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Sent: Thursday, January 03, 2013 10:53 AM
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Subject: Zoning Bylaw Review Committee--Final Report
Attachments: BOS23JH_EXCHANGE_01032013-104524.PDF.PDF

Please find attached the final report of the Zoning Bylaw Review Committee. Committee members were Judi Barrett, Paul Boudreau, Freeman Boynton, Scott Casagrande, Fred Clifford, Martin Desmery, Bob Fitzpatrick, Nancy Armington Johnson, Mary Steinke and George Wadsworth.

Over the last eighteen months, the Committee has worked hard to gather information about the clarity, internal consistency, organization, and administration of the Duxbury Protective Bylaw. The Committee sought information from as many vantage points as possible including the public, municipal officials, and professionals who work with the Bylaw.

The Committee found, among other things, that the numerous amendments of the Bylaw over the years have had unintended ripple effects that have created ambiguity, duplication, and inconsistency. Complications arising from the numerous Bylaw amendments have made the Bylaw hard to navigate. Definitions are scattered throughout the Bylaw, some terms are defined more than once, and permitting procedures have become disaggregated.

The Committee recommends that the Town engage a qualified professional to prepare a plan for recodification of the Bylaw. A working group should be convened to carry forward this project. This is a large undertaking, so expectations should be managed carefully. Legal counsel should be consulted as appropriate. Additional recommendations are described in the report.

The Committee thanks Diane Grant and Anne Murray for their help with administrative and logistical matters.

This filing concludes the work of the Committee. Thank you for the opportunity to serve the Town on this important matter.

Bob

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IRS CIRCULAR 230 DISCLOSURE:

Committee Report to the Board of Selectmen

December 5, 2012

This report and the work of the committee is not and should not be construed to be the position of the Town of Duxbury or an acknowledgment or admission of any fact , interpretation of any Bylaw or a waiver of any right or defense.

I. Background.

A. Committee Charge.

In June, 2011, the Town of Duxbury Board of Selectmen established the Zoning Bylaw Review Committee (referred to as the "ZBRC" and the "Committee") to review the Duxbury Protective Bylaw ("Bylaw") and make recommendations to improve, if necessary, the following elements of the Bylaw: clarity, internal consistency, organization (e.g., structure and form at), permitting requirements and procedures, administration and enforcement procedures, consistency with statutory changes and case law since the Bylaw was adopted in 2003, and other matters the ZBRC deems relevant and appropriate to review in order to carry out its charge.

The Selectmen asked the ZBRC to seek input from present and past members of Town boards, local developers and the professionals who represent them, others in the Town with knowledge of the Bylaw and its administration, and the Town's professional staff. The Selectmen authorized the ZBRC to conduct hearings in order to obtain comments from the general public, gather information from other communities and from academic or professional organizations specializing in land use and zoning. In addition,

the Selectmen asked the ZBRC to monitor the status of S1019, the Comprehensive Land Use Reform and Partnership Act

("CLURPA") and related proposals in the legislature, and report on the potential impact of such legislation on potential amendments to the Bylaw. 1

B. Committee Membership.

The ZBRC consists of ten members. At its June 6, 2011 meeting, the Selectmen appointed the following people to the ZBRC: Judi Barrett (representative of the Board of Appeals), Paul Boudreau (Citizen at Large), Freeman Boynton, Jr. (Citizen at Large), Scott Casagrande (Citizen at Large), Fred Clifford (Citizen at Large), Martin Desmery (Citizen at Large), Bob Fitzpatrick (Citizen at Large), Nancy Armington Johnson (representative of the Design Review Board), Mary Steinke (Citizen at Large) and George Wadsworth (representative of the Planning Board). Bob Fitzpatrick served as Chairman, Judi Barrett served as Vice-Chair and Martin Desmery served as Clerk. Theodore J. Flynn was liaison with the Board of Selectmen. Diane Grant and C. Anne Murray provided important logistical and administrative support.

C. Organization of Committee Work.

The ZBRC divided its work into three main areas: information gathering, review of collected information, and conclusions and recommendations. These areas are discussed below.

II. Information Gathering.

To inform its work, the ZBRC sought input on the administration, application and operation of the Bylaw from those who have had experience with it. The ZBRC's goal was to gather information so it could determine whether a plan was needed to improve

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the clarity, internal consistency and organization of the Bylaw.

During the last legislative session, several amendments to M.G.L. ch. 40A were proposed but were not enacted into law.

The ZBRC sought information from as many vantage points as possible, e.g., it sought information from the public, municipal officials, and professionals who work with the Bylaw. The ZBRC met with and interviewed property owners, architects, developers, builders, lawyers, current and former members of Town Boards, and members of the Town's professional staff.

These volunteers, to whom the Committee is grateful, shared their experiences with the Bylaw, provided useful background information about the evolution of portions of the Bylaw and identified areas where disputes have arisen, among other things.

Early in the information gathering process, Thomas Broadrick, Planning Director, and Scott Lambiase, Building Commissioner and Director of Inspectional Services, met with the ZBRC to discuss the Bylaw and the Committee's work. They provided valuable insight into the land use permitting process in Duxbury. They have served as a continuing resource for the Committee.

