



Town of Duxbury Massachusetts Planning Board

Approved 09/27/17

TOWN CLERK

2017 SEP 28 PM 1:03

DUXBURY, MASS.

Minutes 09/13/2017

The Planning Board met on Wednesday, September 13, 2017 at 7:00 PM at the Duxbury Town Hall, 878 Tremont Street, Mural Room.

Present: Scott Casagrande, Chairman; David Uitti, Vice Chairman; Cynthia Ladd Fiorini, Clerk; John Bear, Brian Glennon, and George Wadsworth.

Absent: Jennifer Turcotte.

Staff: Valerie Massard, Planning Director; and Diane Grant, Administrative Assistant.

Mr. Casagrande called the meeting to order at 7:01 PM.

OPEN FORUM

Hall's Corner: Mr. Bear reported that the Economic Advisory Committee recently held a conference call with staff from the Metropolitan Area Planning Council (MAPC) to outline next steps for research on Hall's Corner.

Eventide Disclosure: Mr. Bear disclosed that he serves on a private, non-profit committee with Mr. Ned Lawson, an "objector" to the Eventide Definitive Subdivision; however, that role is not related to the topic, nor will it taint his review of the Eventide subdivision application. Mr. Bear stated that he is sharing this information for ethics standards under state requirements.

OTHER BUSINESS

Because it was not yet time for the first agenda item, the Planning Board addressed Other Business items.

Engineering Invoices:

MOTION: Mr. Glennon made a motion, and Mr. Uitti provided a second, to approve the following Amory Engineers invoices dated August 1, 2017:

- #14733A in the amount of \$1,414.50 for services related to Eventide Definitive Subdivision
- #14733B in the amount of \$483.00 for services related to 1065 Summer Street / Tedeschi Definitive Subdivision.

VOTE: The motion carried unanimously, 6-0.

ANR PLAN OF LAND (CONTINUED): 56 CRESCENT STREET / GERRAUGHTY

Present for the discussion were the applicants, Mr. Bill Gerraughty and Ms. Holly Gerraughty; and their representatives: Atty. Brian Cook and Mr. Lamont Healy. Mr. Casagrande invited Atty. Cook to present the application. The ANR plan proposed the division of a parcel of land located at 56 Crescent Street, a public way, into two lots – Lot 1A and Lot 1B – for the purpose of creating a new buildable lot. Lot 1A would have 258 feet of frontage on Crescent Street and Lot 1B would have only 41.83 feet of frontage on Crescent Street.

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The mission of the Town of Duxbury is to deliver excellent services to the community in the most fiscally responsible and innovative manner while endeavoring to broaden our sense of community and preserve the unique character of our town.

Atty. Cook stated that the Gerraughtys looked at their title, deed, Subdivision Control Law, and Duxbury's Subdivision Rules and Regulations. He stated that the proposed plan shows that each of the two proposed lots has 40,000 square feet of upland and 200 feet of frontage. He stated that the plan shows proper setbacks and proper access, and so they filed an ANR plan.

Atty. Cook provided background on how the original lot was created. He stated that it was originally part of a five-acre site owned by Mr. Park, who filed a four-lot subdivision in 1962 and was told by the Planning Board that he could have only three lots. As a result, an 80,000 square foot lot was created that fronted on Crescent Street with another two lots located on the waterfront. Atty. Cook stated that a right-of-way was created and used at least from 1962.

Ms. Ladd Fiorini arrived at the meeting at this point.

Atty. Cook explained that the 1962 plan was approved under Subdivision Rules & Regulations in effect from 1952 to 1970 and the paragraph in those regulations is now referred to as "Paragraph 2C." Mr. Glennon asked if the plan was recorded, and Ms. Massard responded that for an Approval Not Required (ANR), no decision is rendered; however, the plan is recorded with notes regarding the approval.

Atty. Cook stated that an ANR plan was filed in 1976 in order to adjust lot lines and provide a more accurate depiction of the driveway location. Mr. Glennon asked what is the starting point: the ANR or the subdivision? Atty. Cook replied that records are not perfect. Mr. Glennon asked if Atty. Cook agrees that the 1962 plan states that the approval was granted under Paragraph 2C, and Atty. Cook agreed. Mr. Glennon clarified with Atty. Cook that a public way was providing 200 feet of frontage for only one of the lots, and Atty. Cook confirmed this. Mr. Glennon clarified with Atty. Cook that the driveway, which the 1962 plan refers to as a right-of-way to the best of anyone's knowledge, was not in existence on August 18, 1950, and Atty. Cook agreed.

Atty. Cook stated that when three lots are created out of one, then it is a subdivision. He stated that if the Planning Board is concerned with frontage, the Planning Board voted on plans in 1962 and 1976 that showed a way.

Mr. Casagrande read from Paragraph 2C of the Rules and Regulations Governing the Subdivision of Land adopted by the Duxbury Planning Board in 1959, revised 1970:

If the owner of a parcel or tract fronting upon a public way wishes to subdivide such parcel or tract into not more than three lots, one or more of which will not front upon an existing public way, or a way there-to-fore approved in accordance with the Subdivision Control Law and such owner is willing to grant to the purchaser of each of such lots the right to construct and maintain an adequate driveway across his remaining land to the public way upon which such remaining land fronts, the Board may...approve such plats; provided however that, in case of a subsequent re-subdivision of any such lots, no such driveway shall be deemed a way, public or private, furnishing access to any of the lots in the subdivision unless all of the provisions of these Rules, Regulations and Requirements applicable to ways in a subdivision have been complied with in respect to such driveway.

