

Date: March 7, 2022

Date Minutes Approved: 04/04/22

TOWN CLERK

2022 APR -5 AM 10:14

DUXBURY, MASS.

BOARD OF SELECTMEN

OPEN SESSION MINUTES

Present: Amy M. MacNab, Chair; Fernando Guitart, Vice Chair; Cynthia Ladd Fiorini, Clerk; Theodore J. Flynn; and Michael McGee

Absent: None

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

Others: Valerie Massard, acting Planning Director; Leslie Fields, Woods Hole Group; and Cris Luttazi, Executive Director of the DBR

CONVENED IN OPEN SESSION

I. CALL TO ORDER This meeting was called to order at approximately 7:00 pm. *Pursuant to Chapter 20 of the Acts of 2021, this meeting will be conducted in person and, as a courtesy, via remote means in accordance with applicable law. Please note that while an option for remote attendance and/or participation is being provided as a courtesy to the public and board members, the meeting/hearing will not be suspended or terminated if technological problems interrupt the virtual broadcast, unless required by law. Members of the public who wish to watch the meeting may do so by viewing the Duxbury Government Access Channels – Verizon 39 or Comcast 15. Viewers can visit www.pactv.org/duxbury for information about Duxbury programming including streaming on Duxbury You Tube, to watch replays and Video on Demand.*

II PLEDGE OF ALLIGIANCE

III OPEN FORUM PUBLIC COMMENTS

Mr. Brian Glennon acknowledged the efforts of the DPW's Tree Department for all of their excellent and tireless work during these winter storms. He also suggested putting together a group meeting on a Saturday with all board and committee members so everyone can meet each other especially since we will be getting a new Conservation Administrator and Town Planner. Ms. MacNab thought that was a good idea.

IV NEW BUSINESS

Discussion regarding Climate Resiliency Infrastructure Planning

Ms. MacNab began the discussion referencing the Town Meeting Article for Matching Grant Funding and that they asked Ms. Massard, Ms. Luttazi (DBR), and Ms. Fields to discuss what opportunities/projects that would benefit from the grant matching funds and to also prioritize those projects.

Ms. Valerie Massard, acting Planning Director, and Leslie Fields of Woods Hole spoke to this topic. Ms. Massard shared their Duxbury Resiliency Planning presentation and started by summarizing the focus on projects over a 30-year horizon, which include:

- Municipal Climate Vulnerability Assessment/Action Plan (2018)
- Snug Harbor/MAPC mini-grant (2019)
- Implementation Plans (2020-2021)
- Risk of when and the impact of sea level rise
- Looking at bridges to beach and Gurnet Road
- Small – ready to go projects (such as Powder Point Ave)

Ms. Fields added that the 2021 study identified a number of assets and ranked them by priority – top of the list of vulnerability assessment – which is the Powder Point Ave project. This area, by 2050, will undergo flooding at every high tide. This project would help against high tide events through 2070. She said that the Woods Hole Group would apply for the grants as follows: Year 1 – alternatives & preliminary design; Year 2 – Engineering design and permitting; and Year 3 – Final Design & Construction. They chose the Powder Point Ave project because it fits in the small and ready to go projects and meets grant criteria, which will also include a public education component making the grant more likely to be approved. Ms. Fields has already discussed with Duxbury Schools.

Mr. McGee thanked the Planning Board and Cris Luttazi (DBR). He mentioned Gurnet Road public safety issues and working with other Towns (Marshfield & Plymouth) and also asked if this project could be worked in. Ms. Massard stated that they are working with Marshfield on the ocean side including nourishment and that Plymouth has been approached several times, but no response. Ms. Fields also responded that Gurnet Road – at the Duxbury/Marshfield line – the Town could consider adding, but would cost a lot more because it is a low point and 6,000 feet long. Ms. Ladd Fiorini asked what the timeline is for Gurnet Road. Ms. Massard answered that for their recommendation tonight they were trying to stay small. Mr. Scott Casagrande, Planning Board, also added that Gurnet is a bit more complex whereas Powder Point Ave has less houses on the water side, which is better for lifting the road.

