

Date: May 16, 2022

Date Minutes Approved: 06/13/22

TOWN CLERK
2022 JUN 14 AM 9:03
DUXBURY, MASS.
OPEN SESSION MINUTES

DUXBURY SELECTBOARD

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

Absent:

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

Others: Paul Brogna, Co-Chair, HSC; Jeff Lewis, Co-Chair, HSC; Deputy Chief Mike Carbone, DPD; Chief Kevin McDonald, DPD; Frank Holden, resident 330 Powder Point Avenue; Jeff Palmer, resident 10 Powder Point Avenue.

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

During Open forum Mr. Frank Holden, resident at 330 Powder Point Avenue, and Mr. Jeff Palmer, resident at 10 Powder Point Avenue, made the following statements to the Selectboard:

Mr. Holden began by sharing a letter he wrote to the Selectboard addressing the recent appeal's court decision in favor of Mr. McLaughlin.

Monday, May 16, 2022

Letter to the Town of Duxbury's Board of Selectmen

As many of you know, the Town of Duxbury has been engaged in a lengthy 12year dialog with Mr. McLaughlin regarding his desire to build a pier at 685 Washington Street. This dialog started with his first application to the Conservation Commission, which was denied based on the Town's regulations and the State's regulations. After his appeal was reviewed, the court sent the issue back to the Conservation Commission and asked them to allow the applicant more time for his presentation.

His second application to the Conservation Commission was presented and debated over the course of two years and it was also denied. Another Judge ruled that the Town failed to formally inform Mr. McLaughlin of the denial within the required time limit which we emphasize has no relationship to the reasons why the Conservation Commission denied his application.

Mr. McLaughlin's third application to the Zoning Board of Appeals was also denied based again on the deliberation of the Board and the Town's by-laws and regulations. Mr. McLaughlin's third appeal was ruled in favor on May 9th, 2022 and in a very unusual ruling ordered the Zoning Board of Appeals to approve a special permit allowing Mr. McLaughlin to proceed with building a pier without any additional debate.

Mr. McLaughlin has been very persistent in seeking a permit to build his pier. His winning of his third appeal should not distract you from the reasons why the two Boards based on the Town of Duxbury's supporting regulations and by-laws denied his requests three times. The first two denials were based on process issues and not on the merits of the Conservation Commission's decisions or the quality of their regulations.

The recent third appeal raises lots of reasons as to why the Judge's ruling should be challenged. The Judge's unusual reasoning and written ruling should be addressed by others. I only note here that without appealing this last decision the ruling, in essence, negates and discards the twelve years of work done by these Boards but also negates and discards the credibility of the Town's by-laws, regulations and governance processes.

On behalf of a large number of Duxbury residents, and on my own, strongly encourage the Selectboard and the Town's Counsel to file an appeal within the 30-day time limit, and support its Conservation Commission, its Zoning Board, their staff and their regulations and file an appeal to reverse the last Judge's ruling.

Mr. Jeff Palmer, an attorney, resides at 10 Powder Point Avenue, shared his issues with Judge Smith's decision:

- 1. Finding decision on 21-day rule as somehow relevant to his consideration of the validity of the ZBA's decision; finding relevant DEP's superseding order of conditions in his consideration of the validity of the ZBA's decision.*
- 2. Reliance on the engineer's and builder of the pier's opinion as an expert to delineate the wetlands area.*
- 3. In determining, contrary to the ZBA's finding, that the pier ended in a tidal flat, the judge simply ignored the DEP's definition of "tidal flat" contained in its regulations and instead relied on the "experience" of the applicant's paid expert and engineer.*
- 4. The judge reasons, following Plaintiff's expert's logic, that because there is no regulatory definition of "tidal creek", one must look to the definition of "creek", but then cites a regulation defining "streams" not "creeks", and completely ignores the fact that the words "tidal creek" should not be parsed but together refer to a delineated area within the salt marsh. Even if the definition of "stream" were to apply, the judge omits that part of the definition that states: "stream means a body of running water...which flows **within, into or out of an area subject to Protection under M.G.L c. 131, §40.**" Coastal wetlands, including salt marsh and tidal flats ARE Areas subject to Protection under MGL., ch.131, s.40. The judge also ignores the Guide for Coastal Zone Management upon which the Town's expert heavily relied and which provides a definition of "tidal creek" describing the area in question to a T. It was this testimony and source on which the ZBA relied in its decision.*
- 5. The judge discounted the testimony of the Town's expert in large part because he found that she had never inspected the property where the pier was to be constructed. That finding was*

erroneous and contrary to her testimony, as well as the fact that she attended the site visit with the parties, as the Judge well knew. Moreover, any limitations on the expert's visit to the property were, as the judge recognizes, due to the Plaintiff's refusal to allow access to the property.

