

Date: May 7, 2018

Date Minutes Approved: May 21, 2018

TOWN CLERK

BOARD OF SELECTMEN

2018 MAY 23 PM 3:35

Present: Theodore J. Flynn, Chair; Shawn Dahlen, Vice Chair; and David Madigan, Clerk.

Absent: None

Staff: René J. Read, Town Manager; John Q. Adams, Finance Director; and Nancy O'Connor, Executive Assistant

CONVENED IN OPEN SESSION –

I. CALL TO ORDER The meeting was called to order at approximately 7:00 p.m.

II. OPEN FORUM

Mr. Larry Dullea of 6 East Pine Road brought forth the following documentation:

1. Letter dated June 8, 1992 from the Commonwealth of Massachusetts Department of Environmental Management to Ms. Christine Heanue of MEMA stating that the seawall is under the ownership of the Commonwealth rather than the Town as originally thought;
2. Letter dated June 18, 1992 from the Commonwealth of Massachusetts Department of Environmental Management to the Board of Selectmen chairmen regarding maintenance stating that the Commonwealth is responsible for the maintenance which is to be cost-shared with the municipality and the county as was the original construction project (Commonwealth 50%, Duxbury 25% and Plymouth County 25% - there is a question that maybe the Town is only 12.5%); and
3. End of the year report of the attorney general dated August 3, 1939 regarding maintenance and liability for injuries (this actually relates to Marshfield but provided information).

Mr. Dullea continued to say that he plans to also present these documents to the Duxbury Seawall Committee meeting, which is scheduled for Tuesday, May 8, 2018.

III. NEW BUSINESS

Special Education Reserve Fund – Continued discussion from last meeting and review of payments

Mr. Read began by providing the following explanation:

The Special Education Reserve Fund was established at the March 11, 2017 Special Town Meeting – Article 11 Special Education Reserve Fund Acceptance. This fund was established pursuant to MGL Ch. 40, Section 13E for the future payment of unanticipated or unbudgeted costs of special education, out-of-district tuition, or transportation. The expenditures require both a majority vote of the School Committee and the Board of Selectmen.

Documentation attached as follows:

1. Circuit Breaker spreadsheet showing Analysis of Revenues and Expenditures from FY13 through FY18.
2. Email from Dr. Antonucci along with Finance Committee minutes.
3. Special Education Expenditures to be approved in the amount of \$75,795.74

Dr. John Antonucci, School Superintendent, stated that the School Committee voted in favor of the Special Education Expenditures to be approved in the amount of \$75,795.74 (as required under MGL Ch. 40, Section 13E).

Mr. Flynn asked why we aren't using the leftover circuit breaker funds before we use the stabilization fund. Dr. Antonucci replied that \$13,356 (approx.) from FY13 and FY15 circuit breaker funds will be used.

Dr. Antonucci continued to explain that this year's budget for special ed revenue fund includes the \$400,000 revenue offset from stabilization and the \$650,000 offset from circuit breaker and without that, we would be short. He agreed that the \$13,000+/- should be spent (meaning on the Special Education Expenditures first before the stabilization fund).

There was some back and forth discussions between Dr. Antonucci and Ms. Betsy Sullivan (Finance Committee). Ms. Sullivan did ask if the school was prepaying for next year as well. Dr. Antonucci replied that they are currently at budget for FY18 so not sure. Ms. Sullivan also asked if the schools will contribute to the stabilization fund. Dr. Antonucci answered that if money is left over, they will put into the stabilization fund.

Mr. Madigan moved that the Board of Selectmen approve expenditures from the Special Education Reserve Fund pursuant to MGL Ch. 40, Section 13E, in the amount of \$75,795.74, as presented (using FY13 and FY15 circuit breaker funds first as agreed to by Dr. Antonucci).

