



# Town of Duxbury Massachusetts

## Planning Board

TOWN CLERK  
2020 JAN 13 AM 9:30  
DUXBURY, MASS.

### Minutes 11/20/19

The Planning Board met on November 20, 2019 at 7:15 PM at the Town Hall, 878 Tremont Street, Mural Room, lower level.

Present: Scott Casagrande; Chairman, Brian Glennon II; Vice-Chairman, John Bear, Cynthia Ladd Fiorini, Jennifer Turcotte and George Wadsworth.

Absent: David Uitti; Clerk.

Staff: Valerie Massard, Planning Director; and Emily Hadley, Administrative Assistant.

Mr. Casagrande called the meeting to order at 7:15 PM.

### OPEN FORUM

No one from the Planning Board, staff, or the public audience brought anything forward during open forum.

### A) ADMINISTRATIVE ITEMS

#### *Minutes*

Motion: Mr. Bear made a motion to approve the minutes from November 6, 2019 with edits. Mr. Glennon provided a second.

Vote: 4-0, Ms. Turcotte and Ms. Ladd Fiorini abstained due to absence from November 6 meeting.

#### *KP Law, P.C. Invoice*

Mr. Glennon asked which fees are being presented to the Planning Board for consideration. Ms. Massard responded that the fees are for zoning recodification, and the wording in the Town Meeting Article funding the work is formatted in such a way that the Planning Board must vote on the invoices. Ms. Amy Kwesell, KP Law, P.C., said that in the future the Board will be provided with a separate bill for zoning recodification charges. Relevant items were highlighted on the invoice.

Motion: Mr. Glennon made a motion to approve highlighted items on invoice number 122738 from KP Law, P.C. dated October 25, 2019. Ms. Turcotte provided a second.

Vote: 6-0, unanimous.

*Amory Engineering Invoices*

Motion: Mr. Glennon made a motion to approve invoice number 15214A from Amory Engineers, P.C. dated November 4, 2019. Ms. Turcotte provided a second.

Vote: 6-0, unanimous.

Mr. Glennon inquired about the status of the project at 907 Tremont Street/Littletown Way. Ms. Massard told the Board that the Planning Department just received as-built plans for the project, and peer reviewers, Amory Engineers, P.C., find that the work is complete.

Motion: Mr. Glennon made a motion to approve invoice number 15214B from Amory Engineers, P.C. dated November 4, 2019. Ms. Turcotte provided a second.

Vote: 6-0, unanimous.

*Right of First Refusal - 0 East Street/Loring Bogs*

Ms. Massard explained that the property is listed under Chapter 61A. It was cleared by Town Counsel as being a valid purchase and sale agreement. Ms. Massard informed the Board that the Town does not have funds available, and her recommendation would be to follow its past actions and recommend the Board of Selectmen pass on the Right of First Refusal (ROFR). There is a working bog on the property. The entire property is listed under Chapter 61A. Ms. Massard reminded the Board that their role is to provide an advisory recommendation to the Board of Selectmen. She also told the Board that the department heads do not see any express benefit to purchasing the land, other than as additional open space due to the limited developable land.

Mr. Bear said that it could be beneficial due to declining number of bogs. Ms. Massard said that the property could be referred to the agricultural commission. Ms. Ladd Fiorini said that it is a beautiful property and that the Town could come up with the funding if needed. She also mentioned that there is a possibility that a 40B development could be built on the property and on others like it in the future, so the Town should be cautious about passing on ROFRs. Ms. Turcotte noted that 238 acres for \$700,000 is a lot of land for a reasonable amount of money, so she would recommend that the Selectmen move forward, but proceed with caution.

Mr. Glennon asked if there is any open space near the property. Ms. Massard pointed out the nearby conservation areas on the map distributed to the Planning Board with the staff memo in their agenda materials. Ms. Turcotte noted that the property is located at the SW corner of Route

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3 and East Street. Ms. Massard noted that the property is partly in an RC district, partly in a planned development district, part is in the wetlands protection overlay district and the whole lot is in an aquifer protection overlay district.