Mr. Casagrande stated that the right-of-way created to get to the back lots is not a way. Ms. Massard added that basically the Planning Board at the time was granting a waiver of frontage.

Atty. Cook agreed that a regulation like Paragraph 2C does not exist anymore in Duxbury. He stated that the exact situation has occurred on Phelps Lane, where there are four lots on a road that is more of a cart path than a road. He stated that the Planning Board has the flexibility to allow the fourth lot on Crescent Street. Mr. Casagrande noted that the Planning Board rejected the rationale for four lots on Crescent Street even in 1962. Mr. Uitti pointed out that Atty. Cook's example of Phelps Lane is a way.

Atty. Cook stated that if the property owners were to file a subdivision it would require them to tear up the existing driveway and raze a barn that is on the property.

Mr. Glennon reviewed that under Subdivision Control Law, there are three ways to justify an ANR plan by showing frontage on:

1. A public way
2. A way shown on a plan endorsed in accordance with Subdivision Control Law and subject to certain conditions
3. A private way in existence on August 18, 1950 when Subdivision Control Law became effective in the Town of Duxbury.

Mr. Glennon asked Atty. Cook which rationale is being used for this ANR application. Atty. Cook replied that he is using the second reason, noting that it uses the term "way," not "public way" or "right-of-way." Mr. Glennon stated that for Planning Board purposes, they must be satisfied that the plan does not show a subdivision, which is not the case here. Mr. Glennon again referenced the wording of the Paragraph 2C regulation.

Atty. Cook asked if the Planning Board could prove that what he is proposing is a subdivision. Mr. Glennon responded that there is no property line there currently and the Planning Board has no authority to create lots unless the applicant can prove to the Planning Board that the proposal is not a subdivision. Atty. Cook stated that easements, right-of-ways and cart paths are described in deeds. He stated that the right-of-way could be moved but the property owner is leaving it there to create two lots.

Mr. Utti again referenced the Paragraph 2C wording, noting that it clearly states that a way, public or private, is not created. He stated that there is no finding that all of the provisions of the rules, regulations and requirements applicable to ways in a subdivision have been complied with. Mr. Utti concluded that the 1962 plan allowed for three lots and the driveway is not considered a way.

Atty. Cook noted that in 1976 the Planning Board approved a plan that created a wider access and paved it. Mr. Casagrande clarified that in the Planning Board approved minor lot line changes, and paving a driveway is not regulated by the Town of Duxbury. Ms. Ladd Fiorini noted that even though it may have been paved, it was still a driveway.

Atty. Cook then asked if the Planning Board would consider a frontage waiver, stating that it is within the Planning Board's purview, or else recommend another way the applicants can gain another lot. Mr. Bear responded that it is not up to the Planning Board to recommend options. Mr. Casagrande noted that frontage waivers are granted through the Zoning Board of Appeals.

Atty. Cook stated that he could withdraw the ANR plan, but he would need to know the next step. Mr. Bear stated that the ANR plan is based on the driveway being considered a way, but it is actually a right-of-way used as a driveway. He stated that how the applicants proceed is up to them. Mr. Glennon added that the Planning Board is sympathetic to the applicants' intention but has no authority to grant a frontage waiver.

Atty. Cook stated that Mr. Lamont Healy, the surveyor who drew the 1976 plan, was present at the meeting. Mr. Healy stated that he was asked to define the limits of the existing way and the idea was to create an 18-foot driveway that follows the natural slope.

Mr. Casagrande noted that what is before the Planning Board tonight is an ANR with a right-of-way as frontage. Atty. Cook stated that he believes there is no difference for ANR purposes between a public way and a private way. Mr. Utti stated that sufficient frontage on a way is required for an ANR endorsement and neither of the earlier plans established a way.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Bear provided a second, to deny endorsement of an ANR Plan of Land entitled, "Plan of Land, Duxbury, Massachusetts; Owner / Applicant: Holly L. Gerraughty, 56 Crescent Street, Duxbury, Massachusetts," dated June 19, 2017, prepared by McKenzie Engineering Group, Inc., 150 Longwater Drive, Suite 101, Norwell, MA 02061, not stamped or signed, due to lack of frontage.

VOTE: The motion carried unanimously, 6-0.

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**INITIAL PUBLIC MEETING, ADMINISTRATIVE SITE PLAN REVIEW:
295 SAINT GEORGE STREET / ROBBIE**

Present for the discussion were the applicant, Mr. Jack Robbie, and his representative, Mr. Freeman Boynton of Duxbury Construction. Also present was the town's consulting engineer, Mr. Patrick Brennan of Amory Engineers. The applicant proposes to raze an existing dwelling and barn and to build a new two-story building that would have an office on the first floor walkout and living space on the first and second floors; and also to construct a new storage building, with related utilities and parking. The property is located in the Neighborhood Business I (NB1) District. Ms. Massard noted that revised plans had been submitted within the last week, before the Planning Board had a chance to review the initial set of plans.

Mr. Boynton stated that the Board of Health has approved the septic design. The Conservation Commission is waiting on Mr. Brennan's final review of plans. Mr. Boynton noted that because of groundwater separation issues, two more chambers have been added to revised plans. In addition, a retaining wall has been lowered by six inches so no separate building permit would be required for it. Mr. Boynton noted that the existing structure is twelve feet from the front property line. Ms. Massard noted that there are no setback requirements in the NB1 District.

