

Date: January 9, 2023

Date Minutes Approved: 01/23/2023

TOWN CLERK

2023 JAN 24 AM 11:43

DUXBURY, MASS.

SELECTBOARD

OPEN SESSION MINUTES

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

Absent:

Staff: René Read, Town Manager; and Michelle Seda-Stotts, Principal Assistant.

Others: Jake Emerson, Harbormaster; Attorney Tim van der Veen, Scott Casagrande, Chair-Planning Board, Brian Glennon, PB-member

CONVENED IN OPEN SESSION (*in-person and Via remote participation by Zoom*)

I. CALL TO ORDER This meeting was called to order at approximately 6:30 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. A transcript or other comprehensive record of proceedings will be available as soon as possible after the meeting. 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. EXECUTIVE SESSION

6:30pm Executive Session – *Collective Bargaining*

For the purpose of discussing strategy with respect to collective bargaining since an open meeting may have a detrimental effect on the litigating and bargaining position of the Town.

Mr. Guitart moved we go into Executive Session for the purpose of:

Discussing strategy with respect to collective bargaining (Police, Fire, and Dispatchers) since an open meeting may have a detrimental effect on the litigating and bargaining position of the Town; if the Chair so declares, in accordance with Mass. General Laws Chapter 30A, section 21, and that the Board will adjourn and re-convene in Open Session on or about 7:00pm immediately after completion of this Executive Session.

“Mr. Guitart, As Chair, declared that the necessity for an Executive Session to conduct strategy sessions in preparation for contract negotiations as to do so in an Open Session may have a detrimental effect on the Town’s bargaining, strategizing and negotiating position.”

Seconded by Mr. Flynn Roll Call Vote: Mr. Guitart-Aye; Ms. Ladd Fiorini-aye; Mr. Flynn-Aye; and Ms. MacNab-Aye (Mr. McGee arrived after the Call to Order)

Motion To Adjourn Executive Session

After the business of Executive Session was completed, Mr. McGee moved that the Selectboard adjourn the Executive Session and re-convene in Open Session on or about 7:00pm.

Seconded by Ms. MacNab Mr. Guitart-aye; Ms. Ladd Fiorini-aye; Mr. McGee-aye; Ms. MacNab-aye; and Mr. Flynn-aye

III OPEN FORUM PUBLIC COMMENTS

No comments from the public.

IV NEW BUSINESS

7:05pm – Public Hearing – 2023 Aquaculture Float Renewals

Open Public Hearing:

Mr. McGee moved that the Selectboard open the aquaculture float license public hearing advertised in the *Duxbury Clipper* on December 21, 2022 regarding aquaculture float license renewal applications from the aquaculture grant holders named in the notice.

Seconded by Mr. Flynn Roll Call Vote: Mr. Guitart-aye; Ms. Ladd Fiorini-Aye; Mr. McGee-Aye; Ms. MacNab-Aye; and Mr. Flynn-Aye

Mr. Jake Emerson, Harbormaster, said that these are the annual aquaculture float applications, which allows the processing, sorting, and upwelling of shellfish product in designated areas. Mr. Emerson stated that the Shellfish Advisory Committee met on 12/7/2022 to discuss the applications and voted to recommend that the Selectboard approve the applications.

Mr. McGee moved that the Selectboard approve the float license renewal applications submitted by the following applicants:

Arthur Bennett, William Bennett, Mark Bouthillier, Brad Doyle, Scott Doyle, Michael George, Stephen Gilbert, Joseph Grady, Christian Horne, Robert Knecht, Benjamin Lloyd, Victoria Lloyd, John McCluskey, William McCormick, Donald Merry, Gregory Morris, Christopher Phillips, Joseph Pierce, Peter Prime, Kevin Thomson, and Brian Zec

and, as required by MGL 130 sec 57-68, grant permission to conduct activities as outlined by the Management Plan- (Designated Aquaculture Area, Federal Anchorage, DBMS Upweller–Aquaculture Float) pending all Federal, State, and local reviews and approvals.

Seconded by Ms. MacNab Roll Call Vote: Mr. Guitart-aye; Ms. Ladd Fiorini-Aye; Mr. McGee-Aye; Ms. MacNab-Aye; and Mr. Flynn-Aye

Mr. McGee moved that the Selectboard close the aquaculture float license public hearing.

Seconded by Ms. MacNab Roll Call Vote: Mr. Guitart-aye; Ms. Ladd Fiorini-Aye; Mr. McGee-Aye; Ms. MacNab-Aye; and Mr. Flynn-Aye

7:05pm – Public Hearing –Proposed Harbormaster fee changes

This hearing is a continuation of the Fee Hearing held on December 12, 2022 to discuss Harbormaster Fee Requests only.