Seconded by Mr. Dahlen Vote: 3:0:0

7:01 pm Continued hearing - Amendment of Liquor License (Alteration of Premises) – Peel Pizza

Mr. Madigan moved that the Board of Selectmen open the continued advertised public hearing (continued from April 23, 2018) to consider an application for an Alteration of Licensed Premises to allow Wines and Malt Beverages to be served in a roped patio section containing approximately 300sf with two tables and eight seats for Peel Holdings LLC, d/b/a Peel Pizza Co., License No. 03261-RS-0300, Brendan Higgins, Manager, located at 19 Depot Street, Duxbury, MA. Seconded by Mr. Dahlen Vote: 3:0:0

Mr. Brendan Higgins, owner of Peel Pizza was present. He stated that the beer and wine sales is a small portion of his business. He doesn't have plans for a beer garden, and he only serves beer and wine with food. Mr. Read asked him to explain his plans. Mr. Higgins responded that the landlord installed the patio last year, which includes two tables. He continued to say that they plan to add partitions/planters. Mr. Dahlen asked if public safety officials met. Mr. Read replied yes and read the conditions (part of motion below).

Mr. Flynn asked if there were any comments from the public.

Mr. Dana Narlee of 80 Bayberry Lane spoke to both requests for outdoor patios (Peel Pizza and Chestnut Street Grille). He continued to say with people outside, the noise echoes through the neighborhood and felt that the mix doesn't work. Mr. Dahlen stated that Peel Pizza is on the other side in the Duxbury Marketplace away from Bayberry Lane. Mr. Narlee replied that noise can still be heard in the summer with windows opened.

Mr. Higgins also responded saying that Peel Pizza closes at 8pm, Friday and Saturdays by 9pm, they never play music and there is only eight seats.

Mr. Read mentioned that Peel Pizza's license is an annual license and will look at it again (at renewal).

Mr. Madigan moved that the Board of Selectmen, acting as the Local Licensing Authority, approve the application for an Alteration of Licensed Premises to allow Wines and Malt Beverages to be served in a roped off patio section containing approximately 300sf with two tables and eight seats for Peel Holdings LLC, d/b/a Peel Pizza Co., License No. 03261-RS-0300, Brendan Higgins, Manager, located at 19 Depot Street, Duxbury, MA, and which application is subject to all the required conditions of the ABCC (Alcoholic Beverages Control Commission) and the following conditions of the Board of Selectmen:

1. Provide a scaled plan specifying the number of tables and seating (done);
2. The outdoor patio must be accessible to persons with physical disabilities and in full ADA compliance;
3. Must provide egress in compliance with the fire code;
4. Bollards must be placed between the parking and the seating areas, while maintaining ADA compliance;
5. No outdoor service to anyone not within the outdoor patio area;
6. The outdoor patio area must be kept clean and clear of trash and debris;
7. No loud or unnecessary noises are permitted;
8. The applicant is responsible for the good conduct of its patrons;
9. Once the applicant has received ABCC approval, they must arrange a meeting with the Municipal Services Director and the Police Chief before construction begins to ensure that all requirements have been met; and
10. The applicant is subject to any and all additional conditions imposed by the Board of Selectmen as the Local Licensing Authority.

Seconded by Mr. Dahlen Vote: 3:0:0

7:05 pm Continued Hearing - Amendment of Liquor License (Alteration of Premises) – Chestnut Street Grille

Mr. Madigan moved that the Board of Selectmen open the continued advertised public hearing (continued from April 23, 2018) to consider an application for an Alteration of Licensed Premises to allow All Alcoholic Beverages to be served in a roped off patio section containing four tables and sixteen seats for Chestnut Street Grille, LLC d/b/a Chestnut Street Grille, Emily Walker, Manager, License No. 0287-RS-0300, premises located at 8 Chestnut Street, Duxbury, MA.

Seconded by Mr. Dahlen Vote: 3:0:0

Mr. Read recommended that the Board continue this hearing until Municipal Services has had the opportunity to review additional information provided by the applicant.