Mr. Casagrande asked Mr. Boynton about proposed drainage and parking spaces. Mr. Boynton stated that Mr. Brennan had concerns with vehicles' ability to back out of the spaces designated for the living spaces. However, because the parking will be used at complementary hours, it will be feasible for vehicles to back out of spaces.

Mr. Bear asked if any re-grading is proposed, and Mr. Boynton responded that the property goes from elevation 23 in the front to 18 feet in the rear so little grading will be required. Mr. Casagrande asked about the existing access, and Mr. Boynton replied that an existing easement agreement will remain.

Mr. Glennon asked about the nature of the business, and Mr. Robbie stated that it will be a construction business, with storage for small equipment in the storage barn.

Mr. Glennon asked if the new retaining wall will wrap around the corner, and Mr. Boynton confirmed that it will, noting that it is a short wall. Mr. Glennon asked about the property behind the site, and Mr. Boynton stated that the back of the barn is the neighbor's front lawn and garden. Mr. Boynton added that all drainage will remain on the proposed site. Mr. Glennon noted that it appears that there will be no impact of the project on the abutting property.

Mr. Glennon asked about a third wall on the west end of the site between the two buildings, asking how high that wall will be. Mr. Boynton replied that the height of that wall is below four feet.

Mr. Casagrande asked Mr. Brennan, the consulting engineer, to provide his comments from review of the plans. Mr. Brennan noted that his comments are summarized in his letter to the Planning Board dated August 29, 2017. He noted that he has also reviewed the revised plans that the Planning Board has not yet seen and he has provided comments on those plans as well. Mr. Brennan noted that the applicant has addressed many issues with the revised plan. A lighting plan has been provided. He stated that the only outstanding issue is the parking spaces. He noted the applicant has stated that the residential and business parking will be used at opposite times.

Mr. Bear asked about dumpster pickup and Mr. Brennan replied that they will schedule pickup during off-hours. Mr. Wadsworth asked if handicap parking is provided, and Mr. Brennan replied that none are proposed and they are not required for sites with less than fifteen spaces. Mr. Brennan stated that although six spaces are required a total of eight parking spaces are proposed: four paved and four gravel.

Mr. Glennon asked if the proposed storage building will be two stories, and Mr. Robbie responded that it is 1.5 stories with stairs. Mr. Robbie noted that the bathroom on the first floor is for cleanup and there is no heat in the building. He also noted that the proposed bath on the second floor has been removed from revised plans.

Mr. Glennon asked about elevation plans, and Mr. Robbie showed the elevations. Mr. Casagrande asked how many apartments are proposed for the main structure, and Mr. Robbie replied that it would be one apartment with two

bedrooms for his own personal use because he lives on the Cape, so he can stay locally when needed. Mr. Robbie added that a landscape plan has been submitted and grass has been added where possible.

Mr. Casagrande asked about the lighting plan, and Mr. Robbie stated that the intention is to minimize lighting, and there will be a residential light pole on the street.

Ms. Massard noted that the Planning Board will have an opportunity to review and comment on a Zoning Board of Appeals (ZBA) special permit application for the same project at a future meeting.

Mr. Casagrande invited public comment. Mr. Lee Lindemuth of 294 Saint George Street stated that he lives across the street from the proposed site. He questioned if eight parking spaces and five baths are excessive on a site that is only 15,000 square feet in size. Mr. Casagrande stated that the site is a pre-existing nonconforming lot, and the Planning Board's purview is basically the parking and lighting.

Mr. Lindemuth asked if work performed on the site will produce loud noise and if chemicals will be stored outside on the site, and Mr. Robbie stated that no work will be done on the site and there will be no active storage of chemicals. Mr. Casagrande advised Mr. Lindemuth that some of his questions might be better addressed at the ZBA hearing.

Ms. Marjorie Mayo of 291 Saint George Street, the abutter to the rear of the proposed site, stated that she has lived through the reconstruction at the Millbrook Crossing next door and is she is anxious to have all the construction projects completed. Mr. Casagrande advised her that the project still needs approval from the Conservation Commission and the ZBA.

MOTION: Mr. Glennon made a motion, and Mr. Uitti provided a second, to continue the public meeting for Administrative Site Plan Review of 295 Saint George Street / Robbie to Wednesday, September 27, 2017 at 7:14 PM.

VOTE: The motion carried unanimously, 6-0.

CONTINUED PUBLIC HEARING, DEFINITIVE SUBDIVISION: 1065 SUMMER STREET / TEDESCHI

Mr. Casagrande opened the continued public hearing. Present for the discussion was the applicant, Mr. Matthew Tedeschi of Duck Berry LLC, and his representative, Mr. Rick Grady of Grady Consulting. Also present was the town's consulting engineer, Mr. Patrick Brennan of Amory Engineers.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Glennon provided a second, to waive the reading of the correspondence list which is on file at the Planning Office.

VOTE: The motion carried unanimously, 6-0.

The correspondence list for the record:

- Emails between V. Massard and R. Grady et al dated 08/10/17 re: Subdivision continuation
- Cover letter from Grady Consulting dated 08/14/17 and revised plans dated 08/14/17
- Letter from D. Grady of Grady Consulting to PB dated 08/14/17 re: Waivers requested
- Letter from P. Brennan of Amory Engineers to PB dated 08/30/17 re: Peer review of revised plans dated 08/14/17
- Cover letter from Grady Consulting dated 09/06/17 and revised plans dated 09/06/17 (NOT DISTRIBUTED TO PB)
- Letter from D. Grady of Grady Consulting to PB dated 09/07/17 re: Waivers requested (NOT DISTRIBUTED TO PB)
- Emails between V. Massard and R. Grady et al dated 09/06/17 – 09/11/17 re: Summer Street / Tedeschi – unexpected plan revisions just received.