Continue Public Hearing:

Mr. McGee moved that the Selectboard continue the public hearing recessed from December 12, 2022 regarding proposed fee changes for the Harbormaster Department. This was re-advertised in the Clipper on 12/28/22 and 1/4/23.

Seconded by Mr. Flynn Roll Call Vote: Mr. Guitart-aye; Ms. Ladd Fiorini-Aye; Mr. McGee-Aye; Ms. MacNab-Aye; and Mr. Flynn-Aye

Mr. McGee wanted to give the residents time to comment on the fees. Mr. Emerson had not received any negative feedback or comments. They have been delaying the renewals for the mooring permits. Mr. Read also commented that they have not heard anything and that the bills will go out later, will they be due at same time? Mr. Emerson stated they will be extending the due date to allow for the same amount of time to renew.

Motion:

Mr. McGee moved that the Selectboard approve the fee changes proposed by the Harbormaster as presented, and as recommended by the Fiscal Advisory Committee, with new fees starting effective January 1, 2023.

Seconded by Ms. MacNab Roll Call Vote: Mr. Guitart-aye; Ms. Ladd Fiorini-Aye; Mr. McGee-Aye; Ms. MacNab-Aye; and Mr. Flynn-Aye

Mr. McGee moved that the Selectboard close the public hearing regarding proposed fee changes.

Seconded by Ms. MacNab Roll Call Vote: Mr. Guitart-aye; Ms. Ladd Fiorini-Aye; Mr. McGee-Aye; Ms. MacNab-Aye; and Mr. Flynn-Aye

Discussion and vote on intention to Lay Out Evergreen Terrace as a Public Way and refer the layout to the Planning Board.

Mr. Read stated that after receiving a Citizens Petition requesting Evergreen Terrace to be accepted as a public way and as advised by KP Law, the Selectboard needs to vote its intention to lay out Evergreen Terrace as a public way (vote below) and then refer the layout to the Planning Board for its nonbinding recommendation (referral attached). At a later meeting, the next step is to adopt an Order of Layout, laying out Evergreen Terrace as a public way, at a public meeting, after the Planning Board has submitted its report and the Town has given Notice of the public meeting.

Here is the timeline as provided by Town Counsel:

1. Selectboard meeting 1/9/23 – Selectboard votes its intention to lay out Evergreen Terrace as a public way and refers the layout to the Planning Board;
2. Planning Board has 45 days to make a nonbinding recommendation;
3. Selectboard sends notice of Selectboard meeting to abutters and posts in a public place at least seven (7) days prior to the Selectboard meeting;
4. Selectboard holds meeting and adopts Order of layout – 2/27/23 (no later than 3/1/23);
5. Selectboard files Order of Layout and Plan with Town Clerk no later than 3/2/23; and
6. Annual Town Meeting vote on Citizens' Petition to accept layout – March 11, 2023

Mr. Casagrande stated that they have not had the opportunity to review or recommend the plan. Ms. MacNab inquired about the completion of the development, in which she was told it had been completed. Mr. van der Veen, attorney for the developer, confirmed the lots have been built out and sold. The roadway has been completed and the Planning Board has accepted the "as built" plan for the roadway. Mr. Glennon commented that the Planning Board has approved a way for access but does not automatically imply it should be a public way. Ms. MacNab stated that they need the recommendation from the Planning Board and, other departments, to determine that the road was designed and approved and built-in accordance with subdivision rules and regs for a Public Way. If it wasn't then it should not be accepted as a public way because then it becomes a burden and a cost to the Town.

Suggested motion:

Motion of Intention to Lay Out Evergreen Terrace as a Public Way

Mr. McGee moved that the Selectboard vote to acknowledge the Citizens Petition to lay out Evergreen Terrace as a public way, all as shown on a plan entitled "Street Acceptance Plan for Evergreen Terrace Duxbury, Massachusetts", dated December 8, 2022, prepared by McKenzie Engineering Group, which plan is on file with the Town Clerk, and to forward this vote and the plan to the Planning Board for its comments and recommendations pursuant to G.L. c. 41, §§81G and 81I.

Seconded by Mr. Flynn Roll Call Vote: Mr. Guitart-aye; Ms. Ladd Fiorini-Aye; Mr. McGee-Aye; Ms. MacNab-Aye; and Mr. Flynn-Aye

Discussion and vote on Seawall Easement Takings for Beach Nourishment Project.