6. *The judge criticizes the ZBA decision, as relying on 2 sources a) the recommendation of the Conservation Commission and b) the testimony of the Town's expert. The Judge ignores the ZBA regulation that requires it to seek the recommendation of ConCom which offered its opinion quite appropriately on the critical issue in the case, i.e., whether the pier project ended within a "tidal creek." The Judge then gratuitously and without any basis disparages the ConCom recommendation as "a plea for the Board to take up the Commission's concerns as described in its two denials because it no longer had jurisdiction to deny the project itself." This latter observation undercuts the judge's misstatement just two sentences before that the "recommendation was devoid of any factual basis..." (ConCom's decisions were exhaustive in their recitation of facts supporting its decision, as the Judge, again, well knew). The Judge also cites a contradiction where there is none: the ConCom's recommendation is NOT inconsistent with the ZBA's observation that there are "numerous other piers" ends in a "tidal creek." With respect to the Town's expert, the judge disingenuously suggests that the ZBA chose the opinion of expert Lenore White over that of its own peer review consultant. The peer review consultant's opinion, however, disclaimed any ability to opine on the critical issue in the case, i.e., whether the pier ended in a tidal creek. The "consultant was not even a wetlands expert. Lenore White's testimony, based on her expertise as a wetland's expert, clearly and unequivocally established that the pier ended in a tidal creek and gave her reasons why. FOR THE ABOVE REASONS AND THOSE EXPRESSED BY FRANK HOLDEN THE TOWN SHOULD FILE A NOTICE OF APPEAL WHICH AT THIS POINT WOULD COST THE TOWN VIRTUALLY NOTHING AND GIVE THE TOWN ADDITIONAL TIME TO REVIEW THESE AND OTHER SIGNIFICANT ISSUES RAISED BY THIS DECISION.*

Mr. Guitart thanked them for their comments.

IV NEW BUSINESS

Water and Sewer Commissioners – Authorize Water & Sewer Commitment No. 3 - Adjustment

Mr. McGee moved that the Board of Selectmen adjourn the meeting as Selectmen in order to meet as the Water & Sewer Commissioners, with the intent of reconvening as Selectmen afterward.

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

Mr. McGee moved that the Board of Water & Sewer Commissioners instruct the Treasurer to adjust the following amount for water service charges totaling **-\$1,225.00** for Water and Sewer Commitment #3 of FY2022.

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

Ms. Ladd Fiorini moved that the Board adjourn their meeting as Water & Sewer Commissioners and re-convene as Selectmen.

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

Review, discuss and vote on Municipal Relief Transfers Approved by Finance Committee on May 11, 2022

Mr. John Adams, Finance Director, gave a quick review of each of the transfers being proposed as requested by Mr. Guitart. Mr. Woodford, CTO, spoke to the IT expenses, Mr. Guitart inquired about regarding ROCCC and grants to cover expenses. Discussion was had about the recovering of costs from the government for the ROCCC. Ms. MacNab inquired about the FinCom's position on this. Mr. Read responded that they have voted unanimously in favor. Mr. McGee inquired about the Summit and the costs associated with it. Mr. Guitart responded the Summit is to get all voices heard and we are paying for the cost of hosting the Summit. The MACP is being asked to help source it and locate help with the planning. The cost of which is being transferred from the planning department. Mr. Guitart stated that this is just an estimated cost, and subject to change.

Mr. McGee moved that the Selectboard approve the FY22 Municipal Relief Transfers, as presented.

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

Discussion with Highway Safety Committee regarding Parking at Hall's Corner along Standish Street

Mr. Paul Brogna and Mr. Jeff Lewis, Co-Chairs of the HSAC where present to discuss.