Mr. Casagrande said that he would like to see the Town purchase land when it is available, and that the Town would have to find another way to raise funds. Ms. Massard told the Board that the Director of Assessing feels that the price may be high for the probable value of the property. Mr. Casagrande sought a motion to recommend to the Board of Selectmen that the Town should try to seek funding to purchase the property.

Motion: Mr. Glennon moved Mr. Casagrande's statement. Ms. Turcotte provided a second.

Vote: 6-0, unanimous.

*As Built Plan – 397 Washington Street*

Ms. Massard told the Board that peer-reviewers, Amory Engineers, P.C., signed off that the work is complete. Mr. Glennon mentioned that the property is proposed to be its own local historic district at 2020 Annual Town Meeting.

Motion: Mr. Glennon made a motion to accept the plan entitled "Site As-Built Plan 397 Washington Street – Duxbury" and dated May 23, 2019. Ms. Turcotte provided a second.

Vote: 6-0, unanimous.

*ZBA Appeal - Case No. 2019-16, 106 Harrison Street/Duxbury Yacht Club*

Mr. Glennon asked Ms. Massard if the Board received a request to continue this case. Ms. Massard responded that the Town received a request to prolong the public hearing with the Zoning Board of Appeals, and the ZBA has not had the opportunity to respond. Ms. Massard also told that the Board that this would be their last opportunity to provide the ZBA with the advisory comments before the public hearing on December 12.

Mr. Bear made a disclaimer that he is a member of the Duxbury Yacht Club, but he is not an officer or on any committee that is involved in any changes being made to the club. Mr. Casagrande also made a disclaimer that he is a member of the Duxbury Yacht Club, but he is not on any committees for the club and that he already has a disclosure on file with the Town, as does Mr. Bear, Ms. Massard confirmed.

Ms. Massard explained that the filing is an appeal of the decision of the Building Inspector. She explained that staff conducted an investigation of the property to see if there was any work not known by the Town. Ms. Massard toured the property with the Golf Course Superintendent and found that the Yacht Club is doing maintenance, such as replacing irrigation systems.

Ms. Massard said that the Yacht Club met with the department heads informally prior to proceeding with any work, and this review found that there was no need for further filing, except with the Conservation Commission, which was done. Ms. Massard said that she found no work besides routine maintenance being performed. She also explained that the complaint is asking for a cease and desist and a special permit for land clearing, and refers to Sections 430, 424, and 611 of the Zoning Bylaw.

Mr. Glennon asked if the case is related to the berm issue. Ms. Massard responded that the appeal is from the same parties, but it is a different complaint. Mr. Glennon said that in the bylaw, if more than 30,000 square feet of land is being disturbed, it falls under the Planning Board's jurisdiction, but if less than 30,000 square feet are disturbed it is not the Planning Board's decision. Ms. Massard said that neither parties looked at square footage in their studies, but she would guess that the Yacht Club could have disturbed 30,000 square feet, but they are not changing grade throughout most of the land disturbance in question, nor altering the use - a golf course. Mr. Bear related the disturbance to a farmer plowing their fields.

Mr. Casagrande clarified that the 30,000 square feet of disturbance is for developments. Ms. Massard further clarified that maintenance qualifies as an exemption. Mr. Casagrande said that all the work being done is maintenance. Mr. Glennon said that the letter from the applicant discusses bylaws about zoning and grading. Ms. Massard stated that the golf course is a legally grandfathered use and has a special permit for this use on this portion of the course.

Ms. Massard explained that some trees were removed from the lot, about 10 from one section and about 20 from another. Ms. Massard explained that a small area was regraded to avoid ponding to prevent damage to a leaching field.