Representatives of the ZBRC met with the Board of Selectmen, Planning Board, Board of Appeals, and Design Review Board to discuss the work of the Committee and gather comments and information relevant to the Committee's charge. Also, on November 2, 2011, and October 3, 2012, the ZBRC held public meetings in the Ellison Room of the Duxbury Senior Center to obtain public input about the Bylaw and elicit comments, thoughts, and experiences that could help inform the ZBRC's work and obtain feedback on its draft Report.

Since June, 2011, the Committee has met more than 24 times. Meeting dates

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generally have been added to the Town's calendar before the meeting date. Meeting

agendas and meeting minutes have been posted (and are posted as of the date of this

writing) on the Town's website: <http://www.town.duxbury.ma.us/Public>

[_Documents/Dux_buryMA_bcomm/zbrc.](#)

III. Review of Collected Information.

We received numerous comments about the Zoning Bylaw and the application of it. We have included a digest of comments, organized by Article, at Exhibit A. Key findings are summarized below.

I. Unintended Effects of Serial Amendments to Bylaw. The Bylaw has been amended, in part, 23 times since 2003.² These discrete changes have had unintended ripple effects that have created ambiguity, duplication, and inconsistency. Complications arising from the numerous Bylaw amendments make the Bylaw hard to navigate. Definitions are scattered throughout the bylaw, some terms are defined more than once and permitting procedures have become disaggregated. The Town should consider recodifying the Bylaw to give it a unified, coherent structure.

2. Procedures/Standards for Special Permits. Special permitting procedures and standards are scattered throughout the Bylaw. See, for example, Section 406.9 (entitled, Special Permits) and Section 906.2 (also entitled, Special Permits). Special permit procedures and standards should be consolidated. It is not uncommon for a zoning bylaw to have supplemental criteria for certain classes of special permits, such as in the aquifer protection overlay district. In cases where supplemental criteria must be satisfied, the Bylaw should be clear how the supplemental criteria relate to other special permit criteria otherwise found in the Bylaw. See Sections. 404.8 and 404.9 (discussing special permit procedures for the wet lands protection district), Section 406.9 (special permit procedures for aquifer protection overlay district), and Section 424 (special permit procedures for

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neighborhood business districts). The Bylaw also should clarify how more general

²The 2003 Bylaw was not a comprehensive restatement of the previous Bylaw. So, in addition to "voice" problems created since 2003, some of the problems we see today already existed in 2003.

special permit criteria, see Section 906.2, apply, if at all, to special permits for alteration of nonconforming uses or structures.'

3. Definitions. Definitions in the Bylaw need to be recodified, standardized, and deleted if not used. On the need for recodification, see the two Bylaw definitions of accessory structure (pages 5 and IO of the Bylaw). On the need for standardization, see the definitions of Applicant (pages 5, 26 and 84) and Setback (pages 9 and 95). For examples of defined terms that are not used and can be deleted, see Informal Hearing, Interested Party and Land Improvements (page 8). Definitions are scattered throughout the Bylaw which can lead to confusion. Consider putting all definitions into a single article.

4. Filing Requirements. Minimize duplicate and redundant submission requirements from board to board. Reduce the number of paper copies of application materials and plans that are currently required. Request applications and supporting materials also be filed in electronic form to facilitate distribution and save paper.

5. Site Plan Review. Section 906.5 could be read as granting the Board of Appeals authority to conduct site plan review in connection with special permit proceedings. Such a reading is at odds with Section 615, which grants administrative site plan review authority to the Planning Board. As a matter of practice, the Planning Board performs site plan review. The Bylaw should be amended as appropriate to eliminate doubt about where site plan review authority lies.

6. Consolidated hearings. Some projects require site plan review (Planning Board) and a special permit (Board of Appeals). In such cases, the Town should consider consolidating site plan

Consolidation of building permit requirements also would be helpful. See, for example, Section 401.6 (discussing plot plan requirements for building permit), Section 41 0.5 (discussing residential plot plan requirements for building permit), and Sections 905.1-2 (discussing plot plan requirements for building permit filing).

review authority and special permit granting authority in a single board or provide for a single consolidated hearing of both bodies to streamline the regulatory process.

7. Design Review Board. The role of the Design Review Board is not well known or understood by the public. The Bylaw provides that the Design Review Board shall assist the Planning Board and Zoning Board of Appeals in reviewing development applications with respect to those matters referred to it by the respective Boards. The Design Review Board's role and scope of its responsibility should be clarified. The matters or issues that trigger Design Board Review should be identified. The standards of review for the Design Review Board should be articulated.

8. Board of Appeals. The Board of Appeals needs professional staff. The Board of Appeals is a quasi-judicial tribunal with jurisdiction that includes hearing requests for discretionary permits, variances and appeals of building permits, among other things. Current staff provides important work to facilitate the administrative process, but substantive support is needed to make the process work efficiently, help manage an Applicant's expectations, review filings with an eye to identifying early any deficiencies or missing information, and providing continuity and institutional memory as board members change over time .