Ms. Massard stated again that Powder Point Ave is the top recommended project and that Snug Harbor is also a top project, but very complicated, so they were trying to focus on what we can achieve right now and felt that Powder Point Ave would be a good starting point in their professional opinion.

Ms. Luttazi added that DBR will not be able to continue to protect the barrier beach due to the cost of product and no more FEMA funding. She commented that it's important that the Town figures out how to address the list of projects and neighborhoods not being able to get to their homes. She strongly encouraged Powder Point Ave as a starting point.

Ms. Candace Martin of 59 Gurnet Road asked about the Gurnet Road project because there had been six times that she couldn't get to her home. She also stated that for matching grant funds the seawall is ready to go and wants to know what the seawall plan is as the wall is beyond its useful life. Ms. Massard replied that the costs for the seawall project are a lot more and that their current recommendation (Powder Point Ave) is a project that can be achieved with the available grant programs (grant program out mid-April, application due in May). Ms. Massard also added that for the seawall they still have to add nourishment and get the needed permits before they can even apply for grants. Ms. Martin asked again what the plan was for the seawall. Ms. MacNab stated that they have been working on that (example: nourishment). Ms. Luttazi, DBR, added that in her experience, permits need to be in place first.

There was also discussion regarding the Matching Grant funds being earmarked for the seawall. Ms. MacNab confirmed that those funds were not specifically earmarked for any one stated purpose at Town Meeting. Ms. Babcock commented that the seawall protects the Town. There was also further discussion regarding the easements regarding the beach nourishment project. Discussions were getting off topic and were brought back to the subject matter of recommending the Powder Point Ave project.

Ms. Ladd Fiorini moved that the Board of Selectmen approve the project for the Powder Point Ave elevation as presented. *Seconded by Mr. Flynn Vote: 4:0:1 (Mr. Guitart abstained)*

Discussion regarding list of possible projects to use ARPA funding – presented by John Q. Adams

Mr. Adams described the list of ARPA awards and the list of possible uses as follows and also noting that we have received \$833,214 and will receive another \$833,214 in June, 2022 for a total of \$1,666,428:

	Plymouth		
	<u>County</u>	<u>Duxbury</u>	<u>Total</u>
ARPA Award (1)	1,500,000	1,666,428	3,166,428
Released to Cities and Towns from Plymouth County	749,923		749,923
50% Released from the Federal Government		833,214	833,214

Possible Projects and Estimated Costs:

PFAS filtration	1,500,000	300,000	1,800,000
Infectious Disease Prevention Measures		TBD	0
Stormwater project tasks <i>(May have to be used under Revenue Replacement)</i>		132,200	132,200
COVID Rapid Testing Kits		5,000	5,000

Uses of ARPA funding under the "Revenue Loss" category

Technology Infrastructure - Cybersecurity		TBD	0
Use to Restore Police Beach Patrols that were cut a year ago		10,000	10,000
Restore part-time seasonal help to Lands & Natural Resources		14,000	14,000
Restore part-time seasonal help to Cemeteries		12,500	12,500
Environmental Remediation of MacNeil dump \$TBA pending testing		TBD	0
		0	0
	1,500,000	473,700	1,973,700

ARPA Award Balance	0	1,192,728	1,192,728
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(1) The amount Plymouth County will allocate has not been determined. Plymouth County will also be using county funds to initiate regional projects; therefore, not all the funds will be disbursed to Cities and Towns. Plymouth County Treasurer feels comfortable we can receive double the amount that has currently been released. This could become more or less as more project applications are processed on the County level.

The second amount directly to Duxbury from the Federal Government as a Non-Entitlement Unit (NEU) will be received in June 2022.

Mr. Adams also added coverage for the cost of infectious disease preventative measures to implement within buildings to help prevent the spread of infectious diseases.

