



# Town of Duxbury Conservation Commission

TOWN CLERK  
2018 MAY 17 PM 2:29  
DUXBURY, MASS.

## Minutes of January 9, 2018

The Conservation Commission met on Tuesday, January 9, 2018 at 7:00 PM in the Mural Room at the Duxbury Town Hall.

**Members Present:** Corey Wisneski, Chair; Sam Butcher; Robb D'Ambruoso; Tom Gill; Mickey McGonagle; Holly Morris; Scott Zoltowski

**Members Absent:** none

**Staff Present:** Joe Grady, Conservation Administrator; Susan Ossoff, Administrative Assistant

The meeting was called to order at 7:00 pm.

### **CONTINUED PUBLIC HEARING; DUCKS BERRY LLC; 1065 SUMMER STREET; DRIVEWAY ENTRANCE, INFILTRATION BASINS SE18-1757**

Joe Grady reported that additional funds for the Commission's consultant were just received today; and recommended continuing the hearing until January 23. On a motion by Corey Wisneski, seconded by Sam Butcher, it was voted 7-0-0 to continue the hearing for SE18-1757 until January 23 at 7:05 pm.

### **PUBLIC HEARING; DUXBURY CONSTRUCTION LLC; 88 SURPLUS STREET; SINGLE FAMILY HOME SE18-1795**

Freeman Boynton Jr., representing Brian Murphy, described the project. There are a lot of wetlands on the site, and Brad Holmes of ECR delineated the wetlands. This is a 2-phase project; the first phase is to take down a portion of the existing house, do an addition and remodel, and use it as a primary residence. The second phase is to build a home in the back part of the lot, and a new septic system has been designed. There are 3 existing cesspools near the front of the lot. The paved driveway will be kept and a paved parking area will be added; the garage will not be torn down. The new house in the rear and the garage will have the septic flow by gravity to a pump chamber for pumping to the leach field. This is a Riverfront Area and calculations for restoration and mitigation are included with the Notice of Intent. The degraded area is increasing 10% as allowed under the regulations. The existing coverage in the 100-foot buffer zone is 3.6% and this will be increased to 6.2%. Corey Wisneski asked if the restored area will be twice the size of the degraded area, and Mr. Boynton said that it will.

Joe Grady said the planting plan provides a list of plants but no specifics and a planting plan needs to be submitted for approval before any work can begin. He would like to have a physical barrier such as a fence installed to define the edge of the restored area so it won't be mowed and Mr. Boynton said a fence can be installed. Sam Butcher asked if an alternatives analysis is

necessary, and Brad Holmes said it is not necessary for redevelopment. Redevelopment is allowed on structures built prior to 1996; an alternatives analysis is needed for virgin sites.

Peggy Hernandez of Surplus Street asked if they are building two homes on one lot. Mr. Boynton replied that they are removing the existing home portion and doing an addition. She asked if a second home is being built in the rear of the lot, and Mr. Boynton said yes it will, the house in the rear will be lived in and the front house will be used as a guest house. Jeff Hernandez of Surplus Street asked where the septic would be located and Mr. Boynton pointed out the location on a plan.

On a motion by Sam Butcher, seconded by Robb D'Ambruoso, it was voted 7-0-0 to write Orders of Conditions for SE18-1795 requiring submittal of a planting plan and installation of a fence around the restoration area.

**CONTINUED PUBLIC HEARING; SEALUND CORPORATI8ON; 136 & 138 ALDEN STREET;  
ANRAD  
SE18-1786**

Mark Casey of South Shore Survey and Brad Holmes of ECR were there to discuss the project. Nover-Armstrong did a review on the ANRAD for the Commission, and changes were made to address the concerns raised in the review. There is a question of whether this is a Riverfront Area and what the stream's status is. Brad Holmes said it is a weak stream, and the USGS maps shows it as a perennial stream. In September it was clearly an intermittent stream, and Mr. Holmes said he put data together to show it is intermittent according to the regulations. A perennial stream designation can be overturned by observations in no-flow conditions; 5 days of evidence are required. Nover-Armstrong agrees with this and confirmed a portion of the stream on this property is an intermittent stream. He is asking the Commission to confirm there is no Riverfront Area on the site based on this information. Upstream near Railroad Ave this has been designated an intermittent stream, it can't be an intermittent stream upstream and a perennial stream downstream. Scott Zoltowski asked if the construction at Railroad Ave will affect this stream; Mr. Holmes said it would not.

On a motion by Sam Butcher, seconded by Tom Gill, the Commission voted 7-0-0 to accept the wetlands delineation on the ANRAD at 136 & 138 Alden Street; SE18-1786.

**CONTINUED PUBLIC HEARING; CHENEY; 59 BEECHWOOD LANE; PIER  
SE18-1787**

At the request of the applicant, this hearing will be continued. On a motion by Tom Gill, seconded by Sam Butcher, it was voted 7-0-0 to continue the hearing for SE18-1787 until January 23 at 7:10 pm.

**PUBLIC HEARING; REALY; 98 HARRISON STREET; ADDITION & GARAGE  
SE18-1796**

Kevin Grady of Grady Engineering, representing the applicant, described the project which is an addition to a house. The Resource Areas were delineated by John Zimmer there is a BVW to the Bluefish River and a Riverfront Area. They want to add a garage to the front, use the existing driveway and expand it, add a breakfast room, and in the future add a swimming pool (it is shown on the plan). The entire site is in the 200' Riverfront Area; no new work is proposed in the 100' buffer zone. The existing septic system will be used.

The plan is to do a restoration area with plantings as mitigation; this project is redevelopment and if the Riverfront Area is improved through the project it is approvable. Coverage in the 100' buffer is less than 4%.