9. Wetlands Protection Overlay District. The purpose of and on-going need for the Wetland Protection Overlay District should be reviewed.⁴ Based on what we have learned, the Wetlands Protection Overlay District was created during a time when federal, state and

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local regulation of wetlands was in its infancy, to the extent that it existed at all. Today, wetland resources are regulated under federal, state and Duxbury environmental law, in addition to being regulated

⁴ This Section 9 pertains to sections 404.1-404.11 of the Bylaw and does not pertain to Sections 404.2-404 .50 of the Bylaw.

under the Duxbury Zoning Bylaw. Multiple layers of wetlands regulation creates confusion, risks inconsistent application and raises a question of need.

10. Extension/Alteration of Nonconforming Uses and Structures. No subject generated more comments than Section 401.2 of the Bylaw governing nonconforming uses and structures and alterations and extensions thereof. Comments focused on a desire to simplify and clarify the standards applicable to making a change to a nonconforming residential structure. We are informed that the law governing alteration of nonconforming uses derives from the state law, which is complicated and often the subject of litigation. Nonetheless, Section 401.2 should be reviewed with an eye to clarifying the permitting process for altering nonconforming structures and providing more certainty about the process to regulated parties.

11. Piers. Bylaw provisions relating to piers generated considerable attention during the information gathering process. The Bylaw provision governing reconstruction of existing piers as new piers in the Waterfront Scenic Overlay District should be reviewed. As written, the Bylaw provides that a "pre-existing pier shall not be reconstructed as a new pier unless the cost to repair the existing pier is greater than fifty percent (50%) of the cost of a new pier on the same footprint." The meaning of the phrase "reconstructed as a new pier" should be clarified. The provision could be read to provide piers owners an incentive not to maintain existing piers and build a "new" pier if a new pier would be desirable.

12. Maps. District boundaries are shown on maps that are referred to in the Bylaw. Map references in the Bylaw are not consistent with map titles. For example, the map of the Aquifer Protection Overlay District is referred to in the Bylaw as, "Aquifer Protection

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Districts, Town of Duxbury dated March 24, 1993." The map showing the limits of the aquifer protection district is

entitled, "Aquifer Protection Overlay Districts," and is dated March 2009. See also the map references in Section 202.1. Map references in the Bylaw should be harmonized with map titles.

IV. Conclusions and Recommendations.

There is inherent tension in land use regulation. "When do community concerns about health, safety and welfare warrant regulation of private property?" The objective of the ZBRC was not to decide what the limits of Duxbury land use regulation should be, for that is a task reserved for Town meeting.⁵ Rather, the ZBRC was asked to consider whether the Bylaw itself should be clarified to provide certainty of substance and process and remove unnecessary tension that may arise due to a lack of clarity, a lack of consistency, and the like.

There is much to be said for having a Bylaw that people have been using and are comfortable with: the absence of change can bring with it some certainty of administration. However, our review identified subjects and text in the Bylaw that warrant review and updating. At least some of the conditions identified and described in this Report appear to be the product of numerous amendments to the Bylaw over the last 10 years. As at least one commenter said during the process, "There are many voices in the Bylaw," referring to numerous drafters of various parts of the Bylaw.

The time has come it seems to revisit the Bylaw and restate it as a whole, stitching into one the numerous amendments, and clarifying areas where concerns have been identified. Resolving ambiguity provides more certainty --certainty of process for all participants in the land use process and certainty in achieving and implementing the Town's land use planning goals. In so doing, the Town should evaluate substantive land

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use policy issues like the ones identified on

⁵ During the process, the ZBRC received comments on the substantive land use policy of the Town. While beyond the Committee's charge, the ZBRC felt it important to append a list of key comments to this Report to help identify substantive land use matters that may warrant discussion in the future. This list is attached as Exhibit B. The ZBRC expresses no opinion on the merits of any such substantive issue or comment.

Exhibit B, to gauge community feeling about these issues with an eye to possible substantive amendments.

To these ends, the ZBRC has the following specific recommendations:⁶

1. The ZBRC believes that a qualified professional experienced in zoning should be retained to prepare a plan for recodification of the Bylaw as described in this Report. A working group should be convened to carry forward this project. This is a large undertaking, so expectations should be managed carefully. Legal counsel should be consulted as appropriate.

2. In the interim, the Town should create a permitting guide (or at least an outline of the permitting processes) to help guide property owners and applicants through the permitting processes. The guide would help demystify the land use permitting for applicants.

3. New members to land use Boards should receive at least some level of training about the land use process and the applicable state and local legal framework. Formal training is available through the Citizen Planner Training Collaborative.

4. The Town should assign permitting ombudsman responsibilities to help coordinate permit review for complicated projects (particularly at the early stages of projects) and resolve issues that may otherwise arise during the permitting process.

