



# Town of Duxbury Conservation Commission

Approved April 23, 2019

TOWN CLERK

2019 MAY -2 AM 9:07

DUXBURY, MASS

## Minutes of March 19, 2019

The Conservation Commission met on Tuesday, March 19, 2019 at 7:00 PM in the Mural Room at the Duxbury Town Hall.

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

**Members Absent:** Sam Butcher

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

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

### **CONTINUED PUBLIC HEARING; CALISTA; 315 KING CAESAR ROAD; PIER SE18-1836**

Paul Brogna, the applicant's representative, said that based on the discussion at the February 26 Conservation Commission meeting, and discussions with the neighbor, the plans have been revised and the pier has been moved back to the originally proposed location.

Mr. Brogna addressed the issues raised in the March 11 review letter by BETA, the Commission's consultant. One comment is that land containing shellfish is not depicted on the plans. Mr. Brogna discussed this with Brad Holmes, the wetlands specialist, and a full shellfish survey would need to be done to identify land containing shellfish, and this is usually not required by the Commission, the top of the tidal flat is used. Regarding the salt marsh issues, on the revised plan there is no salt marsh to be altered if the 9' section is straddled; he prefers to keep the sections at 10' but can do it a bit longer if that will span the marsh.

Mr. Brogna said that for most lots, where the salt marsh ends the tidal flat begins. In this location, the tidal flat ends 46 – 48' after the marsh ends, so there is a tidal beach, and this is a unique situation. As proposed there are 48' between the end of the salt marsh and the end of the pier, the regulations require the pier to end at the end of the salt marsh but this is not a typical situation.

Laura Krause from BETA said the revised plans addressed a number of their comments, and some additional information has been provided today. The regulations require that the pier not affect land containing shellfish. Additionally the regulations require the pier to end at the end of the salt marsh.

Scott Zoltowski said that the Commission's role is to uphold the bylaws and the bylaws say the pier has to end at the end of the salt marsh, and asked how the Commission could approve a pier that extends beyond it. Paul Brogna said the zoning bylaw says the pier can be no more than 2' beyond the salt marsh, but usually a tidal flat begins where the salt marsh ends. Scott Zoltowski suggested a site visit might be informative, and said the regulations provide no authority to grant something beyond the end of the salt marsh.

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 5471; Fax: 781-934-1137

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Corey Wisneski said the bylaw is clear about the pier needing to end just beyond the salt marsh. This property has options for an alternative location where the pier would not go over any salt marsh. To uphold the bylaws, the Commission can't make exceptions for an unusual property, particularly where there is another option for this property.

Robb D'Ambruoso agreed a site visit would be helpful. He said the alternative site is environmentally better because no salt marsh is affected. Joe Grady said that if the stakes that are currently in the field show the proposed location for the pier, it is definitely in shellfish habitat. Paul Brogna said if the stakes are not labelled, they are not his stakes.

Paul Brogna asked the other Commission members to weigh in with their thoughts about the proposed location. Mickey McGonagle said the proposed location and configuration do not comply with the regulations. He asked what the objections are to the other site that doesn't cross any salt marsh, and Mr. Brogna said it is aesthetic considerations for the owner and neighbor, they want to leave the beach open for their children. Holly Morris said the Commission must uphold the bylaws and the proposed pier does not meet the bylaw requirements and the potential shellfish impacts are an additional concern.

Joe Grady added that for a coastal beach, the Commission does require applicants to determine where shellfish are located for projects.

On a motion by Corey Wisneski, seconded by Tom Gill, it was voted 6-0 to continue the hearing for SE18-1836 until April 9 at 7:20 pm.

**CONTINUED PUBLIC HEARING; DUXBURY CONSTRUCTION; 283 KING CAESAR ROAD;  
PIER  
SE18-1853**

The applicant has requested a continuation of this hearing.

On a motion by Corey Wisneski, seconded by Scott Zoltowski, it was voted 6-0 to continue the hearing for SE18-1853 until April 9 at 7:25 pm.

**PUBLIC MEETING; SEALUND CORPORATION; 142 ALDEN STREET; REMOVE  
DRIVEWAY, STONE PIERS, BRICKWORK AND LAMPS, REVEGETATE**

Mark Casey of South Shore Survey described the project. This is next to the Paddock Circle subdivision but is on an adjacent lot. The water main that runs through the property is being re-run within the 100' buffer. They are going to remove pavement, stone piers, brick, and lamps and revegetate the area. Coverage is decreasing.

On a motion by Holly Morris, seconded by Scott Zoltowski, by a vote of 6-0 the Commission issued a Negative Determination for the project at 142 Alden Street such that no Notice of Intent is required for the work.