Mr. Read read the following memo:

Attached hereto you will find two Orders of Taking (one for registered land and one for recorded land) for the Board's review and execution.

As you may recall, this was previously presented to the Board on November 21, 2022; however, you need to execute again because the prior vote and Orders of Taking expired in 30 days.

Below is Attorney Everett's original explanation for the taking:

All of the owners of the parcels of land have signed a Grant of Easement, donating the permanent easements to the Town. However, none of the lenders that have mortgages on these parcels of land gave permission to the owners to grant the easement to the Town. If the Town records the Grant of Easement and a lender forecloses on a mortgage, the foreclosure will terminate the Town's easement rights. The Town needs to take the easements by eminent domain in order to protect its easements because, by law, an easement taken by eminent domain cannot be terminated by foreclosure. The taking will ensure that the easements will last permanently. Please note that all the Grant of Easements signed by the property owners explicitly authorize the Town to take the easements by eminent domain. Once the Order of Taking is on record, the Town will send written notice of the taking to the owners and their lenders.

Counsel recommends that the Board take the following vote:

I move, pursuant to the vote taken under Article 18 of the May 15, 2021, Annual Town Meeting, to take by eminent domain permanent easements in, on, under, across and along certain parcels of land located on Bay Avenue, Cable Hill Way, Ocean Road South, Ocean Road North, Gurnet Road, and Lewis Court and identified more particularly in the Order of Taking prepared by Town Counsel for public access purposes and for the purpose of undertaking a dune nourishment project, and to execute, and to authorize the Chair to execute, on behalf of the Selectboard, the Order of Taking and any and all other documents related thereto, and award no damages for said taking.

Finally, the easements that the owners have signed will be kept in a secure place at Town Hall, as they are evidence that the owners donated their easements to the Town.

Mr. McGee moved, pursuant to the vote taken under Article 18 of the May 15, 2021, Annual Town Meeting, to take by eminent domain permanent easements in, on, under, across and along certain parcels of land located on Bay Avenue, Cable Hill Way, Ocean Road South, Ocean Road North, Gurnet Road, and Lewis Court and identified more particularly in the Order of Taking prepared by Town Counsel for public access purposes and for the purpose of undertaking a dune nourishment project, and to execute, and to authorize the Chair to execute, on behalf of the Selectboard, the Order of Taking and any and all other documents related thereto, and award no damages for said taking..

Seconded by Ms. MacNab Vote: 5:0:0

Discussion and vote (if applicable) on Seawall Committee recommendations related to betterment percentage to be paid by Town taxpayers and the percentage to be paid by seawall/beach residents

Mr. Read read his Memo to the Selectboard in which, to summarize, the Seawall Committee was tasked with their recommendation on the percentages of betterments that would be paid by the Town and the homeowners in each of the tiers. Ms. Palmieri Babcock, Chair of the Seawall Committee, presented their recommendation. Mr. Guitart summed it up after the presentation, stating that the Seawall Committee does not feel comfortable paying any betterments and would like the Town to hire a Grant writer, to access the funds provided by available grants. They also would like to get a definite number to repair and replace the existing seawall. Mr. Flynn stated that the Town should take responsibility and begin to allocate funds for this project. Mr. Guitart suggested breaking it up into

phases. Mr. McGee stated that we need to take advantage of funds available by hiring a consultant. Maybe asking other communities how they are achieving funds. Ms. Martin stated there are funds being offered, and there is a seawall grant currently open, we just need to apply by 2/17.

Mr. Read wanted to confirm that the Seawall Committee was recommending 0% in Betterments. Ms. Palmieri Babcock confirmed. Mr. Guitart stated that they have work to do and are not ready to submit a warrant article. The first thing is they need to establish is a clear course of financial responsibility. Secondly, we need to develop an unbiased picture of the impacts to the town if not rebuilding the wall. Thirdly, how are other Towns accessing grants. Finally, getting a grant writer to help with accessing these funds. Ms. MacNab stated that she had hoped the committee would have proposed some betterments but it looks like they are going to have to postpone. The Selectboard did agree that they should look into hiring a grant writer, preferably one whose salary would be paid for by a grant. They also agreed to ask Mr. Brennan to put the project out to bid in order to have actual numbers to bring to Town Meeting. Mr. Read agreed to contact Mr. Brennan and get back to them before their next meeting on January 23rd. They will also need to close the warrant at that meeting, and decide if they are keeping the Seawall project on the warrant or taking it off because they have not found a way of funding it.