During our study, we received many favorable comments about the work of the Town Planner, the Zoning Enforcement Officer, and administrative staff for the Planning Board and Board of Appeals. The Town is fortunate to have dedicated professional and administrative staff. Much is asked of the elected and appointed

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members of the Planning Board, Board of Appeals and Design Review Board. The
commitment and effort these volunteers expend in

⁶The Committee did not review the appropriateness of filing fees or related issues on the financial side of permitting. The Selectmen may want to consider such an evaluation in the future.

service on these Boards is exemplary. Our hope is that changes outlined in this Report will reduce redundancy and enhance collaboration between boards, make the job of land use regulation easier for the Town's land use professionals and officials, provide more clarity and certainty for applicants, owners, abutters, architects, design professionals and other interested parties, while carefully implementing the land use policy of the Town.

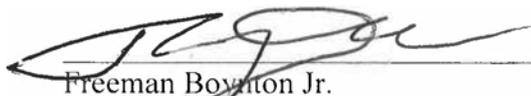
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Dated this 5th day of December, 2012

Judi Barrett--Vic e Chairman



Paul Boudreau



Freeman Boynton Jr.



Martin Desmery--Secretary



Fred Clifford



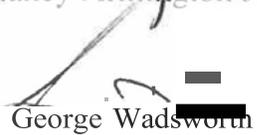
Bob Fitzpatrick--Chairman



Nancy Armington Johnson



Mary Steinke



George Wadsworth

Exhibit A
Key Comments Raised During the Information Gathering
Process

A. Article 100.

1. Sections 102 and 104 should be reorganized and condensed, but these are not high priority items.

B. Article 200.

1. The Town of Duxbury Massachusetts Zoning Map is made up of 7 sheets (maps).

These Zoning Maps are all dated March 2009 and begin with a Composite Map followed by 6 other maps. The Bylaw cites these maps frequently but often with either an incorrect title, date or both.

2. 202.1 Zoning Map: The first sentence in this section refers to the “Town of Duxbury, Massachusetts Zoning Map” dated March 2009 consisting of 7 sheets in total. Then , it refers to one of the maps as the Wetland and Watershed Protection District Map dated March 4, 1971 , as revised and amended to date. The reference is not clear; which map controls? The map dated March 2009 or March 4, 1971? The section also notes that included is the Aquifer Protection District Map dated January 15, 1986, as revised and amended to date. Again not clear, which map applies, the one dated March 2009 or January 15, 1986? The zoning maps are clearly dated March 2009 and there is some fine print under "Data Sources" on each map that refers back to the older dates but there must be a better way for someone to clearly understand that the maps they are looking at reflect the current bylaw.

3. 202.2 (10) District Boundary Line Descriptions: Boundaries of the

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“Waterfront Scenic Area Overlay District” are shown on a map entitled “Waterfront

Scenic View Resource

Area,” dated 2004. Again, this is not clear; the date on the map is March 2009 and the map is entitled, “Water front Scenic Areas.”

C. Article 300.

1. General Formatting. (a) The Town should consider consolidating all definitions, which are scattered throughout the Bylaw, into one comprehensive section. If a particular definition applies only to a discrete section of the Bylaw, that definition could be contained in the applicable section but there should be a cross-reference in Article 300 so the reader can easily locate every defined term. (b) It is often helpful to use initial capitals as way to distinguish defined terms from words which are not defined; e.g., Accessory Use vs. accessory use. The current version of the Bylaw does not use initial capitals. (c) There are instances in which terms are defined in the Bylaw, and yet the Bylaw does not use the defined terms. For example, in paragraph 4.a) on page 14, the Bylaw refers to “structures accessory thereto” instead of “accessory structures.” (d) Several of the definitions include dates in parenthesis (Accessory Use, Bed and Breakfast, Dwelling Unit & Guest Unit). Presumably, these dates indicate the year in which the particular definitions were added to the Bylaw. The dates are unnecessary and should be deleted.

2. Preamble. The preamble needs to be updated. Typically, a preamble is far more instructive with respect to rules of construction. Among other things, the preamble should advise the reader that any language following words or phrases like “such as” or “including” are merely examples and should not be construed as all-inclusive lists.

3. Multiple Definitions. In several instances, a word or phrase defined in Article 300 is defined in another section of the Bylaw, and the definitions do not match. These should be

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recodified and standardized. A good example is “Accessory Structure,” which is defined

differently on pages 5 and 10 of the Bylaw. See also “Applicant” (pp. 5, 26 & 84); “Developer” (pp. 7 & 118); “Home Owners' or Residents' Association” (pp. 8 & 118); “Lot Arce” (pp. 8 & 34); “Projections” (pp. 9 & 35); “Setback” (pp. 9 & 95); and “Use Restriction” (pp. 10, 58 & 119).

4. Redundant Definitions. In several instances, a word or phrase defined in Article 300 is defined again in a subsequent section of the Bylaw. Examples include the definitions of “Impervious Coverage” (pp. 8 & 118); “Sign” (pp. 9 & 63); “Town” (pp. 10 & 119); and “Way” (pp. 10 & 119).

5. Specific Definitions. The following terms should be re-defined for the purposes of clarity, precision and intent: Accessory Structure, Accessory Use, Building (consider using definition in State Building Code), Dwelling (consider using definition in State Building Code), Dwelling Unit (consider using definition in State Building Code), Frontage (check for compliance with applicable law), Structure (consider using definition in State Building Code), and Coverage/Site (change “principal building” to “Principal Structure”).