**ENFORCEMENT: 98 HARRISON STREET**

Property owner A.J. Reilly, Kevin Grady of Grady Consulting, and John Zimmer were present to address this enforcement action. Joe Grady said that he thinks progress is being made. At the request of the Commission, a letter was sent to the property owner with a deadline to submit

materials to the Commission, and these materials were reviewed by BETA as well as by Joe Grady.

Joe Grady said Sheet 1 of the plans is the Existing Conditions Plan. It shows the area that has been cut. It says 54 trees greater than 3" in diameter have been cut, and he asked that to be updated because BETA said 135 trees have been cut (down to 1" diameter) but because of the snow it was difficult for this number to be updated.

In the original Notice of Intent, there were 2 areas to be altered in the Riverfront Area of about 2400 square feet on the west side. The Commission approved with a mitigation planting area of 2800 square feet next to the driveway. The planting plan showed 37 shrub-like plants to be planted but that is under a separate permit. The violation that this discussion is about altered an additional 200 square feet in the mitigation area, and a proposal to restore the additionally altered 200 square feet and the removal of 2 large trees is needed.

The violation area shows 11,000 square feet of area that are violated, but the area near the mitigation area next to the driveway has 3 additional cut trees that aren't included in this square footage. The restoration area should not be in the mitigation area.

Sheet 3 is the proposed planting plan. It shows 80 trees and 155 shrubs; Joe Grady is concerned with calling Sweet Fern a shrub. He also finds it confusing that there is more than 1 table for the planting plan and they differ, this needs to be made consistent. One document says the brush piles will remain, another says they will be removed and this needs to be clarified. There is reference to a Registered Landscape architect, and Joe Grady wants to know who is driving the restoration plan, is it Mr. Zimmer or the landscape Architect, and if it is the landscape architect more information about the person's qualifications should be provided. Kevin Grady said Bartlett Pinksey is the the registered Landscape Architect who stamped the plans.

Joe Grady said the original limit of work (LOW) line for the house project is not shown on the plan. Trees were cut beyond the LOW line. Part of the new driveway extends beyond the LOW line. In general, there is lots of progress but more detail is needed regarding sprout maintenance for the black cherry trees, the plan for the brush piles, details of the monitoring plan and the invasive species removal plan.

Kevin Grady of Grady Engineering responded. He said originally they located trees 3" in diameter or more, and they didn't realize the Commission expected them to locate trees of 1" diameter. The alteration area overlaps the mitigation area. There had been a comment asking that a certain species of tree in the restoration plan be eliminated so they eliminated that tree in the mitigation area as well. Joe Grady asked what tree he was referring to, and John Zimmer said sweet fern was recommended to replace sweet pepper bush. Joe Grady said that was because he doesn't believe sweet pepper bush will grow in that location but also he wanted to be clear that neither of these plants is a tree. Kevin Grady confirmed that he meant these are shrubs, and not trees.

Kevin Grady said that John Zimmer is providing the list and species and the landscape architect is putting it on the plan. They prefer not to show specific plant locations. Joe Grady asked to confirm that John Zimmer is driving the restoration work, and Kevin Grady said that is correct.

Joe Grady said the plan is showing full size trees being 20' in diameter which is deceptive because there will be spindly plants planted not 20' trees.

Kevin Grady said they will plant enough plants to restore the buffer zone. They aren't specifying exact locations for plants, they will decide that when they get to the site. John Zimmer said he will oversee the contractor, and thinks the plant list and density is sufficient. There was no significant understory at the site and they are proposing an understory which is an improvement.

Kevin Grady said regarding the 3 trees beyond the LOW line, the LOW line was for the house, the rest was intended to be lawn. Joe Grady said the Orders of Conditions state that no cutting is allowed beyond the LOW line. John Zimmer said they can add those trees in to their tally. For the sprouts, they can't tell which black cherry trees are still alive until the spring, and they will see which stumps are resprouting and then tag those they intend to maintain. John Zimmer said regarding the brush piles, he prefers to eliminate the brush piles but plant more shrubs to provide wildlife habitat because if the brush piles remain they will impair invasives control efforts. Corey Wisneski said she prefers the additional shrubs and the removal of the brush piles to help with the invasives control.

Tom Gill asked what the replacement plan for trees that die is, John Zimmer replied that there is a 3 year monitoring plan and whatever doesn't survive will be replaced. Joe Grady added that annual reports are being required.

Corey Wisneski asked that the plant lists be aligned and the brush piles be removed. Kevin Grady said they can separate the plant list for the mitigation and restoration areas. Joe Grady said the LOW line needs to be maintained and a new LOW line installed until the site is stabilized. Joe Grady also said more review money will be necessary, he has never had a project take so long and the extent of the cutting is beyond anything he has seen before.

This will be further discussed at the next Commission meeting and hopefully finalized.

**PUBLIC HEARING; DUXBURY CONSTRUCTION; 30 FREEMAN PLACE; RAISE HEIGHT OF EXISTING SEAWALL AND RAISE GRADE**

**SE18-1859**

Scott Zoltowski recused himself from this hearing because he is an abutter.

