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DUXBURY, MASS.

# TOWN OF DUXBURY



## BOARD OF APPEALS

### DUXBURY BOARD OF APPEALS MEETING MINUTES

January 28, 2020 @ 8:00 a.m.

**ATTENDANCE:** Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr. & Emmett Sheehan

**Other persons present at the hearing:** Scott Lambiase, Director of Municipal Services & Amy Kwesell of KP Law & Angela Ball, Administrative Assistant

**CALL TO ORDER:** Judith Barrett, Chair Pro Tem, called the meeting to order.

**ZBA Case #2019-14, Duxbury Lincoln LLC, 0 Lincoln Street – CONT'D:** *The Board voted to close the public hearing, 4-0.*

*Judith Barrett voted to adjourn the meeting. Emmett Sheehan seconds. All in favor (4-0).*

## **BOARD OF APPEALS — MINUTES**

**Case No: 2019-14**

**Petitioner: Duxbury Lincoln, LLC  
(Champion Builders)**

**Address: 0 Lincoln Street**

**Date: January 28, 2020 Time: 8:00 a.m.**

**(Cont'd from January 9, 2020, December 19, 2019 &  
November 6, 2019)**

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on ~~WEDNESDAY, November 6, 2019 at 7:30 p.m., rescheduled from October 24, 2019,~~ to consider the application of Duxbury Lincoln LLC for a Comprehensive Permit. The property is located at 0 Lincoln Street, Parcel No.'s 053-512-036 & 053-512-037 of the Duxbury Assessors Map, consisting of 21.52 acres in the Residential Compatibility District and owned by The Town of Duxbury. The Applicant proposes to construct twenty (20) single family homes – five (5) affordable, five (5) moderate and ten (10) market rate - that will meet the definition of low and moderate income housing under G.L. c. 40B, Sections 20-23. The application may be viewed in the Municipal Services Department between the hours of 9:30 a.m. and 2:30 p.m., or by appointment. Any individual with a disability may request accommodation in order to participate in the public hearing and may request the application and any accompanying materials in an accessible format. Such requests should be made at least three business days in advance by contacting the Municipal Services Department

**Members present:** Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr. & Emmett Sheehan

**Members Voting:** Judith Barrett, Kathleen Muncey, Freeman Boynton, Jr. & Emmett Sheehan

**Other persons present at the hearing:** Scott Lambiase, Director of Municipal Services & Amy Kwesell of KP Law & Angela Ball, Administrative Assistant

- Judith Barrett opens the meeting and explains to the Applicant that they have a Board of only 4 and it's up to him if he'd like to proceed.
- Matt Dacey, Applicant, agrees to continue with the meeting.
- Judith Barrett asks if the applicant has any new information. No.
- Judith Barrett explains where things were left off and that Atty Danehey presented an argument regarding the open space and Article 97 and our Town Counsel opined the opposite.
- Attorney John Danehey states he is looking to have the ZBA consider the importance of the 1988 TM vote, specifically the idea to keep the 70% in conservation and despite my difference of opinion with Town Counsel the ZBA can ensure that whatever plan is submitted they can also do a no disturbance law and find common ground. Mr. Danehey goes on to states that if they go into the 70% areas, it should be designated or dedicated to conservation not open space. Our position is to have 70% open space.
- Amy Kwesell of KP Law explains that the language in the TM vote was not specific enough to put land in Article 97 and that the argument regarding public trust doctrine is also not applicable either as there is also no specific dedication. Ms. Kwesell goes on to state that she has further opined that Article 97 is not for

the ZBA to decide it's for the BOS, but that the ZBA does have the authority to do a comprehensive permit and per CMR 756 the applicant has site control.