6. Unnecessary Definitions. The following defined terms are unnecessary because they are not used in other parts of the Bylaw, or are used so rarely that a separate definition should not be required: Bed & Breakfast, Improvement Schedule, Informal Hearing, Interested Party, Land Improvements, and Ways to the Water. In addition, the term “Principal Structure” is used only in the definition of “Accessory Structure,” which could easily be re-defined to eliminate the need to separately define a “Principal Structure.” Similarly, the only reference to an “Accessory Building” is in Section 425.1.5. on page 43, and since a “Building” is defined as including a

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“Structure,” there is no need to have separate definitions for “Accessory Building” and

“Accessory Structure.”

7. Additional Definitions. The Committee believes that the following terms should be defined in the Bylaw: Upland, Limited Access Highway, and Vehicles.

D. Article 400.⁷

1. 401.1 Prohibited Uses: Update language, especially as it relates to farming.

Do we need to have tables once again provided as a reference item in the Bylaw?

2. 401.2 Nonconforming Uses: This section provides that for the purpose of this 401.2, a use or structure shall not be deemed nonconforming simply because the lot on which the use or structure exists does not conform. What is a nonconforming lot?

Nonconforming with respect to area or frontage or setback? Does this language suggest that a conforming alteration on a nonconforming lot is permissible?

3. 401.2.2. Restoration: This section allows reconstruction of a nonconforming structure destroyed by fire or other casualty. Reconstruction should be defined. Should reconstruction be limited to the footprint of the nonconforming structure?

4. 401.2.4 (a) (iii) Alteration , Reconstruction, Extension or Structural Changes to Preexisting Nonconforming Single and Two-Family Residential Structures: This section needs review. Does it mean that the applicant is entitled to a special permit if the special permit granting authority finds the proposed change would not substantially increase the nonconforming nature of the proposed structure?

5. 401.5&6 These section are duplicated in 410 & 906. Should these requirements be consolidated in one place?

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⁷ Consider tabular rather than narrative presentation of allowed uses and dimensional requirements. Also, uses should be updated to reflect current norms.

6. 401.8 A section title should be provided that corresponds to the statutory reference and purpose of the exemptions.

7. 403.7 Special Permit Procedures: This section should include a reference to the Design Review Board. See also Section 404.8. Special permit procedures are too scattered throughout the Bylaw. Consider including references to other Sections in the Bylaw where special permit procedures/criteria are presented. This section should include at least a reference to section 906.2, which is entitled Special Permits. The section should include a timeframe within which the referral must be made to the reviewing boards to provide more certainty.

8. Sections 404.6 and 404.9: Wetlands Protection Overlay District includes two provisions addressing special permits, which causes confusion. 404.9, which requires compliance with all other requirements of the Bylaw for a special permit to issue, places a heavy burden on an applicant to sift through all aspects of the Bylaw to figure out what is needed to comply. Special permit criteria should be referenced or provided.

9. 406.7.2 Density Regulations: Best Management Practices should be defined.

10. 410.1 Permitted Uses and Structures: Define educational uses. Define service vehicle.

11. 410.4 Residential Compatibility District Intensity Dimensional and Coverage Regulations: (a) Intensity - The maximum density shall be one single family dwelling per 40,000 SF or more of upland. This is a definition of density therefore the word "Intensity" should be replaced with "Density." Also, it has been argued, as currently written, a lot with 80,000 sq. feet of upland could by right have two dwellings (one per 40,000 sq. feet of upland).

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This should be clarified. (b) Height.⁸ No detached structure or building shall be closer than its height to any other. Should this be applied only to buildings or detached structures on adjoining lots not in common ownership? And not apply to buildings and detached structures on the same lot. Examples - why would a shed have to be 30 feet away from the home? If you have two sheds why would they have to be 10' apart vs. placing them next to one another? (c) Coverage. In a Residential Compatibility District, building coverage as defined in Section 302 shall be no more than fifteen percent (15%) of the total area of the lot (as defined in Section 302 and not "Lot Area"), except that in the case of a lot having a total area of less than twenty thousand (20,000) SF the Board of Appeals by Special Permit may permit additional building coverage in an amount not greater than three percent (3%) of the difference between the total area of the lot and twenty thousand (20,000) SF. A chart and or example of the calculation should be included in the Bylaw here to help explain this provision.

12. 410.5 Residential Plot Plan Required for Building Permit: Consider consolidating this provision with building permit requirements. Process by which Board of Appeals could "deem necessary" plot plan elements is not clear.

13. 420 Neighborhood Business Districts: Number of uses and buildings on one lot and or uses within a building. Do multiple buildings in an NB District have to designate a principal building and all others are accessory? This issue has been raised by the Planning Board. Clarity should be incorporated into the NB Districts to deal with this issue. NB Districts are not the RC district and should not have RC District regulations applied the same (i.e. Accessory Structure).