Mr. Mike Woodford, CTO, spoke to the technology infrastructure and the need to update old equipment as some of the network equipment is ten plus years old, the need for Public WiFi connectivity and cybersecurity to provide a more secure infrastructure. Mr. McGee asked if this was part of this year's capital. Mr. Woodford replied no, but that it is part of his five-year plan.

Review and vote on the following Town Meeting Warrant Articles, as needed and as time permits

Annual Town Meeting Articles

Article 16 – Citizens' Petition – Proposed Acceptance of McLean's Way

Mr. Read read the following memo into the record:

At the time of the Board's last meeting during which the Citizen's Petition to accept McLean's Way was discussed, it appears that there was some confusion and perhaps some degree of misunderstanding with respect to the status of the roadway associated with the McLean's Way subdivision. Since that time, our office has had a chance to obtain additional information related to this article, which hopefully helps to illustrate a clearer picture. Specifically:

- 1. The Planning Board's decision of May 22, 2015, approving the McLean's Way subdivision;*
- 2. The Planning Board's letter of June 16, 2020, to Mr. Reinhalter regarding the Certificate of Completion*
- 3. A letter, dated today, from the Planning Board Review Engineer, Peter Palmieri, P.E., confirming that the construction work outlined in their Inspection Reports was satisfactorily performed and was completed in compliance with Town of Duxbury Subdivision Rules and Regulations.*

Upon further review, the Planning Board's decision of May 22, 2015, approving the McLean's Way subdivision was clear in stating, under Condition #8, that, "upon completion of the roadway and issuance of As-Built approval, the applicant may petition Town Meeting for street acceptance." Additionally, in their June 16, 2020, letter to Mr. Reinhalter regarding the Certificate of Completion, the Planning Board stated that the "Duxbury Planning Board voted unanimously at its meeting on June 1, 2020, to accept the As-Built Plan, and find that the subdivision is complete."

And finally, in his March 7, 2022, letter to me, the Planning Board Review Engineer, Peter Palmieri, P.E., stated that, "as the Planning Board Review Engineer for the above project this letter is to confirm that the construction work outlined in our Inspection Reports submitted to you earlier today has been satisfactorily performed and has been completed in compliance with Town of Duxbury Subdivision Rules and Regulations."

Citizen's Petitions for the acceptance of a roadways are rare in Duxbury (and elsewhere for that matter) as there are a series of steps that must take place in order for such a proposal to be

successful. The process for acceptance is typically driven by either Planning Board or Board of Selectmen sponsored articles. Though well-intended (as was the case here) a Citizen's Petition for the acceptance of a roadway is a bit trickier largely because of the manner in which the review of the article takes place. To be perfectly clear, and after having spent a considerable amount of time looking into the proposal, it's apparent that there were no real errors made here – no one was misled or lied to about the road taking process; no promises were either made or broken and there is no blame to be established – what did happen was that time got the best of us all. And while the Board of Selectmen may possibly have an interest in ultimately recommending Article 16 to the voters at Town Meeting, there is a technical reason why that cannot happen at this time.

In my discussions with Town Counsel on this subject, she has opined that “there are steps that need to be taken before the acceptance can be voted on at Town Meeting:

1. The Selectmen need to give notice to the abutters of a meeting at which they consider the layout of the way, such notice to be given at least 7 days prior to the Selectmen's meeting;
2. The Selectmen, at or after the meeting, vote to lay out the road as a public way;
3. The approved layout is filed with the Town Clerk 8 days prior to Town Meeting; and
4. Town Meeting votes to accept the layout.

Here, since the Selectmen previously voted not to lay out McLean's Way as a public way, they need to hold a new meeting, notice of which is given at least 7 days in advance to the abutters. Thus, unless notice has already been given to the owners by February 28, the Selectmen cannot lay out the roadway tonight. Even if the Selectmen could lay out the road as a public way tonight, Town Meeting is on March 12, which is 5 days away. Since the approved layout needs to be on file with the Town Clerk at least 7 days in advance, it is too late for the Selectmen to adopt the layout now and to have the approved layout with the Town Clerk for 7 days prior to Town Meeting.

