



# Town of Duxbury Conservation Commission

Approved 6/23/15

TOWN CLERK

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DUXBURY, MASS.

## Minutes of June 2, 2015

The Conservation Commission met on Tuesday, June 2, 2015 at 7:00 PM in the Mural Room at the Duxbury Town Hall.

**Members Present:** Chairman Joe Messina; 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 at 7:00 PM by Chairman Joe Messina

### **PUBLIC HEARING; DUXBURY CONSTRUCTION FOR SHAUGHNESSY; 259 KING CAESAR ROAD; SINGLE FAMILY HOME, IRRIGATION WELL, INCREASE HEIGHT OF SEAWALL, GRADING AND LANDSCAPING SE18-1700**

Freeman Boynton of Duxbury Construction, representing the applicant, presented the project. The house was removed under a previous NOI, and the pre-existing coverage was 17%. The proposed project has 11.6% coverage in the buffer zone; the house is being moved back and elevated above flood elevation, with filling of the lot. A new septic system is being installed. Joe Grady said the project meets the rules and regulations, and brings the lot into better conformance with the regulations. Sam Butcher asked if riprap is being added to the east end of the existing riprap; Mr. Boynton said no, there will be an open boat ramp with an additional layer being added to the boat ramp. The seawall is being raised to elevate the lower section to the height of the rest of the wall.

On a motion by Sam Butcher, seconded by Joe Messina, it was voted 6-0-0 to issue Orders of Conditions for SE18-1700.

A neighbor expressed concern with the raised elevation. Mr. Boynton said he would meet with the neighbors to discuss their concerns.

### **CONTINUATION OF PUBLIC HEARING; MCLAUGHLIN; 685 WASHINGTON STREET; PIER SE18-1653**

Joe Messina said there would be a closing summary from the applicant, then the Friends of the Bluefish would have some time to talk, and then there would be some public comment. The goal is to close the hearing tonight so the Commission can discuss the project; this will close the submissions as well.

Mr. Driscoll, representing the applicant, said that the previous day they had filed a plan to divide the Mclaughlin lot into two lots. A Deed was executed that deeds the smaller lot and land under the river to Ms. Allen, and this will go to the Planning Board in 2 weeks as an ANR. This is to address the regulation that prohibits 2 piers on 1 lot.

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 5471; Fax: 781-934-1137

Mr. Driscoll said there are Federal and State Constitutional issues involved here. He discussed substantive and procedural due process, and equal protection. He discussed a number of legal cases that address the ability to enforce and aesthetics. He discussed the Horsley-Witten report, and the projects approved by RDA that had tidal flats and land containing shellfish and three projects in the tidal marsh. He said an overwhelming body of evidence is required to deny a Constitutional right.

Gregor McGregor, representing the Friends of the Bluefish River, addressed and disagreed with Mr. Driscoll's premises of having a Constitutional right to the pier, that a project can't be denied unless there is a specific standard that it violates, and the implied premise that the Commissioners must select his evidence against all other evidence to the contrary. He disagreed with Mr. Gray's opinion that because of the lack of a freshwater stream, this project is not in a Tidal Creek, and said that no piers have been permitted in Duxbury that terminate in a Tidal Creek.

Audience Comment:

Fernando Guitart, 14 Powder Point

Mike Quinlan (no address given)

Mark Stearns, Oceanwoods Drive:

David Amory, 18 Puritan

David Corey of the Duxbury Rural and Historical Society

Jeff Palmer of 10 Powder Point

On a motion by Sam Butcher, seconded by Barbara Kelley, it was voted 6-0-0 to close the Public Hearing and allow no more public comment or submissions.

Chairman Messina asked the Commissioners for a sense of where they stand on this project.