Chris Leamy of Duxbury Construction described the project which is to raise the height of an existing seawall to the height of the neighboring seawall and then raise the lawn 1-2 feet for about 100'. Corey Wisneski asked if all the work will be done from the top and Chris Leamy said yes it will.

On a motion by Tom Gill, seconded by Holly Morris, it was voted 5-0 to write Orders of Conditions for SE18-1859, 30 Freeman Place.

**PUBLIC HEARING; GOODICK; 95 HORNBEAM ROAD; REMOVE AND REBUILD SEAWALL; DEMOLISH HOUSE AND POOL AND CONSTRUCT NEW HOME AND POOL; GRADING, LANDSCAPING; RE-ESTABLISH DISTURBED RESOURCE AREAS**

**SE18-1858**

Chris Leamy of Duxbury Construction described the project. The seawall and pool area are not compliant with the original Orders of Conditions for this property. This proposal will move the house further away from the resource area, remove the pool area and put in a new pool, and remove the existing seawall and rebuild a seawall in the approved location with an extension. The damaged areas from the nonconforming seawall will be restored with grass and sand.

The house is in the 50' wetlands buffer zone in one area, the new location will all be beyond the 50' wetlands buffer. The house will be within the 50' buffer to the coastal bank but encroachment in the 50' coastal bank buffer is allowed under the regulations.

Corey Wisneski said the Coastal Bank coverage is going down by 1% with the new project, but the wetlands buffer zone coverage is increasing and it can't increase. Chris Leamy said they would revise the plans so there is no increase in coverage.

Joe Grady said this is a complicated plan. The wall that was built out of compliance with the old Orders of Conditions changed the coastal bank, so for this project they have used the original location of the coastal bank not the location of the existing wall. Expansion within the area less than 50' from the top of the coastal bank is allowed in non-eroding coastal bank areas.

On a motion by Holly Morris, seconded by Tom Gill, it was voted 6-0 to write Orders of Conditions for SE18-1859 with a new plan required with 12 square feet less coverage in the buffer zone.

**PUBLIC HEARING; DUXBURY CONSTRUCTION; 286 MARSHALL STREET; SEAWALL, GRADING, LANDSCAPING  
SE18-1857**

Chris Leamy of Duxbury Construction described the project. There is a jagged coastal bank in this area covered with invasive species. They will connect with seawalls to either side of this wall and smooth out the grade. There is no new lawn proposed within the 25' buffer zone. All plantings will be salt tolerant vegetation. Corey Wisneski said there is a note on the plan saying the beach grass will be restored, and she asked if any beach grass will be destroyed during construction. Mr. Leamy was not certain, but the wall will be built from the beach. Joe Grady said the toe stones placed below grade will disturb the area, and grass areas that are impacted must be repaired. A limit of work line will be established before construction with stakes.

Corey Wisneski said there should be stakes placed for the bottom of the wall and also for the limit of work line before construction can begin.

John Olsen of 287 Marshall Street asked how the equipment will be brought in; Mr. Leamy wasn't sure. Mr. Olsen said it is very tight there and he doesn't want his yard and fence impacted, it was agreed that Mr. Boynton will talk with Mr. Olsen about this.

Joe Grady said if they are going to access the project over neighboring property that they need written permission from the neighbors.

On a motion by Corey Wisneski, seconded by Scott Zoltowski, it was voted 6-0 to write Orders of Conditions for SE18-1857 with the conditions that beach grass damage be minimized, any damaged areas be restored, and the bottom of the wall and limit of work locations will be staked prior to any work beginning.

**ADMINISTRATIVE MATTERS**

**Minutes for Approval:**

On a motion by Corey Wisneski, seconded by Scott Zoltowski, it was voted 6-0 to approve the minutes of **February 26, 2019**.

**Certificates of Compliance:**

**SE18-1744, 151 Gurnet Road:** Joe Grady reported that he has asked the applicant for updated coverage calculations, so he recommends no action until the updated information is provided.

**SE18-1604, 25 Possum Run:** Joe Grady said he has received all required documentation, he inspected the property and the project conforms to the Orders of Conditions, and he recommends issuing Certificates of Compliance for SE18-1604. On a motion by Corey Wisneski, seconded by Sam Butcher, it was voted 5-0 to issue Certificates of Compliance for SE18-1604, 25 Possum Run.

**Adjournment:** On a motion by Robb D'Ambruoso, seconded by Scott Zoltowski, it was voted 6-0 to adjourn the meeting at 8:47 pm.

**MATERIALS REVIEWED AT THE MEETING**

NOI applications for SE18-1836; SE18-1859; SE18-1858; SE18-1857  
RDA Materials for 142 Alden Street  
Materials for Enforcement Action at 98 Harrison Street  
Draft minutes of 2/26/2019