One could argue that the approved layout has been on file with the Town Clerk, but, since the courts require strict compliance with the statutory requirements, I recommend that the article be passed over or postponed indefinitely.”

I discussed all of this with Dr. Reinhalter earlier today and he understands the situation. I have explained to him that in advance of the next Town Meeting (Special or Annual), an article will be drafted for the acceptance of Mclean's Way as a public road and it will be brought before the Board of Selectmen for their consideration for inclusion into the warrant.

With that, I recommend the following motion for the Board's consideration (as opposed to the two motions previously included in your packets this evening):

-----move to recommend that Article #16, a Citizen's Petition for the proposed acceptance of McLean's Way as a public way, in the March 12, 2022 Annual Town Meeting warrant be Indefinitely Postponed.

It is unfortunate that we've run out of time and that the article cannot go forward at this time and appreciate Dr. Reinhalter's (and the neighborhood's patience), but I believe we will all be better informed in the future as a result of this experience.

Ms. Ladd Fiorini moved to recommend that Article #16, a Citizen's Petition for the proposed acceptance of McLean's Way as a public way, in the March 12, 2022 Annual Town Meeting warrant be Indefinitely Postponed.

Seconded by Mr. Flynn Vote: 5:0:0

Article 25 – Proposed Transfer of Land from Tax Title to the Duxbury Affordable Housing Trust (On hold – no vote taken. To be discussed morning of Town Meeting)

Special Town Meeting Articles

Article 1 – Supplemental Appropriations

Ms. Ladd Fiorini moved that the Board of Selectmen support and recommend the March 12, 2022 Special Town Meeting Article #1 regarding Supplemental Appropriations, as presented.

Seconded by Mr. Flynn Vote: 5:0:0

Article 8 – Matching Grant Funds

Ms. Ladd Fiorini moved that the Board of Selectmen support and recommend the March 12, 2022 Special Town Meeting Article #8 regarding Matching Grant Funds, as presented.

Seconded by Mr. Flynn Vote: 5:0:0

Discussion regarding Seasonal Liquor Licenses, Common Victualler and parking license for Duxbury Beach Park and Duxbury Package Store

Duxbury Beach Park

Ms. Ladd Fiorini moved that the Board of Selectmen, as the Local Licensing Authority, approve and renew the following Seasonal On-Premises Wine & Malt Beverages License issued to Duxbury Beach Park 2 (License #: 00034-RS-0300) for the calendar year 2022, subject to satisfactory inspection by the Town, submission of all required documents, and payment of all funds/fees owed to the Town of Duxbury, and the conditions on the license. *Seconded by Mr. Flynn Vote: 5:0:0*

Ms. Ladd Fiorini moved that the Board of Selectmen renew the Common Victualler License and General License (for Parking) issued to Duxbury Beach Park 2 for the year 2022, subject to Town inspections, the receipt of all renewal paperwork and payment of all funds/fees owed to the Town of Duxbury. *Seconded by Mr. Flynn Vote: 5:0:0*

Duxbury Package Store

Seasonal Liquor Licenses are effective from April 1 through November 30, unless extended by the Local Liquor Authority (LLA) to January 15. That extension was granted to Duxbury Package Store, Inc. in 2021 and they are once again asking to extend to January 15, 2023. The Selectmen need to approve of the extension to January 15 annually

Ms. Ladd Fiorini moved that the Board of Selectmen, as the Local Licensing Authority, approve and renew the Seasonal Off-Premises All Kinds of Alcohol Beverages license issued to Duxbury Package Store, Inc. (License #: 00046-PK-0300) effective from April 1, 2022 through January 15, 2023, subject to satisfactory inspection by the Town, submission of all required documents, and payment of all funds/fees owed to the Town of Duxbury, and the conditions on the license.