Mr. Brogna began the discussion by stating they are here to discuss a request of the HSAC regarding the current situation of the angled parking spaces along Standish Street at Hall's Corner from the Stop Sign thru the front of Cotton's and Reed's Jewelers. After further review by the HSAC, it was deemed that these parking spaces, when used by larger vehicles, become an obstruction to traffic passing through, therefore, the Committee voted 6-0 in favor of designating these spaces for "compact cars" only.

Mr. Jeff Lewis presented photos, showing the vehicles over extension in the parking spots based on the length of the parking. Mr. Guitart inquired about the signage and the definition of Compact Car, as well as the enforcement of these parking spots. Mr. Read was able to look up the definition of "Compact" and was able to discern that it is an average of 13.4ft to 15.5ft in length, whereas the average SUV is 16.5ft and 17.5ft. Average car length is 14.7ft. So, there is a wide range of car sizes that can fit. The questions remains who is going to enforce this.? Ms. Ladd Fiorini agreed with making the spaces compact. Mr. McGee inquired about the store owner's opinions of this change. Mr. Lewis responded that they have not been asked. Mr. McGee suggested that there be a meeting with the HSAC, the Planning Board and the store owners to come up with a solution to the parking in that area. Mr. Brogna stated that the parking spaces do not currently meet the criteria for 4 normal parking spaces in Duxbury. Angled spaces are different in length but these spaces still fail to meet the criteria. It would be a minor inconvenience that makes a positive change. Ms. MacNab would like to see more signage or perhaps some writing on the pavement to differentiate spaces.

Ms. Deb Bowen, resident at 11 Washington Street, and member of the EAC, thanked everyone for listening because it does affect the safety and movement of traffic and ultimately the goal is to have good people traffic, not car traffic. She also requested that the last parking spot be removed for safety reasons. Mr. Guitart asked if Ms. Bowen was in favor of this new designation for "compact cars" and

she replied "Yes." Ms. MacNab confirmed that it was a safety issue. Mr. Brogna said they will re-look at the single parking spot in front of Wine & Spirits store. Mr. McGee asked Ms. Bowen what she thought the owners felt about the change and she replied, it would not be a problem. They have a responsibility to make a safe community. Mr. Flynn commented that this is an easy fix. Mr. McGee suggested that the vote be tabled for next week, so that we could get more feedback from the community. Mr. Brogna volunteered himself and Mr. Lewis to canvas the area for more feedback. Ms. MacNab wanted to find out more about the signage placement for next week. Mr. Guitart requested they visit the owners of Wine & Spirits regarding removing the parking spot. Ms. Bowen reminded the Selectboard that they have a parking area in back.

Discussion pertaining to proposed COPS Grants

Chief McDonald presented with a brief summary stating that a 2020 state law relative to justice, equity and accountability in law enforcement created a mandatory certification process that eliminates reserve and special police officers. Under this new law, the only police officers considered certified will be full-time officers who have completed 26 weeks of the police academy. We usually have 15-20 special police officers, we currently have 11. We have currently lost 1/3 of the police force because of the current police reform. Through the federal grant offered by the Office of Community Oriented Policing Services (COPS), it will help pay for 75 percent of the salaries and benefits for three full time police officers for three years, although we are required to keep them for four years. The total cost of the three officers for the four years is over 1.1 million. This includes the town's 25 percent costs of \$278,285 and the grant funds of \$834,854. Chief McDonald stated "I was just trying to find a way to stop the bleeding." Mr. Guitart wanted to see a comparison of the costs of having 11-12 special police officers to the overall costs to the town for the three proposed new hires. Chief McDonald stated he would get them that information. He also stated that there is a deadline of June 9th for the grant proposal. Mr. McGee commented that last fall he had made a compelling case to the Finance Committee for hiring three new police officers without using any grant money and he fully supports the grant proposal. Ms. MacNab also would like the Finance Committee weigh in on the financial impacts the town could face if it got the grant. Mr. Read commented that it is a policy decision that needs to go before the board first. Ms. Ladd Fiorini wanted to be clear that there is no other opportunity to use some other person to patrol the beach? Chief McDonald stated that currently there is not. Ms. Ladd Fiorini sees it as a good opportunity for the Town to keep the total costs down, if they are spending a lot on OT. Mr. Guitart would like to see the numbers that would reflect the balancing of the budget. Mr. Read doesn't believe they could get a FC meeting in time before the next Selectboard meeting. Mr. Guitart thinks they might be able to get a meeting in before the next Selectboard meeting. Mr. Guitart would specifically like to see the cost for special officers (11-12) vs. the cost of overtime vs. the cost of three new officers. Mr. Flynn commented that it is important that we find the time to do this. Mr. McGee commented that the presentation he had given to the FC was a compelling presentation. Mr. Guitart would have like to have seen it and requested the data to compare, so that a decision can be made promptly to apply for the grant.