⁸Section 410.4 also provides that no dwelling shall be more than 30 feet in height. The reference point for the height measurement should be clarified, i.e., is the reference point natural grade or post construction grade?

It is not uncommon nor is it likely undesirable to have multiple commercial uses in one building or in multiple buildings on a commercial property.

14. 425.1 Reference to 10 linear feet for front set back should be 40 linear feet.

E. Article 500.

1. 530. Division of Land and Development of Multiple Dwellings: Together, sections 530.1 through 530.3 impose a special permit requirement on residential developments involving six or more lots, or 10 acres divided into five or more lots, or six or more dwelling units in a development that does not constitute a subdivision. Section 530 functions as an umbrella for at least two related provisions of Article 500, notably section 540 (Residential Conservation Cluster) and Section 560, Inclusionary Zoning. It needs to be reviewed for legality by a qualified zoning consultant in light of recent case law, e.g., Wall Street Development Corp. v. Planning Board of Westwood (2008).

2. 540 Residential Conservation Cluster: This provision requires a special permit for residential subdivisions involving the creation of six or more lots. It establishes performance standards that should be reviewed in light of criteria for approval of subdivisions under the Subdivision Control Law, G. L. c. 41 , §§ 81 K-81 GG, and empowers the Planning Board to grant or deny a special permit for a development that may otherwise comply with the Rules and Regulations of Subdivision Control. Section 540 is similar to many open space residential development bylaws that are based on models published by the Green Neighborhoods Alliance and other organizations prior to 2003. All of these bylaws pre-date Wall Street Development Corp. v. Westwood, however. Since it "fuses" a special permit with subdivision approval under the Subdivision Control Law, section 540 also should be reviewed for legality in light of recent case law.

3. 560 Inclusionary Housing: This section imposes an affordable housing requirement on subdivisions and other types of residential developments that do not constitute a subdivision, e.g., so-called “Approval Not Required” lots and planned developments regulated under sections 700-800. It requires that at least 10 percent of the units in a development be affordable as defined by the Commonwealth. Units may be provided within the proposed development, on another site in Duxbury, or by payment of a fee in lieu of creating an affordable unit. (Note: the Town has a special revenue fund for fees paid by developers under section 560 of the Bylaw.) Like sections 530 and 540, the Inclusionary Housing provision needs to be reviewed in light of Wall Street Development Corp. and other relevant case law. Legal review of the inclusionary housing provision should be updated in light of recent takings law.

4. 570 Affordable Housing: As if to underscore the problems of incremental zoning amendments since 2003, section 570 introduces a different affordable housing requirement with its own set of definitions. Though two of the definitions cross-reference section 560, one of the new definitions is virtually identical to a cross-referenced definition under Inclusionary Housing. Furthermore, sections 560 and 570 contain different ways of explaining the requirements for an affordable housing restriction - a restriction that must be the same under state law (G. L.c. 184, §§ 31-32) or the units would not qualify for listing on the Subsidized Housing Inventory. The intent of section 570 is to allow non-conforming lots that are otherwise unbuildable to be used for affordable housing units that "count" on the Subsidized

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Housing Inventory. Since section 570 is voluntary for the applicant and does not conflict with entitlements under other laws, it otherwise does not appear to be problematic. It has some provisions that should be reviewed at a policy level (such as minimum setbacks that differ from those which apply elsewhere in the RC district), but for our purposes, the more important issue involves duplicate, conflicting, or

inconsistent language between sections 570 and 560, section 410 (Residential Compatibility District), and section 906 (Special Permits).

F. Article 600.

1. 603.4 Number of Parking Spaces: for certain “other” business uses the required number of parking spaces shall be provided as determined by the Board of Appeals. A more definitive standard should be provided.

2. 603.8 Landscaping: should specify maximum distance between landscaped islands in parking lots.

3. 603.10.3 Entrance Requirements, Site Distance: “All driveways serving a business must comply with the corner clearance requirements of this section... Measurements of the clear site distance shall be based on a line of sight at a level of 3 1/2 feet above road surface at each end of the clear site distance. Inside the clear site triangle, no vision obstructing object on landscaping shall be permitted at a height of 3 1/2 feet and 8 feet above the plane identified by the adjacent curb grades.” Site distance requirements should be extended to all road intersections as the existence of hedges and fences all too frequently obscures the sightline making it unsafe to enter as it is at the head of Water Street entering Washington Street.

4. 611.6 Application Requirements: This section provides that the Planning Board may require the submission of some or all of the information listed in several subsections and the determination is to be made in relation to the extent of clearing proposed by the applicant. What is the process in which the determination is made? Applicant needs certainty.

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5. 611.8 Required Security: This section provides that the Planning Board may require a performance guarantee in the form acceptable to the Town to cover the costs associated with

compliance with this Bylaw under a site alteration special permit. It would be clearer if this section were titled "Performance Guarantee."

G. Article 700.

1. Definitions are contained in section 725, the end of the section. For better clarity, this should be placed or at least referenced at the front of the section.

2. 702.1 Classifications refer to Land Classification Map under Section 807.3.3 which refers back to this paragraph. Neither location gives sufficient information.