- Walter Sullivan states they have shown they have site control and that he agrees with Town Counsel that its not clear in the deed as it talks about uses for schools or town purposes and that he concurs that 97 does not apply and he and his clients would like to move forward.
- Sally Wilson of 120 Bay Road expresses her concerns over the prposed width of the roadway at 22 ft, stating that the standard width over the years has been 18 ft and she urged the Board to consider other impacts the width will have like climate change, drainage, urban heat from pavement.
- Judith Barrett asks Rick Grady to respond to Ms. Wilson's concerns.
- Rick Grady of Grady Consulting states that the width spec'd was to stay in compliance with the rules and regs set out by the planning board standards and that they would like to keep that as they hope to have the Town accept this as a road. Mr. Grady goes on to state that they have addressed other concerns mentioned like drainage and intend to use a natural depression on the site.
- Kathleen Muncey asks if there are cutting limits. Grady states it's on the plan
- Kathleen Mucney asks if there are any means of enforcing that.
- Scott Lambiase states that they routinely have an engineer walk the property to monitor, yes.
- Rick Grady states that this project is likely to have a good way to monitor as the lots are small at 10k sq ft and homeowners don't have the option to clear cut individual properties.
- Judith Barrett asks what the width of Saw Mill Road is
- Scott Lambiase states that it was built to the PB standards and is 22', and is not yet a Town Road.
- Judith Barrett and Sally Wilson discuss PB reg regarding road width and ability to waive.
- Freeman Boynton, Jr. states that the agrees with Ms. Wilson that it's excessive width, but the Fire Dept has a requirement of 20' width and if you consider how the width changes after snow and plowing is done, it's necessary and is a good compromise.
- Emmett Sheehan concurs with need for the width for safety.
- Matt Dacey states that he's built in 48 cities/towns in the area and although he would like it smaller, the most important thing for each Town is safety and this width accomplishes that as it also allows them to keep with the integrity of the rules and regs required by the Town od Duxbury.
- Judith Barrett asks if there are any questions. NO.
- Frreeman Boyton, Jr states that we are doing wok in the 70% open space area, so we cant set up limits now, but once the work is done they can, similar to how it works with a CR.
- Emmett Sheehan and Judith Barrett discuss that goal is for the 70% open space fto be turned over to the town or have HOA hold the land.
- Matt Dacey suggests that they have a pre-construction meeting, like a mid point and as we approach the final I'd submit an as-built and at that point we can do a site walk to ensure all is compliant, so a few check points along the way.
- Judith Barrett states that we can make it a condition of the permit.
- Matt Dacey states that we've set up open space land for HOA or have Town take it back.

- Kathleen Muncey asks Matt if they have a preference. Matt Dacey answers yes.
- Kathleen Mucney asks if we can condition that.
- Judith Barrett states that we cannot convey the land. We can say either or and say designation will be by the BOS. She goes on to state that they have comments from Amory Engineers and asks if there is anything more.
- Scott Lambiase responds, no.
- Judith Barrett asks Amy Kwesell fi there is anything more.
- Amy Kwesell states that in thinking about open space, she'd like to say that you can't give the Town open space without creating a new lot or you can't get a CR without having a grantee and I agree that it's tough to deal with an HOA with this type of development. She states that all you can do is require open space and the cutting plan is an excellent idea and suggests that if drainage structures are in the open space to keep that separate – the road and the open space.
- Kathleen Muncey asks if there is access to the open space from the roadway.
- Rick Grady answers, yes.
- Judith Barrett asks if anyone else would like to speak. No.
- Freeman Boynton, Jr. makes a motion to close the hearing. Emmett Sheehan seconds.
- Judith Barrett states that she'd like to draft a decision and bring it back to the Board for review within 40 days.
- Amy Kwesell confirms the 40 day mark as March 8, 2020.
- All vote in favor to close the hearing, 4-0.
- Judith Barrett motions to adjourn the hearing. Emmett Sheehan seconds. All in favor, 4-0.

**Motion: It was moved, seconded and unanimously voted to close the public hearing.**

**Moved by: FB**

**Seconded by: ES**

**Number in favor: 4**

**Number opposed: 0**