

## Duxbury Seawall Committee Minutes –November 28, 2018

TOWN CLERK

Present: DSWC Members: Alicia Babcock, Paul Brogna, Steve Callahan, Candace Martin, Don Norris, Mary Shiebler, Tim Spellman, Dimitri Theodossiou

NOV 28 AM 8:01  
DUXBURY, MASS.

1. The meeting was called to order at 7:00PM in Kitchen Meeting Room at Town Hall.
2. The minutes of 10/25/18 meeting were approved as presented (5 Yeas-3 Abstentions)
3. OLD BUSINESS

### 3.1 Town Manager Update-

#### 3.1.1 Grant/Loan Contract Status

Mr. Read distributed copies of letter from the DCR indicting the State of Massachusetts does not own the seawall. He also read into the record the following,

“Yesterday I spoke with William Hinckley who is the contact within the state’s Executive Office of Energy and Environmental Affairs for the Dam and Seawall Repair or Removal Program-the entity that would be responsible for awarding Duxbury a \$1 million dollar grant and a \$2 million dollar loan.

I was calling him about the status of the award to Duxbury. As Bill pointed out, the State is saying they don’t won the wall (via the recent letter from DCR) and the town is saying that we don’t own the wall. He doesn’t know what to do as he cannot award the grant/bond to a state-owned or un-owned wall. He added that he doesn’t know where to go and he stated that he’s a little bit lost in terms of the next steps.

As he sees it, if the grant/loan award is made to Duxbury, the Town would essentially “hold the bag” and be responsible for the wall. He noted that he believed that Marshfield was the other community noted in the DCR letter and Marshfield wound up footing the bill for seawalls there. He suggested that FEMA may say that if nobody claims ownership of the wall, they don’t have to pay for it. He said that without ownership, it’s hard to make the award.

After this conversation, I called our Town Counsel. They agreed that there is not a clear-cut answer here. As such, I have asked counsel to talk with Marshfield’s town counsel to see how their situation played out which could ultimately provide some direction for the Board of Selectmen here in Duxbury.

Shortly after these conversations, Bill emailed me the following:

‘It occurs to me that we may be able to advance a portion of his project regardless of ownership. The town has already expended local funds on engineering for the project. No matter what party ultimately owns the structure, repairs/reconstruction will require numerous permits in order to advance. I would expect at a minimum that:

A Massachusetts Environmental Policy Act certificate; A MassDEP Chapter 91 license/certificate; A US Army Corps of Engineers 401 and 404 permits; and A Duxbury Conservation Commission Order of Conditions will be required. Preparations for these permits by engineers and consultants can be costly. We could initiate one contract to complete these tasks while we await further ownership determinations. As the Town already holds the easements and permission to access the wall for maintenance purposes, we should be able to advance this work and get to 100% design. We would still hold the remaining funds in the grant/loan for execution at a later date depending on ownership. If

this would be helpful to the town, please let me know and we can determine the amount required.'

Our engineer, Pat Brennan, explained to Bill that "we have secured Orders of Conditions from Duxbury Conservation Commission and have 'informally' filed and met with MEPA (along with CZM and DEP) so that process is moving along. We are making some revisions to the plans and ENF document for resubmittal to MEPA. We anticipate a MEPA certificate sometime in January and then filing with DEP and Army Corps with that in hand."

I will be providing this information to Seawall Committee at their meeting this evening."

Mr. Read noted that there will be no construction until ownership is determined. Safety and liability issues were expressed by several residents that were present. Larry Dullea of East Pine Rd. cited a 1952 Act that provided for construction of the seawall in which the Town assumed liability.

Most of those present agreed that proceeding with the design/permitting as well as receipt of available grant money while awaiting Board of Selectmen position, would be a sensible and safe.

There was discussion regarding the expedient need for replacement of the 800 feet of damaged wall. Selectman Shawn Dahlen suggested that the only work that is required to protect the seawall is to add revetment at the toe of the wall. He based this on his experience building seawalls. It was noted by Committee, however, that this experience was for revetments/seawalls along the bay and would not provide sufficient long term protection along the ocean waterfront.

It was noted that the goal of the Seawall Committee remains to start construction in Spring/Early Summer of 2019 on the damaged sections. There was discussion of Town Meeting article that would provide method of financing phase 1 of this reconstruction project. Mr. Read indicated he had a placeholder for a Warrant for Town Meeting for seawall construction.

There was discussion regarding support for seawall as Town infrastructure as wall failure impacts the marshland and Duxbury Bay. The Town does not accept ownership or liability of the wall at this point but it falls to the Town to repair the wall whether they accept ownership or not. The repairs along Ocean Road North and Cable Hill would require a complete replacement.

It was noted that if Duxbury does not accept the State Grants, then, in the future, Duxbury would be at the bottom of list is securing future funding.

Mr. Read indicated, as he sees it, there are three options: 1. Fight the State on ownership 2. Do nothing 3. Town assumes responsibility. It was noted that there are 149 miles of seawall in Massachusetts and all other coastal communities have accepted responsibility for the maintenance of their seawalls. Duxbury, with .8 miles of seawall is the only town that is taking exception.