3. 702.2 Use Restrictions is an inappropriate heading of paragraph. It does not indicate uses. Also, Subsection 1, Common Open Space, has no purpose described in this paragraph, even though it is in definitions at the end of the section. Subsections 2-4 are procedural information. Subsection 4 has extra words that should be omitted: "and enforcement in the manner fixed by law for."

4. 702.3 Planning Requirements is inappropriately named. This is the paragraph that describes allowable uses.

5. 703.6 Building Character: Recommend adding a note that proposed design characteristics are to be reviewed by the Design Review Board as part of its PD review.

6. 704 Residential Buildings: Suggest a re-write of 704.1 - 704.4. Requirements listed by building type are sketchy, and some criteria may apply generally for all types. Recommend adding a general section listing these and review which criteria should apply to individual types. It is unclear how three-and-four-family buildings differ from Multifamily Buildings.

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7. 705 Nonresidential Buildings: These guidelines are minimal, and should be reconsidered. Why is no retail allowed? Convenience stores or cafes would be beneficial

in a walkable residential development to reduce traffic and pollution , conserve fuel and

strengthen community identity. There are some places where this may be appropriate.

8. 707.1 Coverage Ratio: Why is coverage ratio for clusters granted as of July 1, 2001 less than that allowed for RC or Planned Developments? As the purpose of clusters is to place houses on smaller lots to conserve open space, then lots should allow a greater percentage of coverage than the 15% allowed in a standard 1 acre Residential Compatibility lot.

Restrictions for clusters throughout the Bylaw make this form of development less attractive for land owners and developers. The Town would benefit from encouraging Conservation Residential Clusters.

9. 708.4 Road Location Standards: Standards are too specific and limiting. “Gridiron arrangements shall not be allowed.” Why not? There are many attractive traditional neighborhoods with grid street layouts. “Turning lanes shall be installed at offices and community centers.” This should depend on size of development, and may be unnecessary and undesirable in smaller settings.

10. 709.2 Paved Widths: Dimensions given for 45 degree parking are greater than those given for 90 degree parking. These should be reviewed and corrected.

11. 710.2 Clear-Sight Triangles: AASHO is referenced. It would be helpful if any abbreviated references were identified.

12. 713.2 Bikeways and Walkways: “A pedestrian access system shall be provided along side streets as shown under Section 807.3.5 *or preferably* in common open space under Section 807.3.7.” This is unclear. Does it mean there is a choice of either location? Also, Section 807.3.5 only mentions inclusion of these on a map, and

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807.3.7 does not mention

bikeways and walkways at all. This paragraph calls for a separation from the road of a minimum of 10 feet. If this is not feasible, there should be some reduction allowed.

13. 725 Definitions: Building, Attached and Detached are both defined as dwelling units. This differs from the definition of building in Section 300. All buildings in Planned Developments are not dwelling units.

H. Article 800.

1. Suggest a timeline of process for applicants with deadlines--it is confusing as presented.

2. Sections 806.2-806.5: Suggest adding a new section break with a new heading- 806.3- which would start with the third paragraph of what is now Storm water Drainage Capacity in 806.2 beginning with "Further, said findings shall include detailed statements on the subject matter of Section 803.5" and ending with "The report with it findings and recommendations to approve, disapprove or approve with conditions shall be formally submitted at the public hearing on the Development Application."

Then current 806.3 will become 806.4 to complete article.

3. Section 807.3 (4)(b), "integration into the Application," needs to be better explained.

807.3 (5) (i) should state, "Street cross-section for each category on the map and..." 807.3 (11) should state, "A topographical map of existing conditions and a topographical map with proposed contours." 807.3(8)(b) should be clarified.

4. Section 807.4. 807.4 (6), the first sentence should read "The report shall contain an explanation of how the common open space shall be utilized upon completion and therefore maintained..." Last sentence is missing something.

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5. Potential for troublesome inconsistencies in permitting procedures and terminology

usage throughout Article 800 from those in 906.2.

6. Section 908 is specific to Planned Developments and consideration might be made to move this section to Article 800.

7. There is no definition for Planned Development in Article 300.

I. Article 900.

1. 905 Plot Plan Accompanying Application: This section virtually mirrors section 401.5. It is a good example of duplication that can cause needless confusion. A decision should be made whether to keep this section in Article 900 or Article 400, but not both.

2. 906 Board of Appeals: This section contains quite a bit of language that simply repeats text from the Zoning Act. It should be reviewed for opportunities to condense or consolidate, or where cross-references to the statute may be more appropriate than repeating text that could become outdated over time.

3. 906.2 Special Permits: This section establishes a series of criteria to guide special permit decisions by the Board of Appeals. It is not clear whether the Planning Board is bound by the same special permit granting criteria, however. In addition, the Zoning Bylaw lacks clear guidance about the relationship between the special permit criteria in section 906.2 and other sections involving special permits. This lack of clarity has led to some confusion in cases that required a special permit under provisions such as sections 404.20 to 404.50 (piers).