Mr. Glennon said that even if sections of the bylaw apply, it does not appear that the work is not exempted. Mr. Bear asked if the case refers to the property on both sides of the street. Mr. Casagrande explained that the side of the street the complaint refers to exists under a special permit, no significant grade changes occurred and the work being conducted is routine maintenance for a golf course. Ms. Massard said that no special permits were needed for the Town golf course to perform the same kind of maintenance.

Mr. Glennon said that based upon the abbreviated information and written materials, it seems that a case has not been made by the applicant and that the Building Inspector's decision should not be overturned.

Motion: Ms. Ladd Fiorini made a motion to uphold the decision of the Building Inspector. Ms. Turcotte provided a second.

Vote: 6-0, unanimous.

*ZBA Referral, Comprehensive Permit - Case No. 2019-17, 1&25 Lincoln Street/Fieldstone Farm*

Ms. Massard explained that Boards have to respond very quickly when filings come in under Chapter 40B. The applicants' first opportunity to meet with the Department Heads was on Monday, November 18. She also told the Board that in speaking with the Director of Municipal Services, it is her understanding that at the public hearing, the ZBA will choose if they need a peer reviewer and who will do the peer review, and she recommends that the Board defer their action until they can review the information from the peer reviewers. Ms. Massard also said that the applicants have met with Town staff on and off for over two years to review the property options. She also said that reviews are in place from Mass Housing, and the staff did not see any issues with the road width. Ms. Massard said that the site has already been tested for septic, and the Town has no other concerns except for a traffic and civil engineering review.

Mr. Glennon said that he would be comfortable with deferring the Planning Board's action, but would not be comfortable deferring completely to the ZBA. Mr. Wadsworth said that he has no problems with deferring, but he wanted to bring attention to the fact that the property is in an Aquifer Protection Overlay District, and its purpose is to reduce density. Ms. Massard said that the Board could call out in their recommendation to the ZBA, but that local zoning does not apply to a 40B. Ms. Kwesell said that there may be some confusion between the aquifer protection overlay in the Bylaw and Zones 1 and 2 for MassDEP's regulations, and Mr. Wadsworth should be referring to DEP regulations, which apply, while local zoning does not apply.

The Planning Board decided to defer their action until peer review information becomes available.

*ZBA Referral, Special Permits – Case No. 2019-18, 283 King Caesar and Case No. 2019-19, 315 King Caesar*

Motion: Mr. Glennon made a motion to defer to the ZBA cases no. 2019-18 and 2019-19. Ms. Turcotte provided a second.

Vote: 6-0, unanimous.

**B) ZONING WORKSHOP – APPOINTMENT WITH AMY KWESELL, KP LAW, P.C.**

*Zoning Bylaw Recodification*

Mr. Casagrande told the Board that Amy Kwesell, KP Law, P.C., would be walking through the beginning of recodification changes to the Zoning Bylaws. Ms. Kwesell told the Board that she has been working with the Planning Director, Town staff, and the Planning Board Chairman. She explained that they plan on taking uses already in the bylaw and putting them into a use chart, and she recommends that they change some of the uses at a later date. Ms. Kwesell said that they did not change any of the allowances or site plan requirements.

Mr. Glennon asked if the red lines show changes to the first draft or proposed changes to the Bylaw. Ms. Kwesell responded that they show proposed changes to the use chart and are the problems that need to be addressed first. Ms. Kwesell explained the details of all the proposed changes to the Bylaw. Mr. Glennon asked if Ms. Kwesell went section-by-section through the Bylaw to make sure nothing was missing. Ms. Kwesell responded that she had cut and paste from the Bylaw to the table to make sure nothing was missing.

Mr. Glennon said that adding a use table will make the Bylaws much more user-friendly. Ms. Massard said that the plan is to also take out administrative items from the Zoning Bylaws and put them into ZBA and Planning Board's rules and regulations. Mr. Glennon commended Town Counsel for creating the use table.