Ms. Massard noted that this is a similar situation to the last agenda item, where revised plans were submitted after the packet deadline. She stated that she is not sure the consulting engineer has had time to review the revised plans. Ms. Massard stated that for review purposes, this application is for ten lots, and fill is proposed for the road and for

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the house lots in order to create walkout basements. Drywells are proposed for roof runoff. She stated that in order to address water level and stormwater management issues, the retention area near the barn needs to be redesigned.

Mr. Grady, the applicant's representative, provided an overview of the revised plan. He stated that revisions were made because a drainage area was greater than the maximum of four feet, and soils testing showed higher elevation than expected. He stated that the drainage area is now at four feet in depth over a larger area.

Mr. Grady noted that a property line dispute has been resolved, noting that they discovered that the last two plans (fifteen and twenty years ago) filed at the Registry of Deeds are incorrect. He reported that now plans have been revised and the parties are in agreement on the property lines, which did not affect the number of lots or lot areas.

Mr. Grady stated that neighbors to the rear of the property have notified the applicant about a well which is closer in proximity than thought. The well, along with other structures on the abutting property, have been added to the plans. Another major revision is the location of the septic in this area. Previously the septic was to the rear and the wells were in the front of the property and they have now been flipped. The drainage lot has also been squared off as requested at the last Planning Board meeting. A landscape plan has been submitted for more detail on the proposed drainage area and additional screening. He stated that they have been working on moving the location of the drainage basin and believe they can get a 40-foot setback, an improvement over the previous 30-foot setback.

Mr. Grady summarized waivers requested in a letter dated August 14, 2017:

- Length of roadway at 1,249 linear feet which exceeds the maximum required length of 1,000 feet
- Radius at entrance which does not meet the minimum radius of 30 feet, in order to increase the setback to wetlands
- No sidewalks are proposed although they are required for Local Streets
- A buffer zone set back less than the minimum 50 feet on the drainage basins, although existing vegetation will be maintained as much as possible.

Mr. Grady noted that the applicant has recently decided to connect to the public water supply due to the cost of installing private wells. Mr. Bear asked if the applicant had approached the Town of Pembroke about connecting to their water supply which would be a much shorter distance, and Mr. Grady replied that Pembroke said no to connecting to their water supply. He noted that the Duxbury Fire Department officials have offered to reach out to the Town of Pembroke. Mr. Bear stated that it would make sense for the subdivision to connect to Pembroke water. Mr. Grady noted that some other abutting properties are already connected to Pembroke water. Mr. Wadsworth, who serves on the Water Advisory Group, reported that Mr. Peter Mackin, Water Superintendent, has reached out to Pembroke unsuccessfully. Mr. Wadsworth noted that the Town of Duxbury supplies water for properties that are located in Marshfield on the town line.

Mr. Grady noted that there are some additional minor items to work out with Mr. Brennan.

Mr. Glennon asked if street lights are shown on plans, and Mr. Grady stated that they are not but will be added.

Mr. Glennon asked about a small piece of the proposed site, approximately 200 square feet, which is located in the Town of Pembroke, and Mr. Grady responded that technically they could file an ANR plan with the Town of Pembroke. He stated that it is possible that they may convey the piece of land to an abutter because it is not buildable land.

Mr. Wadsworth asked about the drainage basin testing and the date checked and how much water came up. Mr. Grady replied that the testing was done on July 6, 2017, and it came up about three feet or so. Mr. Brennan confirmed that it was mottling was seen, not observed water.

Mr. Casagrande asked Mr. Brennan for his latest review comments. Mr. Brennan noted that he is in the process of reviewing the revised plans and has some initial thoughts on outstanding items:

- A mass balance of project cuts and fills, including roadway and lot development, should be provided, noting that the proposed roadway would be constructed almost entirely in fill. (#6 from Mr. Brennan's review letter dated August 30)
- The proposed drainage basin should be moved as far away as possible from the property line, noting that approximately four feet of landscaping is shown on the plan.

Mr. Grady noted that the problem with moving the drainage basin is that it pushes it into an uphill elevation. Mr. Wadsworth asked if it might be possible to add to the buffer without moving the basin. Mr. Brennan stated that the adjacent land is owned by the Duxbury Conservation Commission, which would like to preserve as much abutting treeline as possible. Mr. Bear stated that the applicant may need to revise his waiver request.

Mr. Casagrande invited public comment. Mr. Thomas Borg of 941 Congress Street stated that he is anxious about the location of the septic. Mr. Casagrande asked Mr. Grady if the septic plan will be revised, and Mr. Grady responded that it will not be revised because at 170 feet it meets setback standards. Mr. Borg stated that this would only be 20 feet outside the required setback. Mr. Glennon confirmed and Mr. Grady responded again that the septic location will not be changed. Ms. Massard noted that the final septic approval will be through the Board of Health, and the Planning Board plan is a schematic design demonstrating that the septic and dwelling can meet regulatory requirements on the lot.

Mr. Borg stated that he has provided evidence of a vernal pool on the proposed site, and stated that he is concerned about contamination of private wells. He stated that during the spring each year there is approximately a foot of standing water for about two months, and his property is at a lower elevation.