4. 906.4 Referrals: This section should be reviewed for administrative efficiency and intent. It requires the special permit granting authority to refer applications to certain public bodies and departments for review, and for the reviewing parties to respond within thirty-five days (as provided under M.G.L. c. 40A, §11). The "mandatory referral"

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list requires the Board of

Appeals to send applications to reviewing parties that may have no purpose in commenting,
e.g..

asking the Bay Management Commission to comment on alterations to a single-family home in West Duxbury. Perhaps some discretion could be built into section 906.4 in order to avoid needless referrals and delays in the permitting process.

6. 906.5 Application Requirements for Special Permits from the Board of Appeals: This section contains a potential conflict with section 615, Administrative Site Plan Review. Under section 906.5, the Board of Appeals and several reviewing parties must receive a site plan as part of the special permit application. The special permit site plan specifications are similar to those found under section 615, but the standards of review are not the same? At issue is whether the Board of Appeals or Planning Board is responsible (and has authority) for site plan review when a project requires a special permit from the Board of Appeals. This needs to be clarified for the benefit of applicants, town boards, and staff.

7. 909 Design Review Board: The Town has a vague provision for design review. The Design Review Board does not always receive the information it needs to conduct an appropriate review, and its role is entirely advisory to the Planning Board and Board of Appeals. Applicants often are unaware of the Design Review Board's role, the scope of its jurisdiction or standards that guide its decision-making. Since Section 909 does not give the Design Review Board any regulatory "teeth," its recommendations can be modified or dismissed by the special permit granting authority. The advisory nature of design review in Duxbury is largely consistent with the Zoning Act, but many Massachusetts towns have given design review a more prominent role in the decision standards for special permits and administrative site plan review. The applicability, scope, and implementation of section 909 need to be reassessed. There are non- zoning

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approaches to design review that may be more effective, and their advantages and

disadvantages should be considered as part of a larger evaluation of section 909. In addition, the

Design Review Board's effectiveness even under the existing section 909 could be enhanced if the Town had formal design guidelines to assist applicants and their architects and the Board itself.

Exhibit B

Land Use Issues That May Warrant Future
Discussion

ZBRC expresses no opinion on the merits of any
issue.

1. Reconsider availability of use variances under 906.3, which provide through zoning for departures from the Town's Comprehensive Plan's land use plan. Duxbury's history with use variances has not been very complimentary to the Town or beneficial to neighborhoods affected by offensive land uses. See *Vokes v. Avery W. Lovell, Inc.* (1984). The Town needs to decide whether a five-member board (the Board of Appeals) or town meeting should determine where various land uses will be allowed and under what conditions.

2. Consider whether the Town needs to embrace other approaches to design review, e.g., a Neighborhood Conservation District, which would give the design review process more “teeth” than can be provided under G.L. c. 40A. There are some options to make the existing arrangement a little stronger, but dealing with design review as part of zoning does have limits.

3. Should special permit granting authority and site plan review be consolidated under the Planning Board, leaving permits for non-conforming uses and structures, variances, and comprehensive permits to the ZBA?

4. Does the Town need a more effective approach to affordable housing?

5. Waterfront Scenic Area Overlay District (404.50): Consider whether there

should be more emphasis/incentives to preserve and repair existing piers.

6. Residential Compatibility District Intensity Dimensional and Coverage

Regulations (410.4): Coverage- In a Residential Compatibility District building coverage

shall be no more than 15% of the total area of the lot, except that in the case of a lot having a total area of less than

20,000 SF, the Board of Appeals by Special Permit may permit additional building coverage in

an amount not greater than 3% of the difference between the total area of the lot and 20,000 SF. It is clear that for lots of 40,000 SF and above the lot coverage is 15% and it is clear that for nonconforming lots less than 20,000 SF the ZBA could grant an increase in coverage up to 3% of the difference between the total area and 20,000 SF. What about nonconforming lots between 20,000 SF and 40,000 SF? Should these lots be allowed more coverage?

7. Municipal Uses (401.3): Consider whether there should be an exception for height limits for public safety structures. In 2011, the Fire Chief had to obtain a variance to install the new communication tower at the fire station.

8. Sign Regulations (601): Consider separating the sign regulation bylaw into 2 sections, one covering signs in Business District and the other covering signs in other districts. Should neon signs be allowed?

9. Consider ways to streamline the special permit process for simple projects.

10. Consider requiring a special permit for large residential structures.

11. Special Permit for Use and Construction (404.9): The boundaries of the Wetlands District are based on information collected some time ago. The boundaries should be updated to reflect current information.

12. Prohibited Uses and Structures (410.2): Lawfully accepted uses (in any district) should not be used to attempt to control size or a structure or any part of a structure. For example, the size of a garage should not be tied to storage of three vehicles. Size should be controlled with dimensional restrictions.

13. Neighborhood Business Districts (420): Consider simplifying the process

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of permitting in our limited number of NB district areas to encourage businesses; the

current

process is too time consuming and cumbersome.

14. Consider whether the Town's method of regulating building height should be based on finished grade or natural grade. See the definition of Building Height in Section 302.
15. Consider whether the Bylaw should regulate the size and volume of garages.