Mr. Bear asked how the updates should be presented at Town Meeting to convey to the public that the rules are not changing. Ms. Kwesell said that the changes should be presented in one article, which are to create the use table and remove some wording. Mr. Casagrande said that someone could explain all the proposed changes at Town Meeting. Mr. Bear explained that the public is going to think that the Town is changing the rules. Ms. Massard said that the Planning Department is planning on putting the Zoning Bylaws online before Town Meeting. Mr. Casagrande said that most people are on board with the proposed changes.

Ms. Massard said that she is hoping to adopt one set of rules and regulations for the ZBA and Planning Board. Mr. Casagrande asked if the ZBA is in favor of this. Ms. Massard said that she has spoken to Judi Barrett, but not the entire Board, and she is favorable (Judi was also the Chair of the Zoning Bylaw Review Committee). Mr. Glennon asked if the reason the Zoning Bylaw will be revised so some special permits are filed through the ZBA and some through the Planning Board is to divide up work load between the departments. Ms. Massard said that it has not been discussed yet, the idea is just a forethought. She further explained that she proposes to put all of the administrative requirements for things that need to be filed in one collective set of rules and regulations because currently every application is detailed in the Bylaw. Mr. Glennon clarified that the goal of this change is to streamline the Bylaw.

Ms. Massard said that yes, the change would put all of the requirements in one place. Ms. Massard briefly discussed a preliminary draft of ZBA and Planning Board Rules and Regulations she created. Mr. Glennon said that he feared that the topic was not properly identified on the agenda. Ms. Massard explained that it is part of the zoning workshop, and just a brief overview of changes. Mr. Casagrande said that it is just preliminary information. Ms. Kwesell said that the purpose of the changes is to condense the Zoning Bylaws. Mr. Casagrande said that he thinks it is the right approach to changing the Bylaws.

Mr. Bear asked if there was any progress on the Conservation Cluster Bylaw. Ms. Massard said that the Housing Trust and the Community Preservation Committee want to address the Inclusionary Bylaw. She said Town Counsel explained that if there is a subdivision, our Inclusionary Bylaw cannot be applicable unless the Town rewrites the Conservation Cluster and Inclusionary Bylaws (adding an increased density bonus) and the Town would like to wait to

address the issue. Mr. Casagrande said that the Planning Board initially thought that they would address it this year, but decided in meeting with Town Counsel to address smaller grammatical changes this year and wait for future Town Meetings to address policy changes, such as the Inclusionary Bylaw.

Mr. Casagrande explained that through case law, anything that is by-right cannot require enforcement of the Inclusionary Bylaw, which as written has to be a special permit and if there is no density bonus offered, no one will want to do it. Mr. Wadsworth said that the cluster has some benefits and individuals in other communities participate without a density bonus. Ms. Massard reminded the Board that the report from the Zoning Bylaw Review Committee identified hundreds of changes that need to be addressed.

### *Medical Marijuana Zoning*

Ms. Massard said that Mr. Casagrande had discussed proposing a ban on medical marijuana zoning at the last Planning Board meeting and at 2019 Annual Town Meeting. Mr. Casagrande asked Ms. Kwesell if any other towns have tried to impose a ban on medical marijuana facilities and been successful. Ms. Kwesell responded that no town has done it, and now that adult use marijuana is up and running, it is unlikely that anyone would site a medical marijuana facility, as most facilities are generally both medical and recreational, and Duxbury has banned recreational marijuana.

Mr. Casagrande said that residents are concerned that the zoning allows for medical marijuana facilities. He also said that they would have to make sure that the zoning would revert back to the current zoning if the Attorney General rejected the ban. Mr. Glennon said that if Duxbury's ban passed, it could set a precedent for surrounding communities. Mr. Casagrande said that every neighborhood-business district is surrounded by residential districts, and the surrounding communities do have medical facilities available.