Ms. Massard stated that she would like more time to review the revised plans because town staff has a number of issues, and proposed conditions need to be drafted.

MOTION: Mr. Glennon made a motion, and Mr. Bear provided a second, to continue the public hearing for the Definitive Subdivision at 1065 Summer Street / Tedeschi to Wednesday, September 27, 2017 at 7:15 PM.

VOTE: The motion carried unanimously, 6-0.

CONTINUED PUBLIC HEARING, DEFINITIVE SUBDIVISION: EVENTIDE, 0, 397, 401 & 405 WASHINGTON STREET / DIAMOND SINACORI

Mr. Casagrande opened the continued public hearing. Present to represent the applicants were Mr. Brad McKenzie of McKenzie Engineering Group; Mr. Peter Dillon of Geoscience, a hydrogeologist; and Atty. Walter Sullivan. Atty. Robert W. Galvin arrived during the discussion. Also present was Mr. Patrick Brennan of Amory Engineers, the town's consulting engineer.

MOTION: Ms. Ladd Fiorini made a motion, and Mr. Glennon provided a second, to waive the reading of the correspondence list which is on file at the Planning Office.

VOTE: The motion carried unanimously, 6-0.

The correspondence list for the record:

- Email from V. Massard to B. McKenzie et al dated 08/10/17 re: Eventide, with attached Fire Code Standards and draft conditions list
- Emails between S. Ossoff, D. Grant, V. Massard and N. Lawson dated 08/17/17 re: Layers for Ned (mean high water line)
- Emails between F. Holden and D. Grant, V. Massard, R.W. Galvin and B. McKenzie dated 08/18/17 re: Request for P. Dillon hydro-engineering report
- Cover letter from McKenzie Engineering Group to PB and ConCom dated 08/18/17 with revised plans dated 08/18/17 and Executive Summary of Drainage Calculations and Stormwater Management Plan

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- Mullin Rule form signed by G. Wadsworth and stamped with Town Clerk on 08/25/17
- Mullin Rule form signed by S. Casagrande and stamped with Town Clerk on 09/01/17
- Letter from P. Brennan of Amory Engineers dated 08/31/17 re: Peer review of revised plans dated 08/18/17
- Wetland replication plan (entitled "Grading & Drainage Plan") latest revision 07/31/17 submitted by Conservation Commission to PB on 09/06/17
- Letter from E. Lawson to PB dated 09/06/17 re: Concerns with proposed subdivision
- Letter from P. Dillon of Geoscience to PB dated 09/06/17 re: Hydrogeologic and Nutrient Loading Review, Proposed Eventide Subdivision, Duxbury, Massachusetts (submitted by B. McKenzie)
- Email from V. Massard to R.W. Galvin et al dated 09/07/17 re: Battelle citizen request for eminent domain taking
- Letter from D. Murphy of Hill Law to PB dated 09/07/17 re: Abutters' comments
- Email from V. Massard to R. Read et al dated 09/07/17 re: Follow up – Battelle (eminent domain)
- Emails between V. Massard and R.W. Galvin et al dated 09/07/17 re: Citizen request for PB to acquire a portion of the property
- Emails between B. McKenzie and D. Grant dated 09/07/17 re: Copy of P. Brennan review letter
- Mullin Rule form signed by C. Ladd Fiorini and stamped with Town Clerk on 09/07/17
- Emails between V. Massard and R.W. Galvin et al dated 09/07/17 – 09/08/17
- Email from D. Grant to PB dated 09/11/17 re: Additional materials for PB packets
- Email from D. Grant to R.W. Galvin et al dated 09/11/17 re: Copies of public correspondence submitted
- Emails between B. McKenzie and D. Grant et al dated 09/12/17 re: Letters submitted regarding Eventide (color maps from D. Murphy)

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Ms. Massard recommended that the Planning Board consider holding discussion tonight although revised plans may be needed pending the outcome of the applicants' discussion with the Conservation Commission regarding filling of wetlands on the site.

Mr. Casagrande invited the applicants' representative, Mr. Brad McKenzie of McKenzie Engineering Group to present the latest revised plans dated August 18, 2017. Mr. McKenzie stated that the hydrogeological study results were submitted to the Planning Board with a letter dated September 6, 2017 from Mr. Peter Dillon of Geoscience. He noted that Amory Engineers' latest review letter dated August 31, 2017 mainly focused on minor housekeeping items and requests for more construction details. He noted that Amory Engineers gave their stormwater management plan "a clean bill of health." As the Planning Board requested, McKenzie Engineering submitted a proposed grading plan to illustrate the grading for the construction of the roadway. He noted that the limit of grading does not apply to individual lots.

Mr. McKenzie stated that the applicants submitted a Bordering Vegetative Wetlands (BVW) restoration plan to the Conservation Commission for its meeting on August 22, 2017 for proposed wetland replication, and a revised plan will be submitted next week. He noted that the existing BVW does not function or protect wetlands.

Mr. Glennon noted that it appears that a lot of retaining walls are proposed, asking for confirmation that the height of those walls will be under four feet. He asked in light of sloping elevations from Washington Street to the bay, if the will the walls will function as terraces. He noted that approving walls is part of the subdivision approval. Mr. McKenzie disagreed that the retaining walls would be part of the subdivision approval and stated that the walls are shown for illustrative purposes and something else could be proposed in the future. Mr. McKenzie stated that the applicants are fully complying with 100-year stormwater management state requirements and also meeting local Subdivision Rules & Regulations.

