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DUXBURY, MASS.



Town of Duxbury Conservation Commission

Minutes of May 6, 2014

The Conservation Commission met on Tuesday, May 6, 2014 at 7:00 PM in the Mural Room at the Duxbury Town Hall.

Members Present: Joe Messina, Chair; Sam Butcher, Dianne Hearn; Barbara Kelley, Holly Morris, Corey Wisneski

Members Absent: Tom Gill

Staff Present: Joe Grady, Conservation Administrator; Susan Ossoff, Administrative Assistant

The meeting was called to order by Chairman Joe Messina at 7:00 PM.

PUBLIC MEETING: NELSON, 113 KEENE STREET, REPLACE DECK WITH SUNROOM; ADD DECK, 7:00 PM

At 7:05, Kevin Keiler, representing Don and Christine Nelson, presented the project. He distributed an enlarged plan. There will a 10' x 16'10" sunroom and a 10' x 10' deck that will be 4 feet off the ground. The helix screw method will be used which disturbs less than 10 cups of soil per post.

Joe Grady has reviewed the proposal which meets all rules and regulations for setbacks and coverage. The helix screw method for footings has a lesser impact than other methods, and a negative determination is recommended.

Sam Butcher asked how the screws are driven in; and Mr. Kieler responded that a machine about the size of a lawn tractor with tires and an arm extender drives the screw until it hits a solid layer; this is better than a sonotube because there is no sinking or deterioration.

On a motion by Sam Butcher, seconded by Corey Wisneski, the committee voted 6-0-0 to issue a Negative Determination so that a Notice of Intent is not required for the proposed project of a sunroom and deck at 113 Keene Street.

PUBLIC MEETING: SULLIVAN, 675 BAY ROAD, WATERLINE AND GAS SERVICE, ELEVATE DRIVEWAY, 7:05 PM.

At 7:09 PM, Freeman Boynton, representing Brian Sullivan, presented the project which is to replace a leaking water line and install new gas service. A 3.5' deep trench will be dug, the waterline laid and the trench immediately backfilled. The same technique will be used for the gas service. They will then re-establish the roadway bed with dense grade material. Sam

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Butcher asked how many tidal cycles the work will go through, and Mr. Boynton said they hope to do each line during one tidal cycle, though work at the ends of the lines may be done at other times.

On a motion by Sam Butcher, seconded by Barbara Kelley, the Commission unanimously voted 6-0-0 to issue a Negative Determination so that a Notice of Intent is not required for the proposed project of installing gas service and a waterline and elevating the driveway at 675 Bay Road.

**CONTINUANCE OF PUBLIC HEARING, MCLAUGHLIN, 685 WASHINGTON STREET, PIER
DEP FILE SE 18-1653, 7:10 PM**

Chairman Messina reviewed the procedure for this hearing. The applicant and his consultants will be presenting their proposal without questions from the audience so the Commissioners can hear the full presentation; questions from the Commissioners may be asked. There will be an opportunity for public comment and presentations at a later hearing date.

The Chairman explained that almost 2000 pages of documents have been received. Packets of materials go to the Commissioners on the Thursday before the hearing, which does not give much time for review with the volume of materials. Therefore the Commission is asking that materials be submitted two weeks before the hearing date. There must be 12 copies of each submittal and they must be submitted as paper copies; electronic copies are appreciated in addition to the 12 paper copies. For a PowerPoint presentation to be entered as part of the hearing record it is necessary for a hard copy of the presentation to be submitted. The hearing will be kept to about 2 hours this evening and continued as necessary.

As an administrative matter, 2 commissioners have missed one meeting each during which no substantive issues were discussed; procedural issues and the hiring of a consultant were the major topics discussed. Under the Mullen Rule, members can review the record and then be considered as part of the quorum. Dianne Hearn and Corey Wisneski each missed one date, and have both reviewed the transcripts and minutes from those dates and are now being considered members of the quorum. Dr. Gill has missed two meetings and cannot be restored as part of the quorum.

Attorney Paul Driscoll representing Mr. McLaughlin told the Committee that he will take this into consideration. He talked to the Commission's special counsel, Mr. Bobrowski, for the first time this afternoon. He thought that if a meeting was missed the individual could not participate and that the Mullen Rule was not going to be used for this hearing. He will discuss the matter with his client and will respond to the Commission about this matter. He asked what the role of people who aren't restored to the quorum is at the hearing; Mr. Bobrowski responded that he prefers that if someone is disqualified from the quorum, that they not sit at the table.

Mr. Driscoll asked about the 'wholesale' submission of documents from the first hearing. He said he had spoken to Mr. Bobrowski about this but they have not reached a resolution. He wants to talk further to Mr. McGregor, who represents the Friends of the Bluefish River, about which documents they can agree to admit. Nathaniel Stevens, representing Mr. McGregor, said they will speak with Mr. Driscoll and try to resolve this before the next hearing.

Mr. Messina said that all interested parties should submit the materials they feel are important.

Mr. Driscoll began the applicant's presentation. He introduced the team present: himself, Robert Gray from Sabatia, Jim O'Connell, George Hampton, and Paul Brogna as well as the applicant, John McLaughlin.. He identified the various regulations he felt were applicable.

Mr. Driscoll identified 3 constitutional law questions that are concerns for the applicant, under the 4th and 14th amendments. He described 3 rights: procedural due process, substantive due process, and equal protection under the law, and clarified that he wanted the Conservation Commission to know that they may see these in the record.

