

**Date: July 9, 2018**

*Date Minutes Approved: July 23, 2018*

TOWN CLERK

2018 JUL 24 AM 10:46

DUXBURY, MASS.

**BOARD OF SELECTMEN**

**Present:** Theodore J. Flynn, Chair; and David Madigan, Clerk

**Absent:** Shawn Dahlen, Vice Chair

**Staff:** René J. Read, Town Manager; 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. Richard Prone, the Town's representative to the MBTA Advisory Board, brought to the Selectmen's attention the need for scheduling more nightly commuter rail trains to allow those who wish to attend nightly events in Boston to have another transit option. As it stands now, if someone wants to attend a Red Sox game, they could not utilize the commuter rail system because there isn't a late enough train departing from Boston to Kingston/Plymouth. Mr. Prone has asked the Selectmen for their support by writing a letter to the MBTA Fiscal Management Control Board recommending an increase in late evening departures from South Station. Mr. Flynn and Mr. Madigan agreed to do so.

Mr. Jim Ryan of Bay Avenue approached the podium regarding the seawall. He began by asking the Selectmen if there has been a decision made regarding paying for seawall repairs. Mr. Flynn replied that there is no decision and that they will not be discussing tonight. Mr. Ryan continuing stating that they (the seawall residents) pay for Town services that they don't use and doesn't feel that \$15.42 is too much to ask other residents to pay for the seawall. Mr. Ryan asked the Selectmen to consider this option for Town Meeting.

**III. NEW BUSINESS**

***7:00pm Hearing regarding review of Liquor License Compliance Violations as follows:***

*The Oysterman  
Chestnut Street Grille  
Winsor House Inn*

*Cellar D'Or  
Red's Emporium*

Police Chief Matthew Clancy was present and addressed the Selectmen. He stated that on a regular basis, and this time prior to prom and graduation season, they send out an underage operative, following the ABCC model policy, and unfortunately, there were a handful of violations. He continued to say that the violators were first notified verbally. The other establishments who were not in violation received letters of congratulation. Chief Clancy further mentioned that these violations are all first time offenses, which require a written warning from the Selectmen. Mr. Madigan asked if all required TIPs certification. Chief Clancy responded that the on-premise locations do, but the off-premise package stores do not; however, the written warning letter will include a recommendation to get re-certified. Mr. Flynn then asked when the next go around would be. Chief Clancy replied that by policy, it is always advertised in the Clipper first.

Mr. Madigan moved that the Board of Selectmen recommend that a written warning be issued to each establishment in violation of liquor license compliance rules and regulations, and that each establishment conduct TIPs re-certification for those employees directly involved in the violation.

Seconded by Mr. Flynn    Vote: 2:0:0

***7:05 pm Public Hearing – Alteration of Premises Duxbury Beach Park II (Blakeman's)***

Mr. Madigan moved that the Board of Selectmen open the advertised public hearing to consider an application for an Alteration of Licensed Premises to allow Wines and Malt Beverages to be served in a roped off patio/tent section containing approximately 400sf for Duxbury Beach Park II, License No. 00034-RS-0300, Dana Battista, Manager, located at 435 Gurnet Road, Duxbury, MA.

Seconded by Mr. Flynn    Vote: 2:0:0

Mr. Dana Battista, Manager, stated that he has been overseeing property/Blakeman's for 19 years. He continued to say that this request is to extend their dining seating to the outside patio. He also stated that patrons are required to sit down for dinner, they cannot just sit and drink, and that dinner is available Tuesday through Sunday from 5pm – 8pm. All patrons wanting patio seating have to come through the restaurant first. There were no other comments.

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 in a roped off patio/tent section containing approximately 400sf for Duxbury Beach Park II, License No. 00034-RS-0300, Dana Battista, Manager, located at 435 Gurnet Road, Duxbury, MA, and which application is subject to all the required conditions of the ABCC (Alcoholic Beverages Control Commission) and the conditions of the license.    Seconded by Mr. Flynn    Vote: 2:0:0

Mr. Madigan moved move that the Board of Selectmen close the advertised public hearing.