Mr. Glennon asked what would be the effect on stormwater management if there are no retaining walls. Would there be more runoff into the bay? Mr. McKenzie responded that as long as high points in the watershed are the same, it should not be a concern. Mr. Glennon asked if under the assumption of no retaining walls, would the stormwater runoff volumes still be within the accepted tolerances? Mr. McKenzie answered, "Yes."

Mr. Wadsworth stated that he is a big believer in Low Impact Design (LID), noting that the property has a fair slope from elevation 33 to elevation 18. He stated that planting LID vegetation and / or rain gardens would slow the velocity of stormwater runoff from the roadway. Mr. Brennan noted that it may be challenging with a steep slope because of the risk of erosion. Mr. McKenzie noted that there are no provisions for LID in the Subdivision Rules & Regulations. He stated that he was charged with creating a no-waiver plan and there would be no benefit to his client to do an LID design. He noted that the applicants have proposed drainage as required by Subdivision Rules &

Regulations. Ms. Massard noted that at Town Meeting in March, residents voted funding to draft stormwater design guidelines which could improve use of LID for the future but they are not available today.

Mr. Uitti noted that Subdivision Rules & Regulations Section 12 addresses preservation of natural vegetation such as trees on site during heavy construction. He asked if the applicants intend to install 8' x 8' wooden tree guards as recommended in the Subdivision Rules & Regulations. He noted that large trees that will be retained should be shown on the landscape plan and possibly on the demolition plan. Mr. McKenzie stated that he will work with the Tree Warden and will walk the site to determine which trees should remain. He noted that within the right-of-way no trees can be saved. Mr. Uitti stated that it could be a token of good will for the applicants to install the tree guards so trees are not removed by mistake during site demolition. Mr. McKenzie stated that the applicants are willing to develop a plan after a site visit with the Tree Warden.

Mr. Casagrande asked for comments from Mr. Brennan of Amory Engineers, the town's consulting engineer, on the Geoscience hydrogeological letter. Mr. Brennan stated that he is not an expert in nitrates but from his experience he believes that an eight-lot subdivision should have far less of an impact than the previous use of the site as a laboratory / office. He stated that he is not comfortable speaking on the matter further than that.

Mr. Casagrande invited public input. Mr. Glennon noted that the Planning Board had reviewed documents submitted by members of the public for tonight's hearing.

Atty. Dennis Murphy of Hill Law stated that he has been retained to represent several abutters. He referenced his letter to the Planning Board dated September 7, 2017 with the following comments:

- Applicants' hydrogeological study by Mr. Peter Dillon of Geoscience should be peer reviewed
- Applicants' wetlands replication plan should be rejected
- No plan should be approved without first complying with Chapter 91.

Atty. Murphy pointed out that the town's consulting engineer has stated that he is not comfortable speaking about the hydrogeologist's report. Atty. Murphy stated that the applicants are not complying with Subdivision Rules & Regulations Appendix G. He stated that the table at the end of Mr. Dillon's wastewater tabulation shows figures for flow assuming 12 bedrooms but the project will have 32 bedrooms, so the flow is understated. Atty. Murphy stated that issues like this require review by someone with expertise on the subject, and he urged the Planning Board to consider retaining someone to review Mr. Dillon's report.

Mr. Brennan noted that the Dillon report assumes 55 gallons per person per day with three people in the house. Mr. Casagrande noted that those assumptions are laid out in the Subdivision Rules & Regulations.

Atty. Murphy stated that other speakers will address the wetlands replication plan issues.

Atty. Murphy addressed Chapter 91 issues, noting that the initial development provided access to the water. He noted that historic maps show tidelands within the jurisdiction, and the applicant should respond to their intention for Chapter 91 purposes. Mr. Glennon clarified that because Chapter 91 applies, access should be provided for the public. He asked if the access should be from Washington Street or from some location within the property? Atty. Murphy responded that the previous plan shows access under the north boundary of the property and the intertidal zone should be made available for public rights to stroll, for dinghies and docks. He stated that the Chapter 91 application should have been submitted with the subdivision application.

Mr. Glennon stated that he does not believe that the waterfront is within the Planning Board's jurisdiction. Atty. Murphy stated that this is uncharted water because there have been no subdivisions on the waterfront in recent history. Mr. McKenzie stated that this is not within the Planning Board's jurisdiction. Mr. Glennon asked Mr. McKenzie to respond as though it is. Mr. McKenzie stated that public access from Washington Street is not required. He stated that under Chapter 91 lateral access is required, and a valid permit from 1961 shows that the only part of the site filled was the revetment for the pier. He stated that public access is required if there is a change from a water-dependent use to a non-water dependent use, but in this case it will remain a water dependent use. Mr.

Glennon stated that it appears that the applicants are not seeking to change any public rights that may exist. Mr. Uitti confirmed with Mr. McKenzie that no new structure or fill is proposed. Mr. Glennon concluded that although continued public rights may be a concern for Atty. Murphy, this application does not purport to change any public access rights.

Atty. Murphy stated that once the lots are created the public may need to trespass in order to access a water dependent use. He stated that the use will now be residential rather than for research purposes. Ms. Massard stated that the Department of Environmental Protection (DEP) Waterways Division's Chapter 91 website indicates that a change in use to residential may be found not to be water dependent. Mr. Glennon stated that he does not believe this is a Planning Board issue.