Joe Grady said the plan shows 2 100' buffer zone lines, but one of them should be labelled as the 50' buffer line. Joe Grady also recommends a fence be required around the restoration zone. Holly Morris asked if there are any trees in the area currently proposed for restoration, and Joe Grady said there are small trees but the area has been mowed. This site is filled salt marsh where harbor dredged spoils were deposited.

On a motion by Sam Butcher, seconded by Scott Zoltowski, it was voted 7-0-0 to write Orders of Conditions for SE18-1796, 98 Harrison Street with a requirement for a fence around the restoration area.

## **ADMINISTRATIVE MATTERS**

### **CERTIFICATES OF COMPLIANCE:**

**SE18-1766; 143 Bay Road:** Joe Grady reported that there are issues with the as-built plan for this project that need to be addressed and he does not recommend issuing Certificates of Compliance.

### **DISCUSSION: TOWN MEETING VOTE TO ADOPT M.G.L. CHAPTER 40 SECTION 8L**

Joe Grady explained that if this MGL is adopted by Town Meeting, it will enable the Agricultural Commission to act like the Conservation Commission in the agricultural arena. He met with the Agricultural Commission and they asked for votes of support if possible. Joe Grady said he envisions the Agricultural Commission helping to assist the Conservation Commission with managing farmland and recommends supporting it. Robb D'Ambruso asked if this would include aquaculture, and Joe Grady said it would. Tom Gill asked if the Conservation Commission and Agricultural Commission disagree over an issue, who would have the final say; Joe Grady said it would depend on who owns the property, if it is under the Conservation Commission's jurisdiction it would be under the Conservation Commission's control. Tom Gill said that some conservation land is farmed, and the overlap in authority concerns him. Joe Grady said he feels the Agricultural Commission can assist the Conservation Commission and he sees it as a partnership.

Holly Morris said wind farming is considered farming and wondered how that would fit in. Mickey McGonagle wondered if the Agricultural Commission should be invited to a meeting. Scott Zoltowski asked about the language that says 'buy, hold and manage land' and in what cases the Agriculture Commission would be buying land; Joe said that language might be geared for more agriculturally-based communities, and he sees in Duxbury that the Agriculture Commission might take over the farm management agreements on Conservation land for tree farming and cranberry farming.

On a motion by Corey Wisneski, seconded by Scott Zoltowski, the Commission voted to support adoption of M.G.L. C.40 s.8L at Town Meeting by a vote of 7-0-0.

Scott Zoltowski suggested that the Agriculture Commission come and have a discussion with the Conservation Commission at some point in the future.

**UPDATE: SE18-1792; 298 POWDER POINT AVE (WITHDRAWN)**

Sam Butcher stated that he has done work on other unrelated projects with the law firms involved in this dispute.

Joe Grady reviewed the situation, which is that at the last hearing, both property owners (290 and 198 Powder Point Ave) were present, and this filing was withdrawn. The day before the hearing an email was received from the Langeland's attorney asking for an Enforcement Order for the neighbor; this request was dated December 11 but was received December 18 and so was not received in time to be discussed at the last meeting. On the 21<sup>st</sup> of December an email was received from Gene Guimond, attorney for the Langeland's, demanding an Enforcement Order be issued for Brooks Chase and his contractor. On the 24<sup>th</sup> an email from the contractor, Freeman Boynton Jr., stated that he will file an NOI to finish the wall and do restoration of the coastal bank. The coastal bank is still functioning; they do erode which is a normal process, so there is no need for enforcement especially when the contractor is moving forward with a restoration plan. Joe Grady said that the easement issues between these property owners are not the Commission's issue.

Gene Guimond said that the contractor and property owner filed a Notice of Intent at 290 Powder Point Ave but extended the project onto someone else's property and destroyed a resource area. The Wetlands Protection Act says enforcement can be taken against anyone who does unauthorized work. Mr. Guimond further stated that the owner of an easement is a property owner. The contractor came at night and installed fill without authorization of the Langeland's. Mr. Guimond further stated that he did not object to the Enforcement Order being issued against his client to 'get him out of limbo.' Sam Butcher said the regulations say that the Commission 'can' issue an enforcement order, not that they must do so, and in this case the absence of an enforcement order is not leading to degradation of a resource area. Mr. Guimond said the fill is unauthorized fill so that is a daily violation. Sam Butcher suggested the applicants and contractor should find a way to resolve this situation.

Joe Grady said issuing an Enforcement Order will involve the Town and Town Counsel in trying to resolve an issue that hopefully will be resolved by the neighbors. Sam Butcher suggested that the Commission wait and revisit the idea of an Enforcement Order if no NOI is filed. It was suggested that all parties be asked to come to the Commission for a brief discussion to see if there is a path to resolution of this dispute.

**EXECUTIVE SESSION**

Robb D'Ambruoso made the following motion: To go into Executive Session to discuss strategy with respect to litigation, as an open meeting may have a detrimental effect on the litigating position of this Commission; and to reconvene in open session at the conclusion of the Executive Session in accordance with Mass. General laws Chapter 30A, Section 21. The motion was seconded by Scott Zoltowski. Roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Tom Gil, yes; Mickey McGonagle, yes; Holly Morris, yes; Scott Zoltowski, yes.

**Adjournment:** On a motion by Sam Butcher, seconded by Robb D'Ambruoso, it was voted 5-0-0 to adjourn the meeting at 7:45 pm.

**MATERIALS REVIEWED AT THE MEETING**

NOI materials for SE18-1757, SE18-1795; SE18-1786; SE18-1787; SE18-1796