Seconded by Mr. Flynn    Vote: 2:0:0

***Discussion pertaining to Chapter 61A Land – Temple Street Lots 2 & 3***

(Both the Conservation Commission and the Planning Board have voted to recommend that the Selectmen do not exercise their right of first refusal.)

Mr. Madigan moved that the Board of Selectmen do not exercise their right of first refusal for parcels known as Lots 2 and 3 located on Laurel Street and shown on a plan entitled "Plan of Land in Duxbury, Mass" dated December 4, 2017 by South Shore Survey Consultants, Inc., Lot 2 containing 65,467.933 square feet and Lot 3 containing 61,675.840 square feet, which are part of the Assessor's Parcel ID #037-022-000.    Seconded by Mr. Flynn    Vote: 2:0:0

***Acceptance of Donation from Copeland Family Foundation, Inc. for Animal Shelter***

Mr. Madigan moved that the Board accept, with gratitude, the Copeland Family Foundation, Inc., donation of \$6,000.00 for the Duxbury Animal Shelter.    Seconded by Mr. Flynn    Vote: 2:0:0

***Discussion regarding McLaughlin Pier ZBA Special Permit Application / Atty. Paul Driscoll***

Attorney Paul Driscoll, as legal representative for his clients, Mr. & Mrs. John McLaughlin, asked to speak before the Selectmen with respect to the McLaughlin's special permit application for a pier at their home on Washington Street and regarding procedural matter issues related to same. Attorney Driscoll provided an overview of this matter from the first application years ago, the legal actions that

arose, decisions rendered, and settlement - all of which ultimately led to the Conservation Commission losing their right to enforce their bylaws due to a technicality (21 day rule – document delivered on day 22). Attorney Driscoll's purpose tonight was to ask the Selectmen to direct Town Counsel Jeff Blake to withdraw Mr. Joe Grady's memorandum dated June 19, 2018 to the Zoning Board of Appeals ("ZBA") so that the memo would not be presented at the ZBA meeting scheduled for Thursday, July 12, 2018.

Attorney Blake responded to Attorney Driscoll's request stating that he reviewed the settlement agreement and feels that Attorney Driscoll is taking a broad stance as to all Town Boards and Committees being prohibited from commenting on this matter. Attorney Blake continued to say that he agreed that the Conservation Commission can no longer enforce their by-laws based on a technicality; however, through Mr. Grady's memo they are not enforcing their bylaw – they are just commenting. He further stated that the ZBA is a separate jurisdiction and is requesting information from everyone, and the Conservation Commission is not trying to enforce their bylaw.

Resident Mr. James Lampert spoke and stated that the Zoning By-Law requires the ZBA to request a response from all committees, and the Conservation Commission has always responded. And in addition, the plans currently presented to the ZBA are revisions of the previous plans. He recommended that this should play out at the ZBA.

Resident Mr. Ned Lawson also spoke. He stated that the Conservation Commission's memo under the special permit is acting in an advisory role only providing comments and input. He continued to say that the ZBA shall refer a special permit to the Conservation Commission for recommendations, and that he doesn't see anything that prevents the Conservation Commission to act under the ZBA bylaw.

Resident Attorney Kathy Palmer stated that she has followed this matter for the last nine years as she is an abutter and also the attorney for the Friends of the Bluefish group. She mentioned that the delays brought by the applicant delayed two years before going to court and it was Attorney Driscoll who rescheduled a meeting which fell on the 21<sup>st</sup> day. She continued to say that Mr. Grady was asked in the ordinary course of the special permit application and that this is a new application so all committees can comment. She further stated that the settlement didn't say that the Conservation Commission or other committees were forever prohibited from comments.

Resident Fernando Guitart approached the podium and stated that the 21 day rule document was not delivered on time, but the Judge did not say the information was incorrect.