Mr. Madigan moved that the Board of Selectmen, acting as the Local Licensing Authority, take the application under advisement for an Alteration of Licensed Premises to allow All Alcoholic Beverages to be served in a roped off patio section containing four tables and sixteen seats for Chestnut Street Grille, LLC d/b/a Chestnut Street Grille, Emily Walker, Manager, License No. 0287-RS-0300, premises located at 8 Chestnut Street, Duxbury, MA., and continue this hearing until Monday, May 21, 2018 at 7:05 pm. Seconded by Mr. Dahlen Vote: 3:0:0

Presentation of Government Study Committee Report / Gay Shanahan –Chair

Ms. Gay Shanahan, Chair of the Government Study Committee, stated that the committee focused on by-law changes along with other recommendations to be evaluated.

The first being an audit committee recommendation. The by-law requires that a charge be developed and approved by the Finance Committee and the Board of Selectmen. Ms. Shanahan made reference to p. 55 of the Government Study Committee's Final Report showing the draft charge with recommended ideas.

Another recommendation the committee spent time on was a building committee regarding building processes and the need for a balance of expertise. They did not propose a building committee, but recommended a process for major construction projects (pp 22-23). Since the Government Study Committee has been disbanded, they asked that the Fiscal Advisory Committee continue outlining requirements in order to evaluate big projects.

The second recommendation is the use of a "Clerk of the Works" for projects. The Fiscal Advisory Committee would recommend based on the size of a project.

Mr. Read then stated that he has talked with the Finance Committee about the audit committee and will make sure they see the draft charge.

Purchase of 892 Franklin Street / Matt Walsh for Duxbury Affordable Housing Trust

Both Diane Bartlett and Matt Walsh were in attendance from the Duxbury Affordable Housing Trust. Mr. Walsh spoke before the Selectmen. He explained the concept of the conversion project in that the committee can buy and sell real estate, which requires Board of Selectmen approval for anything over \$100,000. He continued to state that they must purchase a house offered in the public market, and this home was listed on MLS. The asking price was \$439,000, but because this purchase has not yet closed, Mr. Walsh did not feel that it was appropriate at this time to disclose the negotiated purchase price. He further stated that when they identify a house, the committee discusses in executive session, makes an offer, and conducts the appropriate inspections and appraisal to comply with procurement along with obtaining a flood certificate. After they close on the home, there is a bidding process to handle the lottery and get qualified buyers under State laws. There is also a deed restriction set in place, which the homeowners are bound to.

Mr. Dahlen then mentioned that the money to purchase the home does not come from tax payer money, but rather from developers who under 40B chose to pay the Town rather than construct 40B housing.

Mr. Madigan moved that the Board of Selectmen approves the purchase of 892 Franklin Street per the Affordable Housing Trust, as presented. Seconded by Mr. Dahlen Vote: 3:0:0

Discussion regarding Anti-Idling Law -- Presentation by Wendell Cerne, Sustainable Duxbury

Mr. Wendell Cerne spoke before the Selectmen. Mr. Cerne began by stating that it is not uncommon to see people leaving their car running and wondered if there were any regulations. He said that there is a general law and a DEP regulation. (copy provided to the Board of Selectmen) Mr. Cerne continued to say that we are a coastal town and he is here to get direction. Mr. Read then mentioned that he met with Mr. Cerne. He noticed that at Town Hall delivery people shut off their engines. He further stated that he looked up signs that can be installed, if the Board of Selectmen is amenable. Mr. Madigan replied as long as the police chief is on board. Mr. Read answered that enforcement would be the next step, but that the signs would create awareness and education. Mr. Flynn thanked Mr. Cerne for bringing this to the Board's attention.

Discussion regarding Declaration of Surplus Property – Cemetery Department

Patricia Pappas, Superintendent of Cemeteries, is requesting permission to auction off a self-contained Leaf Vac, which was originally purchased in July, 2006. A new leaf vac will be purchased July 1, 2018. The current value is not certain, but Ms. Pappas feels she can get a better value by auctioning off instead of trading in.

