not all of the requirements for a road under the Subdivision Rules and Regulations. He stated that the drainage and pavement meet Subdivision Rules and Regulations. Additionally, he noted that the town gets reimbursed by the state for public ways.

Atty. Cook stated that the property owners have to work with the Town Clerk, Planning Board, Finance Committee and Board of Selectmen but it is up to Town Meeting to decide whether to accept the road as a public way. He stated that the HOA is willing to pay the legal expenses toward getting the road accepted.

Mr. Wadsworth noted that the Town of Duxbury has never accepted a road that was part of a 40B project. He stated a concern that property owners from other 40B developments might come forward if the town accepts Saw Mill Road.

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Mr. Uitti asked for clarification on what the Planning Board is being asked to recommend. Ms. Massard explained that Step 1 in the process of street acceptance is for the Board of Selectmen to lay out the way, and tonight the Board of Selectmen is asking the Planning Board to make a recommendation on laying out the way. Mr. Uitti asked if the plan presented is the layout in question, and Ms. Massard replied that it is. She noted that the Board of Selectmen must lay out the road before Town Meeting can vote to accept the way. The Board of Selectmen obtain written recommendations from the Planning Board and DPW Director prior to making a decision on laying out a way. The Board of Selectmen's hearing is scheduled for February 22, 2016, which meets the time requirements for Town Meeting to take action on accepting the way.

Mr. Uitti asked if the plans submitted are adequate, and Ms. Massard responded that they appear correct when compared to the As-Built plan, although the town would typically have an engineer review them to make sure. She stated that although Atty. Cook says there would be no precedent accepting the way, the Planning Board has a history of not supporting street acceptance for any subdivision that has been granted waivers. She reported that she had spoken with the DPW Director, Mr. Peter Buttkus, today and he told her there is no financial advantage to the town to accept the way. Any Chapter 90 funds provided by the state would be far outweighed by the costs and liability of the town having to maintain the road. She noted that while Atty. Cook had a good point that the road is not a cul de sac, the road was not constructed to the width required by Subdivision Rules and Regulations, and the drainage, width of berm, and other waivers of subdivision standards were granted. Ms. Massard concluded by saying that the Planning Board would essentially be making a policy recommendation to the Board of Selectmen.

Mr. Uitti asked about the economic impact of the town accepting Saw Mill Road, and Ms. Massard responded that Mr. Buttkus had told her that it would be impossible to figure that exactly because there are many variables involved. Mr. Wadsworth stated that he understands the homeowners' concerns after the worst snowfall on record last winter.

Ms. Susan Curtis of 110 High Street stated that the town does plow some private roads in town. Mr. Bear stated that he has lived on three private roads in town and he was made aware at each closing that he would be partially responsible for plowing and maintaining the private ways. Ms. Massard stated that the Town Manager can authorize plowing but the HOA would need to maintain the road otherwise under a different legal process which has not been explored.

Mr. Patrick Sullivan of 78 Saw Mill Road stated that asking an HOA to plow and maintain a road appears to defeat the purpose of a 40B development.

Mr. Henry Hong of 21 Saw Mill Road stated that the town does benefit from the development because it allows municipal employees to live in affordable housing in Duxbury, so it provides housing diversity. He noted that police monitor the road for speed.

Mr. Mike Hampton of 24 Saw Mill Road stated that accepting the road would be a small cost to the town and it does provide housing diversity. He stated that the majority of homeowners on the road have children, and his children have to walk 800 feet because the school bus will not go down a private way. He stated that he pays the same tax rate but does not receive all the services provided by the town.

Mr. Uitti stated that the homeowners bought their properties knowing they were part of an HOA. Several members of the public responded that they were not informed they were in an HOA. Mr. Uitti read the ZBA decision for the original 40B development for Duxbury Farms, stating that the HOA would be established. He stated that although the property owners are supposed to be aware of the HOA, he agreed that it is not exactly fair that a cut-through street is designated as a private way, since most private ways are on cul de sacs.

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Atty. Cook said that he is only asking for the question to go to Town Meeting. Ms. Massard stated that the request from the Board of Selectmen is a recommendation on laying out the road. She noted that a way can be laid out but not accepted, but if the road is not laid out Town Meeting cannot act on the acceptance.

Mr. Shawn Dahlen of the Board of Selectmen stated that this is not a 40B issue. Private ways are also located in Planned Developments, clusters and other unique developments. He noted that developers have a choice to submit a subdivision with a road that is to be accepted by the town. However, there are dozens of neighborhoods on private ways in Duxbury and every homeowner on these private roads pays into an HOA, and every homeowner on a private way would like the town to accept their road. The cost of the HOA is factored into the sales price of the home.

Ms. Massard stated that while the Board of Selectmen takes the final action, this is the Planning Board's opportunity to make a policy recommendation. Mr. Wadsworth stated that if the vote is favorable it would be a first in the Town of Duxbury.

**MOTION:** Mr. Uitti made a motion, and Mr. Bear provided a second, that the Planning Board recommend that the Board of Selectmen accept the layout of Saw Mill Road.

**DISCUSSION:** Mr. Bear recommended that the Planning Board members vote negative and stop the process.

**VOTE:** The motion failed 1-5, with Mr. Uitti voting in favor and Mr. Wadsworth, Mr. Glennon, Ms. Ladd Fiorini, Mr. Bear and Mr. Casagrande voting against.