Bob Gray, of Sabatia , Inc. was the next presenter. Mr. Gray described the property at 685 Washington Street and the resource areas in detail and described that some of the areas have not been consistently identified. Joe Grady stated that the various resource areas will have to be clearly identified because the standards are applied differently to different areas. Mr. Gray said he believes the pier project will meet the performance standards regardless of whether the area is determined to be a tidal creek or a tidal flat. Consensus about the delineation of the resource area needs to be developed.

Paul Brogna was the next presenter for the applicant. He described the characteristics of the proposed pier: 3' wide and 198' long from the retaining wall until the end of the walkway; with a 3' x 16' gangway and 8' wide by 20' long float. There are two possible float designs that are being considered. The pier would be constructed of light penetrating decking. Joe Grady asked that a sample of the material be provided; Mr. Brogna said he would do so.

Sam Butcher asked for clarification on where the water and electric terminate on the pier. He also asked about what railing is proposed for the pier. Mr. Brogna said he would file for a building permit and at that stage look at the handrail; he anticipates it will be a single handrail on one side.

Mr. Brogna then reviewed some other pier projects that have been constructed, at 2 Ingalls Grove, 90 Marshall Street, and 267 King Caesar.

Joe Grady asked whether Mr. Brogna was using the 267 King Caesar pier site as a comparison site for the proposed McLaughlin pier. He said the substrates are very different at the two sites, and there is no salt marsh at the King Caesar site; the proposed project and this project have no resource areas in common. Mr. Grady would like to specifically know if any of these other permits are in tidal creek resources areas or areas of similar nature to the proposed McLaughlin project, and he requested information on dimensions including the distance from the float to the vegetated wetlands to see if the projects are truly comparable.

Mr. Gray responded that they can provide that information and will do so at a continuation of the hearing. Mr. Driscoll clarified that the other 5 projects are not identical nor do they have the same resource areas, but if the projects have one item in common, his example being shellfish beds, the issue is how did the board treat that project.

Chairman Messina commented that the construction methodology of these piers might be the same, but that the issue under the jurisdiction of the Conservation Commission is the wetland resource areas.

Mr. Butcher asked that a matrix be put together showing what the applicant is comparing in these other pier projects as they relate to the McLaughlin pier project. Mr. Gray said they will provide that information and Mr. Brogna added that he will provide the matrix to the Commission

after clarifying that what the Commission is requesting is to know how each project is being compared to the McLaughlin project, what the resources areas are, and what the distance between the edges of the float and salt marsh are.

Chairman Messina added that the applicant can provide whatever they want; the Commission can ask for materials, but if the applicant does not want to provide it, that is acceptable and it is up to the applicant to decide what they want to submit.

Sam Butcher asked a question about the construction design of the two float designs. He wanted clarification of where on the plans it shows how high the piles will be and at what elevation. In figure 10 of 10 the piles appear to be below mean high water. Mr. Brogna said he will respond to this question at the next hearing. Mr. Butler clarified that he wants to know if he piles are submerged at high water or not.

Mr. Messina recognized Mr. Russ Lyle from the audience, who commented that every pier that is built mars the beauty of Duxbury, and that this is the longest pier he has ever seen. Mr. Gray responded by saying that many piers are longer, though the Conservation Commission became concerned about pier length and did set a limit of 200'.

There was discussion of a continuation date for the hearing. Joe Grady said that the Commission's consultant, Horsley-Witten, is now reviewing the approximately 500 pages of materials in the second packet that has been provided to them; an additional approximately 500 pages of materials has been received but no price proposal for review has been sought yet. Additionally there may be a site visit by the Commission and the consultant, and additional materials are expected to be submitted.

Mr. Driscoll asked Mr. Messina to clarify that the applicant, following completion of their initial presentation, will be allowed additional time. Mr. Messina assured Mr. Driscoll that would be the case.

Mr. Driscoll reiterated that he would provide his feedback to the Commission about the use of the Mullen Rule within a week. Joe Messina suggested he contact Special Counsel Browbroski; Mr. Driscoll reiterated that he would provide the Commission information in writing within a week.

On a motion by Sam Butcher, seconded by Holly Morris, the Commission voted 6-0-0 to continue the Hearing on SE18-1653 to June 3, 2014 at 7:15 pm.

ADMINISTRATIVE MATTERS:

Minutes: On a motion by Sam Butcher, seconded by Barbara Kelley, the minutes of April 15, 2014 were approved by a vote of 6-0-0.

Certificate of Compliance: Curtis, TT 0 Summerhouse Lane, SE 18-1554.

Joe Grady reported that the work for this project was never done and there are no plans to do it.

On a motion by Barbara Kelley, seconded by Sam Butcher, the Commission voted 6-0-0 to issue a Certificate of Compliance for DEP File SE18-1554.

Enforcement: Joe Grady reported that he had issued an enforcement order for 523 Washington Street where sand had been placed on marsh to create a beach, stones relocated, and a

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wheelbarrow or other equipment rolled over the marsh. On a motion by Sam Butcher, seconded by Corey Wisneski, the Commission voted 6-0-0 to reaffirm the enforcement order.

Adjournment: On a motion by Joe Messina, seconded by Sam Butcher, it was unanimously voted 6-0-0 to adjourn the meeting at 9:48 PM.

MATERIALS REVIEWED AT THE MEETING

Request for Determination of Applicability (RDA) materials for 113 Keene Street
Request for Determination of Applicability (RDA) materials for 675 Bay Road
Notice of Intent (NOI) materials for SE 18-1653, 685 Washington Street
Draft minutes of 4/15/2014 Conservation Commission Meeting

Respectfully Submitted, Susan Ossoff