Sam Butcher said he concludes the pier does not extend beyond the salt marsh, is therefore in a Tidal Creek, and so doesn't meet the regulations. He believes that among other concerns it will degrade aesthetics, will create negative impacts on water flow, and that the design can't be constructed in a manner that will protect shellfish. He disagrees that similarly situated to other projects and believes it affects more resources than other projects. He recognized the applicant made efforts to reduce impacts and tried to accommodate Commission concerns, but concludes that this project can't be conditioned in a way that is consistent with bylaws and regulations.

Holly Morris disagreed with Mr. Gray's definition and says in the regulations there is no mention of a salt versus fresh water stream being necessary for it to be a Tidal Creek. The Tidal Creek is vital in function and value and believes the pier terminates in the salt marsh and fails to meet the regulations. She is concerned with shading impacts and slumping, and said no other float is approved in a narrow Tidal Creek; this is a unique proposal. She is concerned with current alterations, sediment movement, propeller scarring, turbidity and that this project cannot be conditioned to meet the performance standards.

Barbara Kelley expressed concerns on the effects on wildlife. She believes the pier terminates in a Tidal Creek, and no pier that does that has been approved before and so this is not similar to other piers. This pier ends in the salt marsh and will damage the marsh, and may contribute to slumping. It will have some aesthetic impacts and doesn't meet the performance standards.

Dianne Hearn said other members have made her points and she concurs with the statements of the other Commissioners.

Corey Wisneski felt the pier does meet the rules and regulations and performance standards. She said the regulations refer to vegetated salt marsh, and the project meets the regulations based on this. Aesthetics are not a major issue; there are many other piers in the area. She said slumping was her primary concern, the stability of the marsh, but believes the project is far enough away from the calving area to prevent further calving.

Joe Messina said he understands the aesthetics argument but the decision can't be made on that, it is not a major interest. His focus is on the salt marsh. He believes the intent of the bylaw is for piers to reach beyond the salt marsh platform, not reach an area within the platform that is wet. He is concerned about the use of piles and the placement of piles on the edge of the Tidal Creek where there is slumping, which risks further degradation of the salt marsh platform. This pier in this location is different than anything that has been permitted in the past. He does not believe this can be permitted in a way that addresses impacts.

On a motion by Sam Butcher, seconded by Holly Morris, it was voted 5-1-0 to instruct Special Counsel to prepare a draft denial of this project.

Chairman Messina said at the next meeting the draft denial will be reviewed by the Commissioners. He made a motion to review the draft denial at the meeting on June 23 at 7:15; this was seconded by Barbara Kelley and approved by a vote of 6-0-0.

## **ADMINISTRATIVE MATTERS**

### **Certificates of Compliance**

**SE18-757; 88 Lakeshore Drive:** Joe Grady has inspected the property, the as-built plan and other required documentation has been submitted, the project conforms to the Orders of Conditions and he recommends Certificates of Compliance be issued. On a motion by Sam Butcher, seconded by Dianne Hearn, it was voted 6-0-0 to issue Certificates of Compliance for SE18-757, 88 Lakeshore Drive.

**SE18-1026; 88 Lakeshore Drive:** Joe Grady has inspected the property, the required documentation has been submitted, the project conforms to the Orders of Conditions and he recommends Certificates of Compliance be issued. On a motion by Sam Butcher, seconded by Dianne Hearn, it was voted 6-0-0 to issue Certificates of Compliance for SE18-1026, 88 Lakeshore Drive.

### **Enforcement Orders: 20 Bradford Road and 30 Bradford Road**

Joe Grady explained that these orders were a mechanism to allow the temporary repairs necessary at the site while the NOI for the permanent project is reviewed. On a motion by Holly Morris, seconded by Sam Butcher, the Enforcement Orders at 20 Bradford Road and 30 Bradford Road were reaffirmed by a vote of 6-0-0.

**Adjournment:** On a motion by Sam Butcher, second by Barbara Kelley, it was voted 6-0-0 to adjourn the meeting at 9:16 pm.

## **MATERIALS REVIEWED AT THE MEETING**

SE18-1700 NOI Materials

SE18-1653 Public Hearing Materials