

From: Kim Ervin Tucker <k.ervintucker@gmail.com>
Sent: Tuesday, January 25, 2022 12:43 PM
To: Loyzim, Melanie; Madore, David; Martin, Kevin; Green, Robert L
Cc: Cutko, Andy; Noll, John; Parker, Lauren
Subject: Failure to provide Adequate Notice to all abutters: Ward Dock NRPA permit application pier at 37 Shag Rock Point
Attachments: Lincolnville harbor boundaries LHO Appendix A.pdf; Ward Application Lincolnville.pdf

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Dear Commissioner Loyzim, Mr. Madore and Mr. Martin:

I am writing to express concern regarding the adequacy of notice that has been provided to abutters of the proposed dock project proposed by Randall Ward and Kristyn Morrissey-Ward.

A copy of the relevant NRPA permit application is attached for your convenience. Exhibit 10 of the application on ly lists two abutters. However Chapter 2, Section 1.A of the Department's "RULE CONCERNING THE PROCESSING OF APPLICATIONS AND OTHER ADMINISTRATIVE MATTERS" defines "Abutter" as follows: "Abutter" for the purposes of the notice provisions of this rule, means a person who owns property that both (1) adjoins and (2) is within 1 mile of the delineated project boundary, including owners of property directly across a public or private right of way."

Pursuant to the definition, my Mother (Dolores G. Ervin) and I — as well as all property owners within the Harbour Pointe Subdivision — are abutters of the proposed project area. Harbour Pointe Subdivision is less than a mile from the proposed project area. All lot owners within the Harbour Pointe Subdivision have a deeded easement "to the shore of Penobscot Bay." However, none of the subdivision's lot owners, including my Mother and me, are listed as abutters in Exhibit 10 of the attached NRPA permit. We received no notice from the Department nor from the Bureau of Parks and Lands.

Here, the "project boundary" includes the State's submerged lands, since the pier, as proposed, requires a submerged lands lease. Thus, persons who own waterfront front property that includes intertidal land (to the low water mark of the shore of Penobscot Bay) within a mile (each direction) of the proposed pier, are "abutters" under the Department's definition, because their intertidal land both "adjoins" the project boundary (impacted submerged lands) and is within a mile. This is particularly true where, as here, the applicant proposes to impede access to intertidal land protected for use by the public for fishing, fowling and navigation by the Colonial Ordinance of 1641-1647. This pier would effectively split the intertidal zone in Lincolnville in two — providing no means of navigation north of the pier to those with lots south of the pier, and vice versa for those property owners with property located to the north of the pier seeking to navigate south of the pier at low tide within the intertidal zone.

Despite these particularized injuries to such abutters, it does not appear that a thorough review of this application for compliance with the Notice requirements relating to abutters was done prior to the Department's completeness determination. I only became aware of this proposal through recent newspaper stories. I should not need to rely on the press to alert me to the filing of applications that would have such a profound deleterious impact on the scenic value of our coastline, navigation and the use of this area by our local lobstermen and those wishing to navigate in the intertidal zone along all on Lincolnville Beach areas. I am requesting that the applicant be required to provide adequate notice to all abutters, as defined by the Department's rules so the proper due process requirements are observed regarding this proposed project — including all waterfront property owners within 1 mile (each direction) of the proposed pier. This should include all property owners within the Harbour Point s Subdivision as we all have deeded easements to the shore.

Further, this pier is in an area where there is known eelgrass beds which should require protection from degradation, especially where the applicant's sole use is for seasonal recreational uses but the impacts will be year-round and significant to the intertidal zone due to the proposal to construct a permanent dock to facilitate only intended seasonal recreational uses by a single family and their guests — to the detriment of current public access along a significant stretch of intertidal land in Lincolnville near the public beach and the ferry landing for Islesboro.

Additionally, there is a lesser environmentally damaging practicable alternative (LEDPA) to the proposed 300-foot pier, that has not been properly described in the Alternatives listed in the application submitted to the Department. That LEDPA is a mooring located adjacent to the Applicant's property. As a property owner of waterfront property, the Wards could place a mooring adjacent to their property, with the permission of the Harbor Master. The existing waiting list for moorings in the inner Lincolnville Harbor is not relevant to placement of such a private mooring adjacent to the Wards' property in the "coastal harbor" of Lincolnville.

Pursuant to the Lincolnville Harbor Ordinance ("LHO"), Section 2(a) and 2.J, the Wards would have the highest priority for such a mooring which could be placed in front of their property without impeding use of the intertidal zone pursuant to the Colonial Ordinance and without the impacts on the eelgrass beds and navigation, including navigation by the public in the intertidal zone, that the proposed pier would have. See also, 38 M.R.S. § 3.

According to the LHO the highest priority is given to "property owners with real estate abutting the waters immediately adjacent to the proposed mooring location pursuant to Title 38 M.R.S.A. Chapter 1 §3," in the assignment of mooring sites by the Lincolnville Harbor Master. p. 11 of the LHO. Further, LHO, Section 2.J states as follows:

J. Littoral Owner Moorings

The Harbor Master shall assign one mooring site to each littoral owner who owns shore rights to a parcel of land of at least one-hundred (100) feet of shore frontage, so long as the assignment of such a mooring is practicable and so long as that littoral owner is the master or owner of a watercraft. Such mooring site shall be either temporary or permanent, as requested by the littoral owner, and such mooring site shall front the land of the littoral owner, if so requested, but only in the event that such a mooring site does not encroach upon the natural channel or channels established by this ordinance. The assignment of this mooring site shall not prevent the littoral owner from receiving additional mooring assignments under the allocation system for other mooring sites set forth in this section of the ordinance and in Title 38 M.R.S.A. §3. The provisions set forth in this paragraph shall conform to the requirements of Title 38 M.R.S.A. §3.

LHO, p. 16.

https://lincolnvilleme.govoffice3.com/vertical/Sites/%7B0EE09280-1571-4126-B77C-44B66AF5BC58%7D/uploads/Harbor_Ordinance_Amended_June_2018.pdf

Based on the foregoing, I am requesting that this applicant be required to provide notice to all abutters, including all waterfront property owners within a mile each direction of the proposed pier and that the existence of eelgrass be independently assessed. Further, I request that this request for a pier be denied based on the existence of a mooring as a LEDPA to the proposed pier, that would preserve and protect vital public access — guaranteed by the Colonial Ordinance of 1641-1647 — to the intertidal zone adjacent to the Wards' property. This intertidal access would be irreparably harmed by this project, as proposed, even in months when no watercraft would likely be used by this property owner or even in the water, due to weather and the intent to use the pier for only seasonal recreational uses.

Thank you for your consideration and attention to the above referenced concerns,
Kim Ervin Tucker (P: 202-8410-5439)
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