Mr. Madigan agreed to leave it at the ZBA, and Mr. Flynn stated that the process will continue with the ZBA, Mr. Grady's memo will not be requested to be withdrawn, and no vote was needed.

#### ***Duxbury Beach Residents Association Temporary Signage Request***

Ms. Alicia Babcock, as representative of the Duxbury Beach Residents Association, was asking permission to place temporary signs on both private property and Town property. She stated that they are in the process of putting together a marketing campaign and would like to put lawn signs out now and up to the Special Town Meeting scheduled for September 6. Mr. Read stated that the Special Town Meeting is still on; and that they are expected to hear about grant money in September. And for that reason, it was recommended to hold off on the seawall article until the March Annual Town Meeting. Mr. Madigan asked if they should then hold off on the signs. Ms. Babcock stated that she

wanted to capture the summer people. Resident Susanna Sheehan asked if signs representing a Town Meeting article are allowed on public property. Mr. Read commented that political signs are not found on Town property. Ms. Babcock replied that part of the reason is for exposure because this is infrastructure. Mr. Read responded that the school project was also infrastructure and school signs were limited to private property. Ms. Babcock said that they may have a hard time finding private property on the other side of the bridge and wanted to utilize public areas to make visible. Mr. Madigan remarked that signs for all public projects that are being supported have to be on private property. Mr. Read also stated that by allowing these signs on public property may set a dangerous precedent. Ms. Candace Martin then asked if the seawall article is not on this Special Town Meeting, can they still have lawn signs. Mr. Read yields to Scott Lambiase for clarity on that.

Mr. Madigan moved that the Board of Selectmen approve the placement of temporary signs on private property, during the summer months up until the Special Town Meeting scheduled for September 6, 2018, subject to the approval of Scott Lambiase and René Read.

Seconded by Mr. Flynn Vote: 2:0:0

***7:15 PM WATER & SEWER COMMISSIONERS: Commitment #1 –FY 2017 (Supplemental) and Commitment #3-FY 2017(Supplemental)***

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. Flynn Vote: 2:0:0

Mr. Madigan moved that the Board of Water & Sewer Commissioners authorize Commitment #1 –FY 2017 (Supplemental) for a water service connection in the amount of \$100.00 and Commitment #3 – FY 2017 (Supplemental) for a water service connection in the amount of \$2,500.00.

Seconded by Mr. Flynn Vote: 2:0:0

Mr. Madigan moved that the Board adjourn their meeting as Water & Sewer Commissioners and re-convene as Selectmen. Seconded by Mr. Flynn Vote: 2:0:0

**IV TOWN MANAGER'S REPORT**

Mr. Read stated that they have applied for a \$3m State grant regarding the seawall repairs and should hear in September if granted. He continued to say that Special Town Meeting is more about stabilization spending and the seawall is ancillary to that. There are possibly two other articles - Citizens Petitions related to zoning bylaws, which we have not seen yet.

North Hill Country Club: Mr. Read also provided an update on North Hill Country Club (information from Gordon Cushing, Recreation Director). North Hill's revenues for the month of June 2018 were \$108,000, which is up from last year's revenue of \$89,000 (June 2017). Mr. Madigan asked about public feedback. Mr. Read responded that it's all positive.

Beach Update:

As of June 29, 2018, there were 24 plover pairs on Duxbury Beach. Currently, the First and Second Crossovers are both available for ORV access with an ORV capacity of approximately 410 total vehicles (205 Resident and 205 Non-Resident). On Thursday, July 12, the Second Crossover will be

closed due to another species – the least tern - reducing the overall capacity of ORV on the beach to 250 cars total (125 Resident and 125 Non-Resident).