Mr. Casagrande stated that the hydrogeological study will be reviewed by the Conservation Commission's peer review for the wetlands replication. He noted that the Planning Board reviews the road and lot layout. Mr. McKenzie noted that the hydrogeological study and the LID issues raised by Mr. Wadsworth are not under the purview of the Subdivision Rules & Regulations. Mr. Casagrande stated that while he appreciates that the applicants have gone above and beyond what is required, the public has concerns. He stated that he does not believe the Planning Board should be second guessing what is not in its jurisdiction.

Mr. Ned Lawson of 34 Sunset Road addressed his concerns with Chapter 91 compliance, noting that the applicants have not provided a clear explanation of how the waterfront will be used, who will use it, and how they will gain access. He stated that there is a change in activity from water dependent to non-water dependent as defined by Chapter 91, and the DEP can take public access into account.

Mr. Lawson also raised the issue of Zoning Bylaws Section 530 which requires a special permit for division of land into six or more lots. Ms. Massard clarified that Mr. Lawson may be looking at a version of the bylaw that was in effect prior to this year's Annual Town Meeting that clarifies that the Zoning Board of Appeals review special permits for Planned Developments.

Mr. Lawson stated that although he is not a hydrogeologist he does know wetlands, and he believes that the soils on the eastern side of the property are mis-identified as Deerfield fine sand when it is actually newly filled wetlands. He stated that he was involved in the dredging of the harbor in 1996-97 and dredged fill was put in a pit on the property.

Mr. Lawson stated that he does not see how the Conservation Commission will be able to approve filling Bordering Vegetative Wetlands other than for limited projects like a road or a driveway. In this case the applicants are proposing to fill wetlands for a backyard on a private lot, and he believes those replicated wetlands will fail.

Ms. Sheila Lynch-Bentinen of 344 West Street stated that the Planning Board appears to be giving up on Chapter 91 even though the applicants are proposing to fill in quite a bit of property. She stated that Chapter 91 applies when the use is transferred to non-water dependent. She stated that historic maps show that up to one-third of the property is filled wetlands. She stated that the Town of Duxbury does have negotiation power on public access and if the subdivision is approved without Chapter 91 approval then the Town loses any negotiating leverage. She stated that she has experience with Chapter 91 licensing on the Boston waterfront which resulted in greater public access. She encouraged the Planning Board to review maps created by Mr. David Corey and submitted to the Planning Office today by Mr. Sherm Hoyt.

Mr. Casagrande asked if public access could be added if DEP requires it under Chapter 91, and Mr. McKenzie replied that this issue is not under the Planning Board's jurisdiction and the dock will still be a water dependent use.

Ms. Massard stated that draft conditions will be prepared for the next Planning Board meeting.

MOTION: Mr. Glennon made a motion, and Mr. Uitti provided a second, to continue the public hearing for the Eventide Definitive Subdivision, 0, 397, 401 & 405 Washington Street / Diamond Sinacorri to Wednesday, September 27, 2017 at 7:20 PM.

VOTE: The motion carried unanimously, 6-0.

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DISCUSSION OF UTILITIES AT LITTLETOWN WAY DEFINITIVE SUBDIVISION / ORWIG

Ms. Massard reported that no Planning Board discussion is needed because the gas main has now been installed and the work was just finishing up today.

PLANNING DIRECTOR REPORT

Comprehensive Plan Update: Mr. Glennon commended the volunteer ambassadors at the Labor Day town-wide beach party who staffed a tent with Metropolitan Area Planning Council (MAPC) representatives to promote the Envision Duxbury process and survey. Ms. Massard reported that the outreach at that event resulted in an estimated 45 responses to the survey. She noted that a number of ambassadors are actively involved in public outreach. She also reported that there will be upcoming staffing changes at MAPC.

DISCUSSION OF PLANNING BOARD MEETING SCHEDULE

Ms. Massard asked that the Planning Board consider adding a meeting on Wednesday, November 15, 2017 because the October 11 meeting will be dedicated to the Comprehensive Plan and only one meeting is currently scheduled in November due to Thanksgiving. The only meeting currently scheduled, November 8, is set aside for the Comprehensive Plan. She stated that adding a meeting will provide time for the Planning Board to discuss potential zoning articles for Town Meeting. Mr. Glennon suggested that a meeting could be added and then cancelled if not needed.

OTHER BUSINESS (CONTINUED)Meeting Minutes:

MOTION: Mr. Ladd Fiorini made a motion, and Mr. Wadsworth provided a second, to approve meeting minutes of July 26, 2017 as amended.

VOTE: The motion carried 5-0-1, with Mr. Uitti abstaining.

MOTION: Mr. Glennon made a motion, and Mr. Bear provided a second, to approve meeting minutes of August 9, 2017 as amended.

VOTE: The motion carried 4-0-1, with Mr. Casagrande and Mr. Wadsworth abstaining.

Discussion of Town of Duxbury Regional Planning Agencies: Metropolitan Area Planning Council (MAPC) and Old Colony Planning Council (OCPC): Planning Board members reviewed a memorandum from Ms. Massard to the Board of Selectmen, the Planning Board, and the Town Manager regarding her recommendation on Metropolitan Planning Organizations (MPOs). Ms. Massard stated that she was asked to provide an opinion and she sought input from the OCPC, the MAPC, other planners, the Planning Board chairman, and residents. She summarized that due to recent changes at the federal level the Town of Duxbury must select a single MPO in which to participate for the purpose of Transportation Improvement Planning (TIP) allocations, and currently its primary MPO is the Boston Metropolitan MPO, a sister organization of the MAPC. In her memorandum, Ms. Massard recommended the OCPC MPO along with maintaining membership in both regional planning agencies. She reported that the Board of Selectmen approved that recommendation at a recent meeting. Mr. Glennon noted that the subject pertains to federal funding of transportation projects.