Ms. Massard said that the ban could be perceived as alienating residents that have a need for prescribed medical marijuana and the Town should be cautious to not state in any way that it does. Ms. Kwesell said that Town Meeting has to understand that Duxbury would be the first town to try to ban medical facilities.

Mr. Bear said that he does not see an upside to imposing a ban and opening a discussion that is not necessary. Mr. Casagrande said that residents are already discussing the issue. Ms. Ladd Fiorini said that she does not think there is any benefit trying to ban it. Ms. Turcotte said that a ban could be enforced through a citizen's petition. Mr. Casagrande said that if the Board were to impose the ban, it would ensure that a citizen's petition would not undermine current zoning. Mr. Casagrande and Mr. Glennon said that they think trying to impose the ban is worthwhile.

Ms. Kwesell said that from a financial standpoint, stand-alone medical marijuana facilities are not common, and since Duxbury banned recreational marijuana, it is very unlikely to have a facility come in. Mr. Glennon said that the ban will reflect the will of the residents, since

Duxbury is not a community that supports recreational marijuana use. Mr. Casagrande said that there has been a lot of pressure to ban medical marijuana completely. Ms. Ladd Fiorini said that it will cost money to try to ban it, and she thinks the current zoning is sufficient. Mr. Bear said that this is not a new problem that needs to be addressed. Ms. Massard said that most eligible sites have looked at and decided not to explore a medical marijuana facility in Duxbury. Mr. Casagrande said that if residents have a problem with the medical marijuana zoning, they can make a citizen's petition.

Motion: Mr. Glennon made a motion to support an amendment to Zoning Bylaw to substitute medical marijuana zoning as a ban. Ms. Turcotte provided a second.

Vote: 2-4.

### **C) OTHER BUSINESS**

Ms. Massard said that items that will be addressed at 2020 Annual Town Meeting include fixing a scrivener's error and adopting updated zoning maps. Ms. Massard also told the Board that the Planning Department is working on converting the Wetlands Protection Overlay District into a digital format and removing the Publicly-Owned Land District from the Bylaw. She explained that the Publicly-Owned Land District is a mapped district that is not used properly, so a statement that public lands have to be voted in at Town Meeting with a 2/3 vote will be put into the Bylaw and the map will be removed. Ms. Massard also said that she will speak to Town Counsel about whether there needs to be a separate Stormwater Bylaw.

Mr. Bear asked if Ms. Massard thinks there will be any citizen's petitions at Town Meeting. Ms. Massard responded that she thinks there will be a petition for 70% coverage. Ms. Massard said that the Exit 10 and sea wall maintenance have been called out as separate articles from the Capital. Ms. Massard said that the Zoning Bylaws that were approved at Annual Town Meeting last year are current, online, and updated. She also said that the Town has decided that the Zoning Bylaws will be published after being approved at Town Meeting, with a note that the Attorney General's notes have not yet been received.

### **ADJOURNMENT**

Motion: Ms. Ladd Fiorini made a motion to adjourn at 9:01 PM. Mr. Bear provided a second.

Vote: 6-0, unanimous.

*The next Planning Board meeting will take place on Wednesday, December 11, 2019 at 7:15 PM at the Duxbury Town Hall, 878 Tremont Street, Mural Room, lower level.*

Materials reviewed at the meeting:

- Minutes 11/6/19
- KP Law, P.C. Invoice #122738



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- Amory Engineers, P.C. Invoice #15214A
- Amory Engineers, P.C. Invoice #15214B
- M.G.L.A. 61A, §14 Notice of Intent to Sell: 0 East Street
- As-Built Plan: 397 Washington Street
- ZBA Appeal Case #2019-16: 106 Harrison Street
- ZBA Comprehensive Permit Case #2019-17: 1&25 Lincoln Street
- ZBA Special Permit Case #2019-18: 283 King Caesar Road
- ZBA Special Permit Case #2019-19: 315 King Caesar Road
- Construction Cost Estimates October 2019