Seconded by Mr. Flynn Vote: 5:0:0

Discussion regarding General License for Surf Dogz – J. Bertoni

Applicant(s): James Bertoni d/b/a Surf Dogz

Type of Establishment: Mobile Hot Dog/food Cart

The applicant has applied for a General License for the operation of a food truck for the preparation and serving of hot dogs during Spring 2022 baseball, softball, and Lacrosse events only located at designated fields, and provides a list of date/time/location of events attending, and the applicant has met all of the listed conditions required for a general license.

Ms. Ladd Fiorini moved that the Board of Selectmen approve a General License for James Bertoni, d/b/a Surf Dogz, contingent upon the following:

- Receipt of a completed Workers' Compensation Insurance Affidavit
- Proof of Worker's Compensation Coverage (if applicable)
- Completion of all Board of Health, Fire Department, and Municipal Services Department inspections and receipt of all appropriate permits / licenses.
- Payment of License Fee
- R.E.A.P. Certification (i.e., Tax ID)
- Receipt of a Business Certificate from the Town Clerk's Office.

Seconded by Mr. Flynn Vote: 5:0:0

V TOWN MANAGER'S REPORT

Mr. Read reminded everyone that we are having our Annual Town Meeting on Saturday, March 12, 2022 at Duxbury High School and also Town Elections on Saturday, March 26, 2022.

VI COMMITTEE APPOINTMENTS/RE-APPOINTMENTS/RESIGNATIONS

Ms. Ladd Fiorini moved that the Selectmen recognize the following resignations of Dan Coughlin from the Sidewalk & Bike Path Committee. *Seconded by Mr. Flynn Vote: 5:0:0*

VII ONE-DAY LIQUOR LICENSE REQUESTS None

VIII EVENT PERMITS

Ms. Ladd Fiorini moved that Mr. Paul Curley, as representative of the Best Buddies Challenge Hyannisport, and participants in the 23rd Annual Best Buddies Challenge bicycle ride to be held on Saturday, June 4, 2022 are granted permission to travel through Duxbury and to use the Duxbury Senior Center as a rest stop, contingent upon the conditions of the license.

Seconded by Mr. Flynn Vote: 5:0:0

IX MINUTES

Ms. Ladd Fiorini moved to approve the 02/07/22 Selectmen's Executive Session Minutes as presented and amended, with the contents to remain confidential until the need has passed.

Seconded by Mr. Flynn Vote: 5:0:0

Ms. Ladd Fiorini moved to approve the 02/28/22 Selectmen's Open Session Minutes, as presented and amended. Seconded by Mr. Flynn Vote: 5:0:0

X ANNOUNCEMENTS

1) Annual Town Meeting – Saturday, March 12, 2022

Reminder that the Annual / Special Town Meeting will be held on Saturday, March 12, 2022 beginning at 9:00am in the Duxbury High and Middle School gymnasiums (enter at High School entrance only). Registration starts at 8:00am.

2) Beach Stickers, Transfer Station Stickers and Recreational Shellfish License applications are available on the Town's website under online payments. The current season expires 3/31/2022.

3) Duxbury Beach Spring Sweep 2022: Duxbury Beach Reservation is conducting their annual beach clean-up on Saturday, March 19, 2022 from 10am – 1pm. With keeping public health concerns in mind, they are asking everyone to register online and follow their clean-up rules. All can be found at www.duxburybeachreservation.org/clean-up

4) Next Scheduled Selectmen's Meeting will be on Monday, March 21, 2022 at 7:00pm. (no meeting March 14)

XII ADJOURNMENT

Ms. Ladd Fiorini moved that the Board of Selectmen adjourn at approximately 9:45pm.
Seconded by Mr. Flynn Vote: 5:0:0

Minutes submitted by Nancy O'Connor

LIST OF DOCUMENTS

- 1) BOS Agenda
- 2) Documents regarding Climate Resiliency including Power Point Presentation
- 3) Document regarding ARPA Funding
- 4) Seasonal Liquor License documentation
- 5) General License – Surf Dogz documentation
- 6) Resignations
- 7) Event Permits
- 8) Minutes
- 9) Announcements