Mr. Madigan moved to declare as surplus one (1) Giant-Vac self-contained leaf vac, Serial Number 2000281547, in order to allow this vac to be auctioned off as further detailed in Patricia Pappas's memo of April 26, 2018. Seconded by Mr. Dahlen Vote: 3:0:0

7:30 pm Water & Sewer Commissioners: Water Commitment #4 and Water Ban

Mr. Madigan moved that the Board of Selectmen adjourn the meeting as Selectmen in order to meet as the Water & Sewer Commissioners, with the intent of re-convening as Selectmen afterward. Seconded by Mr. Dahlen Vote: 3:0:0

Water Commitment #4

Mr. Madigan moved that the Board of Water & Sewer Commissioners instruct the Treasurer to collect the total amount of **\$607,302.06** for water and sewer charges for Commitment #4 –FY'18. Seconded by Mr. Dahlen Vote: 3:0:0

Mandatory Water Ban

Mr. Madigan moved move that due to the drought conditions and in order to maintain our water supply for domestic use and fire protection, the Water & Sewer Commissioners approve mandatory outside watering restrictions effective from May 1 through September 30 every year in perpetuity until such time the State deems otherwise.

Odd numbered houses will be restricted to Tuesdays, Thursdays, and Saturdays.

Even numbered houses will be restricted to Mondays, Wednesdays, and Fridays.

All outdoor watering to be done between the hours of 4AM –8AM and 5 PM -9PM.

Seconded by Mr. Dahlen Vote: 2:1:0 (Mr. Dahlen voted nay)

Mr. Madigan moved that the Board adjourn their meeting as Water & Sewer Commissioners and reconvene as Selectmen. Seconded by Mr. Dahlen Vote: 3:0:0

IV TOWN MANAGER'S REPORT

Duxbury Beach

Total plover nests at 4 as of Saturday.

Letter to the Editor

Two recent letters to the editor in the Duxbury Clipper posed the question, "Who can serve on Zoning Board of Appeals?"

In response to that question, I offer the following:

The Duxbury Board of Appeals was established in accordance with the provisions of MGL Ch. 40A. Section 906 of the Duxbury Bylaw, entitled, "Board of Appeals," states "a Board of Appeals is hereby established which shall have all of the powers of a Board of Appeals under G. L. c. 40A. The Board of Appeals shall consist of five (5) members appointed by the Selectmen, one (1) of which shall be an attorney, and one (1) who shall conform to the requirements under the State Building Code with terms so arranged that no two (2) members' terms shall expire in one (1) year."

The current composition of the Board includes members who hold Construction Supervisors Licenses in addition to 2 attorneys, a planner, and an engineer. The Board as it exists today meets the requirements of the Duxbury Bylaw.

The Municipal Services Department has noted that the Town of Duxbury was not organized or used as a Building Code Board of Appeals as outlined in Section 113 of 780 CMR the State Building Code which was the essential concern noted in the author's letter. As such, Building Code issues do not appear before the ZBA as those issues fall under the jurisdiction of the Building Commissioner. Appeals to the Building Commissioner on building code-related issues are heard before the State's Board of Building Regulation and Standards (BBRS) under M.G.L. c. 143, § 100.

Reader's View: Who can serve on Zoning Board of Appeals?

Two simple questions were raised on the professional qualifications of the Zoning Board of Appeals on April 4, 2018. As of today, no response was received from either the Town Manager or the Board of Selectmen who approved the submitted candidates.

The qualifications are defined clearly by the Massachusetts State Building Code as follows: 122.7.3 Qualifications of local board members: each member of a local board of appeals established under 780 CMR 122.7 shall have at least five years of experience in the construction, alteration, repair and maintenance of building and building codes. At least one member shall be a structural engineer and one member a licensed registered architect.

And questions were:

1. Does Duxbury have a registered professional engineer and a licensed registered architect as members of the ZBA? The code explicitly states “and” not “or.”
2. Do members of the ZBA have at least five years of experience in “buildings” and “building codes?”

Whoever is aggrieved by an interpretation, order, requirement, direction or failure to act by the Inspectional Department may appeal to the ZBA. If the ZBA members do not meet the requirements established by the state building code, there will be basis for filing grievances by the homeowners who are aggrieved by decisions of the ZBA.

Citizens of Duxbury need answers and not benign neglect.