Discussion and vote pertaining to selection of Selectboard member to sit on the Fire Chief Hiring Team

Mr. Guitart asked who would be interested in being on the Fire Chief Hiring Team and Ms. MacNab suggested that Mr. Flynn would be a great on the committee.

Mr. McGee moved that Mr. Flynn be the Selectboard representative on the Fire Chief Hiring Team.
Seconded by Ms. MacNab Vote: 4:0:1 (Mr. Flynn abstained)

Discussion regarding Common Victualler's Licenses for Namaste Café and the Duxbury House at The Village Memory Care Residence

Mr. McGee read the following: New Common Victualler's License for the Namaste Café located at 285 Saint George Street. This is a Café with a focus on health and wellness. They will be offering specialty coffees, a full espresso bar, cold pressed juices, a smoothie bar, creative açai bowls and breakfast sandwiches.

Mr. McGee moved that the Duxbury Selectboard approve a new Common Victualler license for the Namaste Cafe, 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)**
- **Business Certificate from the Town Clerk's office**

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

Mr. McGee moved that the Duxbury Selectboard approve the renewal of the Common Victualler's license for the Duxbury House@ The Village Memory Care Residence, 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)**
- **Business Certificate from the Town Clerk's office**

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

V TOWN MANAGER'S REPORT

Mr. Read shared the following:

Speed Limits in Town

This past week the DPW Director, Police Chief and I had the opportunity to meet with a resident who expressed a number of concerns regarding speeding and pedestrian and vehicular safety in Duxbury.

During that conversation he raised a number of points, one of which I think is worth mentioning here. He recommended that the town clearly articulate that the speed limit on Powder Point Bridge is 10 mph. He correctly noted that not only is exceeding the 10 mile an hour speed limit on the bridge illegal but it also adds to the unnecessary deterioration of the bridge surface itself since its design is meant to accommodate slower moving traffic.

Numerous times throughout the year, both resident and nonresident vehicles can be seen exceeding the speed limit of 10 miles an hour - even though the bridge has appropriate speed limit signage. By way of this update, I would like to strongly encourage that all motorists traveling across the Powder Point Bridge please follow the 10 mile-per-hour speed limit in order to help ensure pedestrian safety, vehicular safety and the unnecessary continued deterioration of the bridge itself. The resident went so far as to say that a large font headline in The Duxbury Clipper would be extremely helpful in drawing readers attention to the speed limit and would help with this effort.

Duxbury Beach Update

32 pairs

29 nests

Estimated possible closing dates:

Crossover #1: June 4th

Crossover #2: June 1st

VI COMMITTEE APPOINTMENTS/RE-APPOINTMENTS/RESIGNATIONS

Discussion regarding increasing the number of members for the Duxbury Cultural Council

Mr. Guitart stated it was requested by the Cultural Council to increase the number of members, due to interest in the committee, and that they had the 5 candidates to support the increase.

Mr. McGee moved that pursuant to MGL section 58 for Local and Regional Cultural Councils, the Selectboard approve the five additional members to the Duxbury Cultural Council for a total of 11 members. Members of the Council shall be appointed for staggered terms and any such member shall not be appointed for more than two consecutive terms.