## **V COMMITTEE APPOINTMENTS/RE-APPOINTMENTS/RESIGNATIONS**

Mr. Madigan moved that the Board of Selectmen appoint Shelia Lynch-Benttinen to the Historical Commission, for a term to expire on June 30, 2021. Seconded by Mr. Flynn Vote: 2:0:0

### **Boards and Committees Open Seats:**

The following Town boards and committees have open seats. If you are interested in serving, please complete a Talent Bank form. The Talent Bank form is available on the Town website or from the Selectmen's Office.

- *Alternative Energy Committee*
- *Design Review Board - 2 Alternate members - 1-year Terms*  
*(Design Review Board Alternates are annual appointments with order of preference given as follows: architect, landscape architect, designee of Planning Bd., lawyer, realtor, nominee of local historical societies or a contractor. (See Section 909.1 of the current Zoning Bylaw,). Anyone interested should fill out a Talent Bank form.)*
- *Duxbury Bay Management Commission 1 member - 3-year Term*  
*(DBMC has one open seat for a three year term to 06-30-21.)*
- *Economic Advisory Committee 2 members*  
1 At-Large Rep. *(to fill an unexpired seat due to expire June 30, 2019)*  
1 Business Rep. *(to fill an unexpired seat due to expire June 30, 2019)*
- *Historical Commission*
- *Sidewalk and Bike Path Committee 2 or 3? Members:*  
*One member for a three- term to expire June 30, 2021.*  
*Another member for a one-year term to expire June 30, 2019.*

## **VI ONE-DAY LIQUOR LICENSE REQUESTS**

### **07/28/18 Cape Cod Bay Challenge**

Mr. Madigan moved that Mr. Mike Chase, as a representative of the Cape Cod Bay Challenge, is granted a One-Day Wine and Malt Liquor License to hold a fundraiser event on Saturday, July 28, 2018 at Blakeman's – Duxbury Beach, from 4:00 PM to 10:00 PM, contingent upon the conditions of the license. Seconded by Mr. Flynn. Vote: 2:0:0

## **VII EVENT PERMITS -- None**

## **VIII MINUTES**

Mr. Madigan moved that the Board of Selectmen approve the 06/26/18 Selectmen's Minutes, as presented. Seconded by Mr. Flynn. Vote: 2:0:0

## **IX     ANNOUNCEMENTS**

### **1. MASSDOT Route 3 Roadwork**

Notification has been received from MASSDOT of anticipated work and ramp closures for the week of July 9-13<sup>th</sup> on the stretch of Route 3 NORTH BOUND from Exit 8 to Exit 12. The work will involve paving in the low speed (right) lane and breakdown lanes.

### **2. CALL FOR ARTICLES for SEPTEMBER 6, 2018 SPECIAL TOWN MEETING**

The Board of Selectmen invites citizens to submit articles for the September 6, 2018 Special Town Meeting. Articles must be submitted to the Town Manager's Office by 12:30 PM on Friday, July 20, 2018. The complete article language and a brief explanation of the article are required. Please contact Nancy O'Connor at 781-934-1100 x 5401 with any questions.

### **3. Next Selectmen's Meeting is on: Monday, July 23, 2018.**

## **X     ADJOURNMENT**

At approximately 8:35p.m., Mr. Madigan moved that the Board adjourn.

Seconded by Mr. Flynn   Vote: 2:0:0

*Minutes submitted by Nancy O'Connor*

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

- 1) Agenda*
- 2) Richard Prone – Handout re MBTA*
- 3) Documentation regarding liquor license violations*
- 4) Documentation regarding Amendment of Liquor License – Duxbury Beach Park II*
- 5) Documentation regarding Ch 61A Notice of Nonexercise of Right of First Refusal*
- 6) Documentation regarding Copeland donation*
- 7) McLaughlin Pier – Atty Driscoll letter and Joe Grady Memo to ZBA*
- 8) Water & Sewer Commissioners documentation*
- 9) Documentation regarding signage request*
- 10) Committee Appointments*
- 11) ODLL – Cape Cod Bay Challenge*
- 12) Draft Minutes*
- 13) Announcements*