Yesugey Oktay
Seabury Point Road

Mr. Flynn made mention that during a March storm, the warning siren at the corner of Chandler Street and Route 14 was downed by the storm. He continued to say that the fire chief contacted Entergy, but that Entergy cannot get poles. Mr. Flynn said that this warning siren is a direct warning for the Town and this is not acceptable. Mr. Read mentioned that he would speak to the fire chief.

V COMMITTEE APPOINTMENTS/RE-APPOINTMENTS/RESIGNATIONS

Historical Commission – Kate Moriarty is resigning.

Duxbury Bay Management Commission – John Brawley is resigning.

The Selectmen thank them both for their time and dedication to these committees.

Any interested parties are encouraged to fill out a Talent Bank form.

VI ONE-DAY LIQUOR LICENSE REQUESTS

5/11 – 5/13/18 Bay Players at First Parish Church

Mr. Madigan moved that Mr. Paul McCuen, as a representative of the Bay Players, is granted a One-Day Wine & Malt License for the Bay Players live theater performance on Friday, May 11, 2018 at the First Parish Unitarian Church on 842 Tremont Street, Duxbury from 7:00 PM to 10:00 PM, contingent upon the conditions of the license. Seconded by Mr. Dahlen Vote: 3:0:0

Mr. Madigan moved that Mr. Paul McCuen, as a representative of the Bay Players, is granted a One-Day Wine & Malt License for the Bay Players live theater performance on Saturday, May 12, 2018 at the First Parish Unitarian Church on 842 Tremont Street, Duxbury from 7:00 PM to 10:00 PM, contingent upon the conditions of the license. Seconded by Mr. Dahlen Vote: 3:0:0

Mr. Madigan moved that Mr. Paul McCuen, as a representative of the Bay Players, is granted a One-Day Wine & Malt License for the Bay Players live theater performance on Sunday, May 12, 2018 at the First

Parish Unitarian Church on 842 Tremont Street, Duxbury from 2:00 PM to 5:00 PM, contingent upon the conditions of the license. Seconded by Mr. Dahlen Vote: 3:0:0

VII EVENT PERMITS - None

VIII MINUTES

Mr. Madigan moved that the Board of Selectmen approve the 04/23/18 Selectmen's Minutes, as presented. Seconded by Mr. Flynn Vote: 2:0:1 (Mr. Dahlen abstained as he was not in attendance)

IX ANNOUNCEMENTS

1. Annual Health and Benefits Fair

All benefit eligible Town /School employees/retirees, spouses, dependents, and COBRA participants are invited to the Annual Health and Benefits Fair from 4- 5:30 PM on Tuesday, May 15th at the Duxbury Senior Center. Representatives from the various health and benefits vendors will be available to answer your questions.

2. Volunteer for a Town Board or Committee:

To volunteer for a town board or committee fill out a Talent Bank form. The forms are available on the Town website or at the Selectmen's Office. Some terms end on June 30th, so now is a good time to show your interest by submitting your Talent Bank form.

3. Next Regular Selectmen's Meeting is on: Monday, May 21, 2018.

X ADJOURNMENT

At approximately 8:25p.m., Mr. Madigan moved that the Board adjourn.
Seconded by Mr. Dahlen Vote: 3:0:0

Minutes submitted by Nancy O'Connor

LIST OF DOCUMENTS (documents are kept in the Board of Selectmen files)

- 1) Agenda*
- 2) Special Education Reserve Fund documentation*
- 3) Documentation regarding Amendment of Liquor License – Peel Pizza*
- 4) Documentation regarding Amendment of Liquor License – Chestnut Street Grille*
- 5) Government Study Report*
- 6) Documentation regarding purchase of 892 Franklin Street, DAHT*
- 7) Anti-Idling Law documentation*
- 8) Documentation regarding Cemetery Department – surplus property*
- 9) Water & Sewer Commissioners – Agenda/Commitment #4/Water Ban info*
- 10) Committee resignations*
- 11) ODLL – Bay Players theater*
- 12) Draft Minutes*
- 13) Announcements*