

Approved May 14, 2019



# Town of Duxbury Conservation Commission

TOWN CLERK

2019 JUN -3 PM 2:48

DUXBURY, MASS.

## Minutes of April 23, 2019

The Conservation Commission met on Tuesday, April 23, 2019 at 7:00 PM in the Mural Room at the Duxbury Town Hall.

**Members Present:** Corey Wisneski, Chairman; Robb D'Ambruoso, Vice-Chair; Sam Butcher; Mickey McGonagle; Holly Morris

**Members Absent:** Sam Butcher; Scott Zoltowski

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

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

### COMPREHENSIVE PLAN OUTREACH

Town Planner Valerie Massard explained that she is doing outreach about the Comprehensive Plan, hoping to get input from the Conservation Committee. The hope is to wrap up the Plan this summer. The draft sections are on the website and the Commissioners are asked to review it if they wish to comment. Joe Grady said this will be put on the May Agenda for discussion and he can offer feedback to the Town Planner following that discussion.

### PUBLIC MEETING; DUXBURY YACHT CLUB; GOLF COURSE; MAINTENANCE & IMPROVEMENT

Peter Lanman from the Duxbury Yacht Club said Brad Holmes delineated the wetlands for the golf course. The project is to improve tees and fairways, repair fairways and thin some vegetation. All the work will be done within the existing maintained area of the course. The work that is proposed near the wetlands will be to reconstruct the 10th tee and bring up the grade as well as adding another tee location behind the 4<sup>th</sup> tee. Joe Grady said it is very useful to have a complete picture of the wetlands on the site, and all the work is within the existing course, no expansion is planned. The only parts of the project within the Commission's jurisdiction are areas near the 4<sup>th</sup>, 10<sup>th</sup>, and 11<sup>th</sup> hole areas.

Corey Wisneski said there are 2 areas on the plan that indicate tree removal will occur near the 20<sup>th</sup> fairway and the lines seem to extend over the wetlands line on the plan. Mr. Lanman said there are 2 trees about 25' from the wetlands, nothing is being removed in the wetlands.

On a motion by Robb D'Ambruoso, seconded by Tom Gill, it was voted 5-0 to issue a Negative Determination for the golf course maintenance and improvement work such that a Notice of Intent is not required for the work.

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The mission of the Town of Duxbury is to deliver excellent services to the community in the most fiscally responsible and innovative manner while endeavoring to broaden our sense of community and preserve the unique character of our town.

**PUBLIC HEARING; DUXBURY CONSTRUCTION; 230 MARSHALL STREET; TENNIS COURTS & RETAINING WALL  
SE18-1863**

Freeman Boynton Jr. of Duxbury Construction described the project. There was a previous project at this property to protect a pond with dunes, beach, and fencing. There is an existing tennis court and retaining walls that will be replaced with a new court and retaining wall. The existing courts don't meet zoning setbacks so can't be moved further from the wetlands. Joe Grady asked if the drainage could be pitched in the opposite direction from what is shown on the plan so it drains away from the wetlands, and Mr. Boynton said yes that modification can be made.

Jim Merlin of 241 Marshall Street asked if Mr. Boynton could describe the replanting area. Mr. Boynton said any disturbed areas will be replanted with vegetation similar to what is currently there. Mr. Merlin said his concern is whether any large trees or shrubs will be planted that will obstruct his view, and Mr. Boynton said he is not aware of any plans to do that.

On a motion by Holly Morris, seconded by Robb D'Ambruoso, it was voted 5-0 to write Orders of Conditions for SE18-1863 to include an order that the drainage trench should be relocated to the opposite side away from the wetlands.

**CONTINUED PUBLIC HEARING; DUXBURY CONSTRUCTION; 156 MARSHALL STREET; SEAWALL  
SE18-1861**

Robb D'Ambruoso recused himself from this hearing.

Freeman Boynton said revised plans were submitted with some changes to the resource areas. A good portion of the area behind what will be the seawall is lawn and will remain lawn but will ultimately likely be washed away.

Corey Wisneski said a section of property is being swapped with a neighboring property for this project to proceed and asked for an update. Mr. Boynton said the Planning Board approved the land swap, but the plan is not signed or recorded. Ms. Wisneski said the Orders of Conditions should require that the deed transfers are complete before work on the project can begin.

Manual Weiss of 158 Marshall Street said this wall abuts his seawall and he wants to be sure there is no damage to his wall or changes to water flow as a result of this wall. Mr. Boynton said they are tying into his vertical wood wall, but this will be a slope stone wall and the cracks will absorb energy. The height of the new wall will match Mr. Weiss's wall and then the height of the wall will be raised along its length to meet the height of the neighbor's wall on the other side. Corey Wisneski asked if there will be fill placed behind the wall and Mr. Boynton said yes. Ms. Wisneski asked Mr. Boynton if all the work will be done from the property side and not from the beach side and Mr. Boynton said all the work will be done from the property side.

On a motion by Corey Wisneski, seconded by Tom Gill, it was voted 4-0 to write Orders of Conditions for SE18-1861 with the condition that the deed transfer for the land swap be complete and recorded before any work begins.

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

Dan Calista, the property owner, asked to read a letter he submitted to the Commission which asked the Commission to consider the special circumstances at his property and allow him to put in a longer pier, and he read the letter. Paul Brogna said that on March 9 he discussed the location of the pier with the Commission and he relayed this information to Mr. Calista.