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**ZBA REFERRAL, SPECIAL PERMIT: 33 MAYFLOWER AVENUE / FLEMING**

Planning Board members reviewed this special permit application to construct an 11' x 19' sunroom to a pre-existing nonconforming structure, further increasing the nonconforming coverage. Mr. Casagrande stated that he would think that the applicant should apply using the "3% rule." Ms. Massard suggested that the ZBA could re-advertise the special permit under the 3% rule.

**MOTION:** Mr. Bear made a motion, and Mr. Glennon provided a second, to recommend DENIAL to the Zoning Board of Appeals regarding Special Permit #2016-1, noting that the application should be filed under the "3% Rule" of the Town's Protective (Zoning) Bylaw.

**VOTE:** The motion carried unanimously, 6-0.

**PLANNING DIRECTOR UPDATE**

Ms. Massard provided updates to the Planning Board on the status of Annual Town Meeting zoning articles regarding the Flood Hazard Areas maps, the Planned Development bylaw, and the Inclusionary Housing bylaw.

**OTHER BUSINESS**

Engineering Invoice:

**MOTION:** Mr. Glennon made a motion, and Ms. Ladd Fiorini provided a second, to approve Amory Engineers invoice #14451 dated December 11, 2015 in the amount of \$65.00 for services related to Shantum Lane.

**VOTE:** The motion carried unanimously, 6-0.

**ADJOURNMENT**

Planning Board meeting adjourned at 10:45 PM. The next Planning Board meeting will take place on Wednesday, February 24, 2016 at 7:00 PM at Duxbury Town Hall, Mural Room, 878 Tremont Street

**MATERIALS REVIEWED**

**Public Meeting, Administrative Site Plan Review: Millbrook Auto Sales, 1474 Tremont Street / Boyd**

- Staff report dated 02/02/16
- ASPR application and materials submitted 01/12/16
- Draft ASPR decision dated 02/08/16

**ZBA Referral, Special Permit: 1474 Tremont Street / Boyd (Millbrook Auto Sales)**

- ZBA application and materials submitted to the Planning Office on 01/13/16
- Vision GIS map, aerial photo and Assessor's property card

**Continued Consolidated Public Hearing, Duxbury Planning Board and Tree Warden: Standish Street /McArdle**

- Staff report dated 02/03/16
- Public hearing notice
- MGL Chapter 87, Section 5
- Emails between N. Pickering-Cook to V. Massard et. al dated 01/11/16
- Letter from L. & A. Mahmud submitted to the Planning Board and Tree Warden via email on 01/08/16
- Scenic Road and Public Shade Tree Removal Special Permit application and materials submitted on 11/23/15
- Letter from M. Barry dated 01/25/16
- "Reader's View: Save 1812 house before trees," Duxbury Clipper article dated 01/20/16

**Continued Public Hearing, Annual Town Meeting 2016 Zoning Article: Proposed Amendments Regarding Nonconforming Uses and Structures (Zoning Bylaw Review Committee)**

- Staff report dated 02/03/16
- Article as printed in draft warrant dated 02/01/16

**Continued Public Hearing, Annual Town Meeting 2016 Zoning Article: Proposed Replacement of Affordable Housing Bylaw (Duxbury Affordable Housing Trust)**

- Staff report dated 02/03/16
- Article as printed in draft warrant dated 02/01/16
- "Article 19 – Amend Zoning Bylaws – Affordable Housing, Edited 01/12/16 DAHT"

**Continued Public Hearing, Annual Town Meeting 2016 Zoning Article: Proposed Replacement of Demolition Delay Bylaw (Historical Commission)**

- Staff report dated 02/03/16
- "Sample Demolition Delay Bylaw – Age Based," Massachusetts Historical Commission draft dated 02/03/16
- Proposed bylaw edited by S. Dahlen and submitted to PB at 01/25/16 meeting
- Proposed bylaw edited by D. Uitti and submitted to PB at 01/25/16 meeting
- "Amended Language approved by Historical Commission 2015[sic]-01-13"
- Current bylaw dated 09/01/15

**Recommendation to Board of Selectmen Regarding Annual Town Meeting Article for Street Acceptance of Saw Mill Road (Citizen Petition)**

- Staff report dated 02/02/16
- Email from V. Massard to B. Cook et. al dated 02/03/16
- Email from V. Massard to F. Mangione et. al dated 02/02/16
- Street Layout Timeline – ATM 2016, Sawmill (sic) Road Street Acceptance
- Mass Interchange newsletter dated Winter 1994
- "Memorandum to Municipal Clients" dated 01/05/2000 from Kopelman and Paige, P.C.
- "Street Acceptance Plan for Saw Mill Road ("Duxbury Farms" – Definitive Subdivision), Duxbury, Massachusetts" dated 12/22/15 with drainage easements
- Amory Engineers letter dated 11/19/2007
- ZBA Comprehensive Permit dated 06/16/05

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PLANNING BOARD MINUTES

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Approved 03/09/16

**ZBA Referral, Special Permit: 33 Mayflower Avenue / Fleming**

- ZBA application and materials submitted to the Planning Office on 01/12/16
- Vision GIS map, aerial photo and Assessor's property card

**Planning Director Update**

- "How to Know What to Wear on the TV News"

**Other Business**

- Amory Engineers invoice #14451 dated 12/11/15
- Planning Board Meeting Schedule 2016
- Construction Cost Estimates for January 2016

**Distributed at Meeting**

- Letter from Atty. J.P. Barry from Prince Lobel dated 02/04/16 and submitted to the Planning Office on 02/05/16
- Amended Language approved by Historical Commission 2016-02-05 submitted to the Planning Office on 02/10/16 via email from M. Barry
- Article 500 article as printed in draft warrant dated 02/05/16

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