There will be a meeting with Duxbury Town Counsel and Bob Galvin, Marshfield Town Counsel, on December 10<sup>th</sup>. Town Counsel and Board of Selectmen will meet in executive session as these discussions unfold.

### 3.1.2 Easements-Next steps for Recording approved Deed Change

Mr. Read read note from Town Counsel into minutes,

“As you know, the plan on record (Book 39, Page 360) shows an easement of varying width on the landward and seaward sides of the seawall. In most cases, the easement is about 20 feet wide on the seaward side. It is my understanding that the width of the easement on the landward side is not changing (which is why we can refer to the plan on record instead of preparing a new plan), but, obviously, the width on the seaward side will increase.

All those owners who already granted an easement to the Town need to give the Town a new easement for the seaward side of the wall; the Town needs an easement on both portions from owners who have not previously granted an easement to the Town.

The most efficient way of accomplishing the acquisition of the easements is through an eminent domain taking against all affected property owners. Before proceeding with a taking, however, we need a Waiver of Appraisal and Damages signed by the property owners. I have attached a draft Waiver for your review, and would appreciate your confirming if the easement as described in the Waiver is sufficient for the Town to undertake repairs.”

Mr. Read had some questions regarding verbiage in Waiver document. Committee also had questions regarding document and process and what had been decided at STM in September. See Action Items for specifics for Town Counsel follow up below. (#8, #9)

### 3.1.3 Town Counsel-Public or Private Beach Determination See Action Items for Town Counsel below. (#6)

### 3.1.4 FEMA/MEMA Wall Ownership/Risk Mitigation Plan

Mr. Read reported that last meeting with FEMA was in late October. They have been preparing seawall information for submission but are not submitting, as this may indicate Town ownership of the seawall.

### 3.1.5 Envision Duxbury-Hazard Mitigation Plan

Mr. Read referred questions regarding structural grants to Val Massard, Town Planner, who is working directly on this project. It was noted that there had been good input regarding seawall, beach nourishment for area to the Envision project. Since the seawall was identified as part of Hazard Mitigation then Town is eligible for FEMA mitigation grants. Discussion of who will be responsible for seeking on going grants for further seawall repairs/replacement. There are grants available to fund a grant writer. Mr. Read felt Amory would be contracted to seek ongoing annual grants.

### 3.1.6 Seawall Article for ATM

Draft of funding article discussed. A draft of the warrant article was provided to Mr. Read which outlined the funding options and updated construction forecast. See attachment. There was discussion of priority setting repairs possibly in phases-most urgent first-for bid purposes.

### 3.2 Amory Engineering Update

#### 3.2.1 Timeline

Permitting in process. Should be completed in March 2019. Met with Coastal Zone. ENF requested additional information, once completed get a Certificate-hoping for end of January. Then can proceed with Army Corps. Bids would be requested following town meeting or possibly can go out prior (noting in RFP that award is dependent on funding approval).

#### 3.2.2 Test Bores/Soil Samples/Foundation Protection

Borings to be done in the next 2 weeks (by 12/14). Locations will be on the seaside in areas without stone. Up to 10 sites taking 1-2 days to complete. Will access via Ocean Road South.

#### 3.2.3 Temporary Revetment Observations

Residents provided observations - 3 Foot sand rise on beach in the last week. Last weekend's storm and ensuing high tides caused shifting in wall and temporary revetment stones. Some stones have toppled forward onto beach.

#### 3.2.4 Additional Grant Opportunities

Pat indicated that Dam and Seawall Grants would be available again next year. No other grant opportunities noted.

### 3.3 DWP Update

#### 3.3.1 Canal Street Bridge Work

Bridge should reopen 12/10/18.

4. Open Forum-was conducted throughout meeting with residents, Town Manager, selectmen input, questions and observations.

## 5. ACTION ITEMS

### Action Items for Town Council

1. Town Council to seek clarification from Marshfield Town Council on legal seawall ownership acquisition history.
2. Town Liability - what happens if the seawall is not repaired and additional property damage occurs? How will the Town avoid increased liability if the seawall is not repaired and additional property damage occurs?
3. Historically, the Town has maintained the seawall for 50+ years and holds an easement from property owners to allow the Town to repair, maintain and reconstruct. Does this precedent confirm the Town's responsibility to maintain the wall? Does it also imply ownership? Does the Town have any plans on changing its 50+ year maintenance obligation given the existing easements from property owners?
4. Can the Town reconstruct the critical areas of seawall that experienced 'complete failure' under the umbrella of Town responsibility for repairs without formal written documentation of ownership to allow the Town to accept available State Grants and FEMA reimbursement?
5. Can the Town legally assess betterments again on the property owners?