MOTION: Mr. Glennon made a motion, and Ms. Ladd Fiorini provided a second, that the Planning Board recommend that the Town of Duxbury utilize the Old Colony Planning Council as its Metropolitan Planning Organization for the purpose of Transportation Improvement Planning, and also recommend that the Town of Duxbury maintain its memberships in both the Old Colony Planning Council and Metropolitan Area Planning Council as regional planning agencies.

VOTE: The motion carried unanimously, 6-0.

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Federal Flood Risk Management Standard Repeal: Planning Board members reviewed an email from the Association of State Floodplain Managers dated August 15, 2017 reporting that the Federal Flood Risk Management Standard has been repealed by Executive Order. The standard had been enacted by an Executive Order from the previous administration to save taxpayers from repeated funding of infrastructure. Now federally funded infrastructure will be able to be built at a lower standard than is required in many communities since they are often exempt from local flood protection standards, resulting in taxpayers footing the bill through disaster assistance when new infrastructure gets built and subsequently flooded. Ms. Massard stated that the new lower standard will take away floodplain protections. She noted that the recent flooding in Houston after Hurricane Harvey demonstrates why floodplain managers do not encourage building in floodzones.

Recreational Marijuana Regulations: Mr. Bear asked if recent actions by the state marijuana board have any effect on any potential zoning amendments regarding recreational marijuana facilities in Duxbury, and Ms. Massard replied that she has asked the new town counsel, K-P Law, for advice. She noted that the medical marijuana moratorium has expired.

ADJOURNMENT

The Planning Board meeting adjourned at 10:11 PM. The next Planning Board meeting will take place on Wednesday, September 27, 2017 at 7:00 PM at the Duxbury Town Hall, Mural Room.

MATERIALS DISTRIBUTED

- ANR application, plan, cover letter and materials submitted to the Planning Office on 09/06/17
- Email from V. Massard to V. St. Andre of K-P Law dated 06/06/17 re: Gerraughty ANR Application – received on September 6, 2017
- Staff report entitled, “ANR Gerraughty for Counsel, 56 Crescent Street”
- Old (undated) assessor’s map of Crescent Street
- PB minutes of 05/14/1962
- Excerpt from Rules and Regulations Governing the Subdivision of Land in the Town of Duxbury, Massachusetts dated 1959, revised 1970
- Registered plan entitled, “1962 Plan in Assessor’s Office, 1944 Plat map shows 1 single lot w no ‘way’”
- ANR plan dated 07/08/1976
- Assessor’s property card for 56 Crescent Street
- Public meeting notice for ASPR 295 Saint George Street / Robbie
- ASPR application and plan for 295 Saint George Street stamped with Town Clerk on 08/17/17
- Assessor’s property card for 295 Saint George Street
- Recorded easement agreement for 295 Saint George Street
- Amory Engineers letter dated 08/29/17 re: 295 St. George Street – Site Plan
- Email from P. Brennan to C. Leamy et al re: Reply to all emails here (additional comments on revised plans)
- Cover letter and plans dated 08/14/17 re: Definitive Subdivision Plan – 1065 Summer Street
- Letter from D. Grady to PB dated 08/14/17 re: Definitive Subdivision Plan – 1065 Summer Street (waivers requested)
- Amory Engineers letter to PB dated 08/30/17 re: 1065 Summer Street Definitive Subdivision (review of revised plans)
- Letter from McKenzie Engineering Group to PB dated 08/18/17 re: Response to Amory Engineers Review of Eventide...
- Revised plans and drainage calculations, and Roadway Grading Plan for Eventide dated 08/18/17
- Letter from Amory Engineers dated 08/31/17 re: Eventide – Definitive Subdivision (review of revised plans)
- Eventide Grading & Drainage Plan wetlands replication plan revised 07/31/17 submitted to Conservation Commission
- Letter from P. Dillon of Geoscience to V. Massard dated 09/06/17 re: Hydrogeologic and Nutrient Loading Review, Proposed Eventide Subdivision, Duxbury, Massachusetts
- Letter from N. Lawson to PB dated 09/06/17 re: Proposed Eventide Subdivision
- Email from V. Massard to D. Orwig et al dated 08/31/17 re: Littletown Way (gas main installation)
- Draft PB minutes of 07/26/17
- Draft PB minutes of 08/09/17
- Amory Engineers invoice #14733A dated 08/01/17 re: Eventide
- Amory Engineers invoice #14733B dated 08/01/17 re: 1065 Summer Street
- Email from V. Massard to S. Dahlen et al dated 08/24/17 re: Recommendation – Metropolitan Planning Organizations (MPOs)
- Email from ASFPM to V. Massard dated 08/15/17 re: Disappointing New Out of the White House Today
- Farm Day invitation from Historic O’Neil Farm received in the Planning Office on 05/01/17
- Town of Duxbury Construction Cost Estimates for August 2017

Distributed at Meeting:

- Letter from D. Murphy of Hill Law to PB dated 09/07/17 re: Eventide
- ZBL Section 530.2 as approved by ATM 2017

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TOWN CLERK
2017 SEP 28 PM 1:05
DUXBURY, MASS.