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

Duxbury Cultural Council

Kristine Brennen	FY23 Re-Appointment	06-30-2025
Tony Kelso	FY23 Re-Appointment	06-30-2025
Mary Coogan	FY23 Appointment	06-30-2025
Therèse DiMuzio	FY23 Appointment	06-30-2025
Mandy Fariello	FY23 Appointment	06-30-2025
Susan Kelley	FY23 Appointment	06-30-2024
Brian Lies	FY23 Appointment	06-30-2024

Duxbury Bay Management Commission

Joe Messina	FY23 Re-Appointment	06-30-2025
-------------	---------------------	------------

Selectboard Open Session Minutes

Date: May 16, 2022

Page 8 of 9

Jackson S. Kent III	FY23 Re-Appointment	06-30-2025
Peter Quigley-fulfill unexpired term-SD	FY23 Appointment	06-30-2024
John Lovett	FY23 Appointment	06-30-2025
Richard Kleinman	FY23 Appointment	06-30-2025
Sam Davenport	Resignation	06-30-2024

DEI Steering Committee

Matt Gambino, School Board Rep	FY23 Appointment	06-30-2023
Fernando Guitart, Selectboard Rep	FY23 Re-Appointment	06-30-2023
Martha Dennison, Library Board of Trustees	FY23 Re-Appointment	06-30-2023
Dr. Danielle Klingaman, Superintendent of Sch.	FY23 Re-Appointment	06-30-2023
Jeannie Horne, Human Resources Director	FY23 Re-Appointment	06-30-2023
Joanne Moore, Council on Aging Director	FY23 Re-Appointment	06-30-2023
Jennifer Turcotte, Planning Board Member	FY23 Re-Appointment	06-30-2023
Friend Weiler, Police Representative	FY23 Re-Appointment	06-30-2023
Dr. Rev. Catherine Cullen, Interfaith Council Rep.	FY23 Re-Appointment	06-30-2023
Karen Wong, At-Large Member	FY23 Re-Appointment	06-30-2023
Mark Prince, At-Large Member	FY23 Re-Appointment	06-30-2023
Alexander See, At-Large Member	FY23 Re-Appointment	06-30-2023
Caitlan Sheehan, Teacher	FY23 Re-Appointment	06-30-2023

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

The following boards/committees have available seats:

<i>Alternative Energy Committee</i>	-	<i>one seat</i>
<i>Duxbury Seawall Committee</i>	-	<i>one seat</i>
<i>Local Historic District Commission</i>	-	<i>one seat</i>
<i>Nuclear Advisory Committee</i>	-	<i>one seat</i>
<i>Open Space Committee</i>	-	<i>one seat</i>
<i>Recreation Activities Committee</i>	-	<i>one seat</i>
<i>Sidewalk & Bike Path Committee</i>	-	<i>one seat</i>

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 Forms & Documents tab.

VII ONE-DAY LIQUOR LICENSE REQUESTS - None

VIII EVENT PERMITS - None

IX MINUTES

Mr. McGee moved to approve the 02/07/22 Selectboard's Open Session Minutes, as presented and amended.

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

X ANNOUNCEMENTS

1) Race Amity Day – Sunday, June 12, 2022

On the June 10, 2018, Governor Baker declared the second Sunday in June, annually, as Race Amity Day, and urged all the citizens of the Commonwealth of Massachusetts to take cognizance of this event and participate fittingly in its observance.

On March 22, 2021, the Town of Duxbury, through the Board of Selectmen, recognized the second Sunday in June annually as Race Amity Day as a day of introspection and reflection on the beauty and richness of the diverse people of this great Town while reaching out with a spirit of amity toward one another.

The Race Amity Committee in partnership with the Duxbury Free Library will host a celebration from 1pm – 3pm Sunday, June 12th at the Duxbury Free Library. This event is open to the public and will include outdoor activities for all ages.

2) Next Scheduled Selectboard Meeting will be on Monday, May 23, 2022 at 7:00pm. We also have a meeting on Wednesday, May 18th, Executive Session at 8am via Zoom.

XII ADJOURNMENT

Mr. McGee moved that the Board of Selectmen adjourn at approximately 8:10pm.

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

Minutes submitted by Michelle Seda-Stotts

LIST OF DOCUMENTS

- 1) BOS Agenda
- 2) Water & Sewer Commissioners Agenda
- 3) W&S Commitment #3 - adjustment
- 4) FY22 Municipal Relief Transfers
- 5) HSC letter and pictures
- 6) Memo from Chief McDonald regarding COPS
- 7) Common Victualler's Licenses for Namaste and the Duxbury House @The Village Memory Care Residence
- 8) FY23 Appointments/Re-appointments/Resignations
- 9) Minutes
- 10) Announcements