6. Beach Ownership (outstanding issue from STM and October Seawall Committee Meeting).
7. The Town did a full replacement of the southernmost section of seawall that returns along the Duxbury Reservation property line, on Ocean Road South a few years ago. This seems to support that the Town is responsible for repairs, even the most extreme repair, which equals a full replacement. How can the current emergency repairs (as declared by FEMA as qualifying for disaster funds), not be viewed the same and be performed by the Town?
8. Easements - Town requested the following before Sept. STM: need simple letter that clearly defines process of easement acknowledgement. Paperwork for homeowners will be needed by January 1st to allow process to be completed before Annual Town Meeting. We were told that the acknowledgement letter would be solely to confirm the warrant article.
9. Easements - need additional clarification on the requirements of Eminent Domain and the implications to affected property owners. The proposed waiver would not be signed by a lot of homeowners as they would be concerned with the strong wording. It sounds like the homeowners are giving up all rights but the Town is not committing to do any maintenance. Eminent Domain - this would be needed if the Town needs the land for a public purpose (i.e. - protects more than homeowners but preserves Duxbury Bay as well as roads/infrastructure). Does that provide assurance that the Town agrees to maintain safe conditions by repairing the wall? Also, what happens if people do not sign? What about areas on the easement plan that do not have a seawall (Plymouth Ave)?

#### Action Items for Town Manager/Engineer

1. Coordinate response from Town Council on wall ownership and request meeting with BOS
2. FEMA reimbursement - can the project be done in phases (ORN, Cable Hill)? What is project completion deadline?
3. Test borings to be done within the next two weeks. Committee members, Dimitri and Tim S, to be notified in advance of test dates.
4. Update on Project Costs - forecast was discussed at October meeting as Phase I at \$4.6M and total project at \$24M. Need confirmation and update from Amory.
5. Funding cost analysis to be completed for carrying costs of bond and loan grant.
6. Draft of warrant article for March Town Meeting (reference attached draft prepared)

Next meeting will be announced as participant availability is determined.

Adjournment

The meeting was adjourned at 8:55PM.

## **Seawall Funding Article**

Authorize the Town to borrow an amount not to exceed \$2,000,000.00 pursuant to Mass. Gen. L.c. 44 or any enabling legislation, from the State Executive Office of Energy and Environmental Affairs Dam and Seawall Loan Fund, and further authorize the Board of Selectmen to accept a grant of \$1,000,000 from the State Executive Office of Energy and Environmental Affairs Dam and Seawall Grant, and authorize, pursuant to Mass Gen. L c.44 or any applicable law, to borrow not to exceed \$1,468,000 to fund the replacement and repair of a portion of the Ocean Road North and Cable Hill seawall, approximately 800 feet in length. The cost of said borrowing will be defrayed by betterments until FEMA Emergency Funds have been awarded for reimbursement.

Submitted by DPW & Board of Selectmen

Article Explanation: Sections of the seawall collapsed during the coastal storm in March 2018. The breach has been temporarily filled with rock. The storm also caused damage to the top of the seawall along sections which have not been repaired. The new seawall will be approximately 3 feet higher and constructed with a deeper footing. The estimated costs to replace the 800' section of seawall and to provide temporary revetment on the remaining 2700' would be \$4,568,000.

The Town applied for funding from the State Executive Office of Energy and Environmental Affairs Dam and Seawall Fund for the seawall reconstruction and was awarded the amount of \$3,000,000 (\$1,000,000 Grant and \$2,000,000 low interest loan).

During STM 2018, the Town authorized \$265,000 for the Design and emergency repairs. An additional \$65,000 was authorized for temporary revetment work. This work, as well as the replacement costs, is subject to reimbursement by FEMA up to 75% of the total cost. A conservative estimate of 65% would provide reimbursement of \$3, 044,000.

The Town's share of the project is estimated to be balance of project not covered by Grants and FEMA reimbursement for \$195,000 plus cost of low interest loan provided by the State and project bonding costs.

The design and permitting is estimated to be complete by March 2019. Construction is anticipated to start in spring/early summer of 2019.

### Cost Estimate - Seawall Emergency Repairs and Replacement

Construction	OCN & Cable Hill	\$ 4,168,000	Amory (Conservative Estimate)
	Temp Revetment	\$ 250,000	Protection of Wall 2000 LF using \$50/Ton
		<b>\$ 4,418,000</b>	
Engineering	Design & Permitting	\$ 85,000	
	Constr Admin- Ph1	\$ 65,000	
		<b>\$ 150,000</b>	
	Total	\$ 4,568,000	

Funding			Balance
	STM Engineering	\$ 85,000	\$ 4,483,000
	STM Expenses	\$ 180,000	Need to confirm (only) \$ 4,303,000
	STM Revetment	\$ 65,000	\$ 4,238,000
	FEMA Grant for 2018 Revetment	\$ 48,750	75% of \$65k \$ 4,189,250
	FEMA Grant for Temp Revetment	\$ 188,125	75% of 250k \$ 4,001,125
	FEMA Reimbursement (PH 1)	\$ 2,806,700	Assumes 65% \$ 1,194,425
	State Grant	\$ 1,000,000	75% State; 25% State \$ 194,425
	State Grant Loan	\$ 2,000,000	
	State Grant Loan Interest @2%	TBD	
	Bond for Total Project	TBD	

Total costs not covered by FEMA/Grants = \$194,425 plus carrying cost of State \$2M grant plus Bond.

