

Conservation Commission Public Meeting – July 14, 2016 Minutes

Time: 7:30 PM – 9:00 PM

Location: Police Station

Members Present: Tom Ruskin; Robert Salter; Marc Andler; and Toni Bandrowicz

Members Absent: Monica Tamborini; Nelson Kessler; and Jennifer Simon.

Others Present: See attached sign-in sheet

The Conservation Commission Public Hearing was called to order at 7:30 pm.

2-32 PRESTON COURT (PROPERTY LOCATION MAP 31, LOTS 98A -98H) - REQUEST FOR CERTIFICATION OF COMPLIANCE FOR STEEL RAILING ON SEAWALL CAP

The Preston Beach Condominium Trust submitted a Request for Certificate of Completion with respect to the steel railing work on the seawall cap. Mr. Ruskin and Mr. Andler had viewed the work. The Commission voted to approve and issue the Certificate. The representative for the applicant noted that Pete Kane had been very helpful.

REQUESTS FOR DETERMINATION OF APPLICABILITY (RDA)– FISHERMAN’S & PHILLIPS’ BEACHES.

The Commission then took up the application of the Town, represented at the meeting by Town Manager Tom Younger and Fire Chief Kevin Breen, to allow residents to make fires on the public beaches via a regulated permit process.

Mr. Younger began by explaining that there had been a long history of residents having fires on Swampscott beaches. In past, residents had just gotten a permit from the fire department. Town had originally planned this year to put in formal fire pits so it would be easier to clean up. Selectmen had approved the fire pit proposal but then the Department of Environmental Protection had stepped in and said that these structures would not be allowed on the beach under the state Wetland Protection Act

and so the Town removed them. The Town then looked at the regulations of some south shore towns regarding beach fires and developed the regulation attached to the RDA. The Town planned to run the program through the summer, and then evaluate it in September to see if changes were needed. Mr. Younger noted that intent of this program was to control non-permitted fires. The police and fire department would check to make sure people having fires on the beach had permits, and public works will review the sites in the morning to make sure cleaned up.

Chief Breen noted that this activity is going on and the permit program designed to bring some order to things. A big concern to the Town is the illegal fires happening in the dunes, close to the vegetation at Palmer Pond. Chief Breen noted that, in the past, the fire department had issued around 100 permits a season. The permit program had been stopped in the past because people had been leaving a mess, both trash and wood. The Town had called and talked to the Cape Cod communities that have similar permit programs. It was also noted that Nahant allows beach fires, although Marblehead and Lynn do not. Chief Breen did not know if other communities that have permit programs had gone before the Conservation Commission. As an aside, Chief Breen noted that his department gets more complaints in the winter regarding wood burning stoves. Asked if people use lighter fluid to start the fires on the beach, Chief Breen acknowledged some due. In response to question as to what if it is a windy day, the Chief noted that the regulations require the permittee to call three hours before hand to confirm that it was permissible to make the fire. Under the program fires can be built on wet sand and tide would wash away residue.

Members of the public were then invited to speak.

Rich Newburg stated that the Wetland Protection Act is designed to protect fisheries and wildlife and that fires on a beach that is adjacent to barrier beach dunes and a conservation area (Palmer Pond) is problematic, especially given that the dominant wind direction is easterly and so smoke and embers would go over the dune toward the pond. He also raised the fact that when wood is burned to ash and then the ash mixed with water, it becomes potassium hydroxide (lye) which would adversely affect aquatic life. He calculated there would be about 15 lbs. of ash for a weekend of fires. A third problem was that it would not be known where the fire wood that is brought to the beach originally comes from, and it could be infected

by invasive insects such as the Long Horn Beetle. Finally, he noted that the phragmites around the pond are highly flammable.

Amy Roberts asked the question of why the town would consider allowing the fires given the fragility of the environment. She questioned also where the ash would be going, given that it is defined under state law as rubbish. She further observed that people are building bonfires even if not allowed to do so by the Town. She did not think that if it was truly a cooking fire, you would not need to burn it for five hours. She believes having the permit system will make illegal fire situation much worse, and that there were a lot less illegal fires when there was a ban on beach fires.

When asked by the Commission whether her objection was to fires on just Phillips Beach and not Fisherman's, she admitted that it was easier to monitor Fisherman's beach and enforce against illegal fires at that beach. With Phillips Beach there is a huge visibility issue, fires go on all night, but police can't see what is happening as at Fisherman's Beach. She is not against beach fires but believes that they should not be allowed at Phillips.

When asked why Town doesn't allow fires as Eisman's or Whale's beaches, it was explained by town representatives that there were parking issues at those beaches.

Paul Levenson spoke and noted that the pond had been moved from state to town authority so the town would have better control over the beach. He concludes that Phillips is not an appropriate beach for fires, whether big or small, but that Fisherman's is more appropriate.

Chief Breen responded then to a few points. First, he said that it is not town's position that the ash should wash away. The Town has a new cleaning rake. He did admit that it was easier to monitor Fisherman's Beach, but that there was interest by residents to have fires on Phillips. Phillips is a more of challenge but it is more desirable. The town might have to get a small vehicle to patrol the beach. He again stated that fires will happen regardless, and he was more concerned with the illegal fires in the dunes.

The Commission then discussed its options regarding beach fires, observing that there is not a clear precedent. (It had been noted that the Commission had talked to both the Department of Environmental

Protection and the Massachusetts Association of Conservation Commissions about beach fires.) The options are: the Commission could take this matter under advisement; it could issue a negative determination of applicability (that is, find that the Commission does not have jurisdiction under the Wetland Protection Act); it could issue a positive determination (that is, it does have jurisdiction) and not allow the beach fires; or it could issue a positive determination and require the town to submit a Notice of Intent and then issue an Order of Conditions that would be protective of the resource area.

Mr. Ruskin said that two issues of concern for the Commission was the protection of the vegetation at the beach, and management of the burned waste. He said that the Commission understood that people wanted to make fires and that the Town wanted to regulate them. Mr. Ruskin observed that if people have to pay for a permit, they may be more invested in ensuring that non-permitted people not have fires on the beach, and thus report such illegal activity thereby aiding in policing of the situation.

The Commission believes that it cannot issue a negative determination of applicability as the area (the beach) is covered under the Wetland Protection Act, and the activity (fires on the beach) could negatively alter the resource area, in particular the vegetation in the dune and pond area at Phillips Beach. The Commission also believes that the permit program regulations developed by the town may be sufficient to protect the resource areas and is therefore agreeable to having a trial period, until the end of the summer, in which to test the program, and then evaluate whether it is successful or not, or needs refinement and amendment. The normal course would be to issue a positive determination and require the Town to submit a Notice of Intent and follow the procedures for issuing an Order of Conditions which would include the Town's permit program regulations, and any other stipulations the Commission believe necessary to protect the resource. However, this would take time, therefore potentially precluding a testing of the program before the summer's end. The Commission therefore decided to take this matter under advisement to determine if there was a way to have the town test the program this summer.

The minutes from the previous meeting were then approved, and the meeting adjourned, both upon motion, seconded, and unanimously approved.