

Regulating Docks and Piers through Local Wetlands Protection Bylaw

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Regulations to a local bylaw can be an effective tool in addressing problems relating to the construction and use of docks and piers.

Cities and towns can write laws relating to wetlands protection that are stricter than the Wetlands Protection Act under authority granted to them by the Home Rule Amendment to the State Constitution.

A municipality's legislative body (Town Meeting or City Council) may write a wetlands protection bylaw or ordinance to protect certain areas (typically referred to as resource areas) for the furtherance of certain public interests (typically referred to as resource area values).

If the local legislation authorizes the Conservation Commission to write regulations, the CC can write regulations for activities in areas mentioned in the bylaw (or ordinance) that further the stated public interests.

The Commission can then make decisions regarding docks and piers independent of the decision reached under the Massachusetts Wetlands Protection Act.

Assuming a proposed dock is in an area of jurisdiction, the commission can only make decisions regarding the permit application consistent with the regulations, which must be based on the Bylaw, which is authorized by the Home Rule Amendment to the State Constitution.

When drafting regulations to address problems associated with docks and piers there must be a connection, or nexus, between the problem addressed and the resource area values.

For example, the Falmouth Wetlands Protection Bylaw has "recreation" as a resource area value. Recreation is defined as

"... the use and enjoyment of our natural surroundings in a manner consistent with their preservation. Activities should not hinder access to coastal and inland resources. Activities that shall be considered part of the use and enjoyment of our natural surroundings in a manner consistent with their preservation shall include but not be limited to recreational boating swimming and shellfishing. The Commission's analysis of the project's effect on the resource area value of recreation should be relative to a proposal's potential impacts on other wetland interests, with priority given to enhancing and protecting those recreational

activities which are not detrimental to the continued natural function of wetlands.”

If the placement of a dock interferes with recreational boating, that is something that can be addressed under the Falmouth bylaw. However, in the Falmouth Bylaw there is no nexus with commercial boating or shellfishing.

The Bourne Bylaw has a resource area value called “Recreational and Commercial Use” This is defined as:

“...the purposes for which the Wetland Resource Area are used by the public such as navigation, fishing, hunting, shellfishing, swimming, water skiing, diving, walking, etc. A project must be designed so as to not impair the ability of the Wetland Resource Area to provide for these public recreational and/or commercial uses.”

This resource area value provides a nexus between unreasonably long docks and piers and a legitimate public purpose for both recreational and commercial boating.

When considering standards for the evaluation of projects, stay away from phrases such as “significant shellfish habitat” without definitions. The Cape Cod Commission has a reference for “significant shellfish habitat” depending on species and whether you are considering commercial or recreational use. These standards have been incorporated into the Falmouth Wetland Regulations.

Summary:

1. Dock permit decisions must be based on the current regulations.
2. Conservation Commissions in many cases may write their own regulations in a manner laid out in the local wetlands protection bylaw.
3. Each regulatory standard must be linked in some fashion to the protection of resource area values.

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