Mickey McGonagle said the project either complies with regulations or it doesn't, and he is concerned with establishing any precedents. There is an alternate location that meets the regulations and the primary objection to that location is based on aesthetics.

Corey Wisneski said the regulations clearly state that a pier can't extend beyond the salt marsh. She said she understands that this property is different, but the Commission can't bend the regulations for unique properties. Mr. Calista said the regulations say the pier can't go any greater distance 'than necessary' and in this case it is necessary to extend the pier to reach open water. Corey Wisneski replied that the 'then necessary' means the pier needs to end at the end of the salt marsh.

Tom Gill asked if the shellfish habitat has been delineated, and Joe Grady said it has not been. Mr. Calista said he will hire someone to determine the shellfish habitat and make sure the pier stops short of that. Holly Morris asked how far the peat extends and what is under the sand. She said the State regulations and Town regulations both are intended to protect the salt marsh, and peat is part of the salt marsh. Mr. Calista said the pilings wouldn't touch the peat, there is just a thin strip of salt marsh. He said he can hire somebody to study the peat.

Mickey McGonagle asked if there is any alternative to the pier ending just beyond the salt marsh in the regulations, and Joe Grady said no there is not. He said the proposed location of the pier also runs against the zoning bylaws because those bylaws state that the pier has to end no more than 2 feet from the salt marsh. Mr. Calista said this location for the pier is best for the wetlands because in the other location the boats will damage the wetlands; Corey Wisneski said the regulations are clear about where the pier needs to end.

Mickey McGonagle said that the hearing can be kept open if Mr. Calista wants to do more studies, or the applicant can use the alternative location which the Commission could approve.

Mr. Calista said he would like to do some research on the peat.

On a motion by Corey Wisneski, seconded by Tom Gill, it was voted 5-0 to continue the Public Hearing for SE18-1836 until May 14 at 7:05 pm.

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

The applicant has asked that this hearing be continued.

On a motion by Corey Wisneski, seconded by Robb D'Ambruoso, the hearing for SE18-1853 was continued until May 14 at 7:06 pm by a vote of 4-0.

## **ADMINISTRATIVE MATTERS**

### **Minutes for Approval:**

On a motion by Tom Gill, seconded by Robb D'Ambruoso, it was voted 5-0 to approve the minutes of May 19, 2019.

### **Certificates of Compliance:**

**SE18-1744, 151 Gurnet Road:** 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 SE18-1744. On a motion by Corey Wisneski, seconded by Tom Gill, it was voted 5-0 to issue Certificates of Compliance for SE18-1744, 151 Gurnet Road.

**SE18-1639, 281 Congress Street:** 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 SE18-1639. On a motion by Corey Wisneski, seconded by Holly Morris, it was voted 5-0 to issue Certificates of Compliance for SE18-1639, 281 Congress Street.

### **Enforcement: 38 Hornbeam Road**

Joe Grady explained that he issued an Enforcement Order for 38 Hornbeam Road on April 11, and he is asking the Commission to reaffirm the issuance. There was cutting on neighboring property. He consulted with Town Counsel before issuing the Enforcement Order, and Town Counsel advised him that under the bylaw an Enforcement Order can be issued to whoever does the violation rather than the property owner, which is what has occurred in this situation. The cutting was done to provide a view. Thirty three or more trees and/or shrubs were cut in Bordering Vegetated Wetlands (BVW); in a buffer zone to BVW, on a Coastal Bank, and in a buffer zone to a salt marsh. The person's attorney responded and said there is a no trespass order for that property now; however the neighbor has said he may allow the violator to work on his property. Attorneys are involved for both sides and this will take time to resolve.

Corey Wisneski asked when the Commission should begin to consider fines. Robb D'Ambruoso said sometimes fining one side discourages the parties from working together.

Joe Grady said perhaps both sides could be invited to a Conservation Commission meeting to discuss the situation.

Robb D'Ambruoso made a motion to reaffirm the Enforcement Order for 38 Hornbeam Road. The motion was seconded by Tom Gill and approved by a vote of 5-0.

Joe Grady said there has been a Public Records request for any communications relating to this situation; the request was from the attorney for the person who cut the vegetation and it includes communication by the Commissioners. The Commissioners were unaware of the situation and had no communications to provide in response to this request.

**Request to Revise Plans: 95 Hornbeam Road; SE18-1858**

Freeman Boynton Jr. of Duxbury Construction said they would like to pull the house back; the owners feel there is too much congestion between the pool and the house so they would like to move the house back. It moves the house further from the bay but closer to the Bordering Vegetated Wetlands, but it meets the Commission's rules and regulations and decreases coverage.

On a motion by Corey Wisneski, seconded by Robb D'Ambruoso, it was voted 5-0 to approve the requested revisions to the plans for SE18-1858, 95 Hornbeam Road.

**Adjournment:** On a motion by Corey Wisneski, seconded by Robb D'Ambruoso, it was voted 5-0 to adjourn the meeting at 8:15 pm.

**MATERIALS REVIEWED AT THE MEETING**

NOI applications for SE18-1863; SE18-1861; SE18-1836

RDA application materials for the Golf Course on Harrison Street

Materials for Enforcement Action at 38 Hornbeam Road

Revisions request for SE18-1858, 95 Hornbeam Road

Draft minutes of March 19, 2019