V TOWN MANAGER'S REPORT

Mr. Read distributed copies of the draft Warrant, stating that Article 18 was being removed and they would be closing the warrant at their next meeting on January 23rd.

VI COMMITTEE APPOINTMENTS/RE-APPOINTMENTS/RESIGNATIONS

Mr. McGee moved that the Selectboard appoint or re-appoint the following:

Affordable Housing Trust

Stephan Marshall – fill unexpired term	Appointment	06-30-2024
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Board of Appeals (Zoning)

Philip Thorn – fill unexpired term	Appointment	06-30-2024
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Seconded by Ms. MacNab Vote: 5:0:0

The following boards/committees have available seats:

Duxbury Seawall Committee	-	one seat
Local Historical District Commission-		one seat (alternate)
Open Space Committee	-	one seat
Sidewalk & Bike Path Committee	-	one seat

Comments: If anyone is interested in volunteering on a board or committee, you are encouraged to fill out a Talent Bank form, which can be found on the Town's website under the Employment & Volunteering tab.

VII ONE-DAY LIQUOR LICENSE REQUESTS

Mr. McGee moved That Ms. Samantha Allen, as a representative of Law Mom, LLC, is granted thirteen (13) One-Day Wine & Malt Licenses for their monthly Wine & Wills events to be held at 5 Chestnut Street, Duxbury, (see list below for dates), from 7:00 pm to 9:00 pm, subject to the conditions of the licenses.

Thursday, January 19, 2023
Thursday, February 16, 2023
Thursday, March 16, 2023
Thursday, April 13, 2023
Thursday, April 27, 2023
Thursday, May 11, 2023
Thursday, May 18, 2023

Thursday, August 24, 2023
Thursday, September 21, 2023
Thursday, October 12, 2023
Thursday, October 19, 2023
Thursday, November 2, 2023
Thursday, December 7, 2023

Seconded by Ms. MacNab Vote: 5:0:0

VIII EVENT PERMITS - None

IX MINUTES

Mr. McGee moved to approve the 09/12/22 Selectboard Open Session Minutes, as presented
(Cindy to abstain, not present)

Seconded by Mr. Flynn Vote: 4:0:1 (Ms. Ladd Fiorini-abstained, not present)

Mr. McGee moved to approve the 09/26/22 Selectboard Open Session Minutes, as presented.
(All can vote)

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

Mr. McGee moved to approve the 10/03/22 Selectboard Open Session Minutes, as presented.
(All can vote)

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

Mr. McGee moved to approve the 12/12/22 Selectboard Open Session Minutes, as presented
(Amy and Cindy to abstain, not present)

Seconded by Mr. Flynn Vote: 3:0:2 (Ms. MacNab and Ms. Ladd Fiorini abstained-not present)

Mr. McGee moved to approve the 12/23/22 Selectboard Open Session Minutes, as presented
(Cindy and Mike to abstain, not present)

Seconded by Mr. Flynn Vote: 3:0:2 (Mr. McGee and Ms. Ladd Fiorini-abstained, not present)

X ANNOUNCEMENTS

1) Waiting Lists for Commercial Mussel & Razor Clam Licenses:

Just a reminder that individuals on the Waiting Lists for Commercial Mussel and Razor Clam Licenses must renew their application annually within the month of January. The sign-up sheets are posted in the Selectmen's office.

2) Martin Luther King Jr. Holiday:

The Town Hall will be closed on Monday, January 16th in observance of Martin Luther King Jr. Day. There will not be a Selectboard meeting.

3) Next Scheduled Selectboard's Meeting will be on Monday, January 23, 2023.

XI ADJOURNMENT

Mr. McGee moved that the Board of Selectmen adjourn at approximately 9:35pm.

Seconded by Mr. Flynn Roll Call Vote: Mr. Guitart-aye; Ms. Ladd Fiorini-Aye; Mr. McGee-Aye; Ms. MacNab-Aye; and Mr. Flynn-Aye

Minutes submitted by Michelle Seda-Stotts

LIST OF DOCUMENTS

- 1) SB Agenda*
- 2) Aquaculture Float License Renewals*
- 3) Propose Harbormaster Fees*
- 4) Layout of Evergreen Terrance as a Town Way*
- 5) Memo regarding Beach Nourishment Order of Taking*
- 6) Memo from RJR regarding proposed betterments/Seawall Committee presentation*
- 7) Committee Appointments/Re-Appointments/Resignations*
- 8) ODLL – Wine & Wills by Law Mom*
- 9) Minutes*
- 10) Announcements*