



Town of Duxbury Conservation Commission

TOWN CLERK
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DUXBURY, MASS.

Minutes of June 19, 2018

The Conservation Commission met on Tuesday, June 19, 2018 at 7:00 PM in the Mural Room at the Duxbury Town Hall.

Members Present: Corey Wisneski, Chair; Sam Butcher; Mickey McGonagle; Holly Morris; Scott Zoltowski

Members Absent: Robb D'Ambruso; Tom Gill

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

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

EXECUTIVE SESSION

Sam Butcher made the following motion: I move we 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 Corey Wisneski.

Roll Call vote: Corey Wisneski, yes; Sam Butcher, yes; Mickey McGonagle, yes; Holly Morris, yes; Scott Zoltowski, yes.

The meeting reconvened in Open Session at 7:08 pm.

Scott Zoltowski made a motion to reaffirm the memo sent by the Conservation Administrator to the Zoning Board of Appeals today regarding ZBA Action 2018-10; McLaughlin; 685 Washington Street. The motion was seconded by Sam Butcher and was approved by a vote of 5-0-0.

CONTINUED PUBLIC HEARING; DUXBURY CONSTRUCTION LCC; 298 POWDER POINT AVE; SEAWALL, BEACH NOURISHMENT; COASTAL BANK STABILIZATION SE18-1797

Freeman Boynton of Duxbury Construction LLC, representing the Chases at 290 Powder Point Avenue, provided some background about the property and the changing plans by the neighbors about whether to construct seawalls and whether access would be allowed over the Chase's property for the Langeland's wall. At this point, Mr. Boynton would like to replant Easement B, and maintain the existing seawall in Easement A. He wanted to address some comments in the review letter from the Commission's peer reviewer, LEC Environmental.

Regarding the question of underlying materials remaining on Easement B, Mr. Boynton said any unsuitable materials have been removed and the fabric and chinking stone have been removed.

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Regarding beach nourishment, the NOI says 300 cubic yards of sand are proposed but that is a typographic error, it will be 30 cubic yards brought in one time at the time of the restoration work. Regarding mitigating the Easement B erosion, he plans to use coir rolls and plant Rosa Rugosa all over the bank. As far as stabilizing the eroding coastal bank at the site, Mr. Boynton would be OK with a requirement in the Orders of Conditions for ongoing maintenance requiring the replanting of the Rosa Rugosa as needed. The boundary markers will be reset as soon as possible; Stan Humphries of LEC recommended using permanent markers in and Mr. Boynton said he would put permanent markers in.

Gene Guimond, representing the Langeland's, said the site is subject to a restrictive order and he wants a DEP site visit go review that; this visit has been tentatively scheduled for June 29. Mr. Guimond believes Orders of Conditions cannot be issued if authority has to be obtained under the restrictive order first. He further said that the bank at 298 Powder Point was functioning and did not need require protection. Jim O'Connell of Coastal Advisory Services, representing the Langeland's, reviewed pictures of the bank before and after the work. He said erosion is expected. The Regulations say a sediment source coastal bank can be armored to prevent storm damage to building, but the building on 29 Powder Point is 60' east of the revetment so was not in need of protection and therefore the wall is non-compliant. Further, there is no alternatives analysis. He discussed Best Management Practices in which a rough surface on the revetment is preferred to break up wave energy. He said scour is already starting at the end of the wall, and the end should be tapered down and should be set back from the property line so scour is on the applicant's property. He also suggested the revetment should be less steep. He said the Environmental Consulting & Restoration memo states that the revetment is needed to end erosion and uses best available measures, and Mr. O'Connell said those are not accurate statements and the effects should not be on the neighbor's property. Wildlife habitat has been removed as vegetation was removed..

Wes Langeland of 298 Powder Point Ave, representing his wife and the property owner, Marcia Langeland, presented his view of the history of the situation. He says that trees were cut down and the bank stripped when he was out of town, and a seawall steeper than their property that runs higher and does not taper through Easement B is creating issues.

Brooks Chase of 290 Powder Point Ave presented his view of the history of the situation. He said he has a right to work on Easement A.

Stan Humphries of LEC, the peer reviewer for the project, offered the 'big picture' for the Commission. A revetment was permitted at 290 Powder Point Ave and the wall appears well built and benefits 290 Powder Point but does not benefit 298 Powder Point. On Easement A the boulders are steeper and flat faced but he does not believe that is a significant design flaw for the performance of the structure. He said the 30 cubic yards of sand will not necessarily be effective mitigation, and said the focus needs to be on a soft return of the wall on Easement B. More detail is needed about the maintenance of the soft return on Easement B, including minimum annual monitoring with photos and measurements and replanting as necessary. The Wetlands Restoration Program (the restrictive order previously referred to) is not the concern of the Commission; the mapping is dubious at best and the DEP is pursuing that line of disagreement.

Mr. Langeland asked how to tie in from Easement A to Easement B. Corey Wisneski said she only saw 2 stakes at the site, one near the house and one down on the beach so it's hard to know where the line is between the easements. Mr. Boynton said he will re-survey the area and will remove anything that is over the line.

Sam Butcher asked Stan Humphries if the bank is a sediment source. Stan said yes, it is a velocity zone. Sam Butcher asked how vegetation stays in an eroding bank, and Mr. Humphries said that with higher tides and bigger storms, there will be more sediment lost and more maintenance needed; it is an eroding coastal bank. Sam Butcher asked for Mr. Humphrie's opinion about whether the proposed ending of the seawall will lead to additional erosion or if the end should be modified. Mr. Humphries said that the steepness and smoothness of the wall will have a negligible impact versus the presence of stone; there will be more erosion with stone than there would be with vegetation. Sam Butcher asked if Mr. Humphries thinks the end of the wall should be mitigated, and Mr. Humphries said that soft measures in Easement B can satisfactorily address the effects from the end of the wall.

Jim O'Connell suggested that some stones be removed and the end of the wall tapered; he believes otherwise there will be erosion behind the wall leading to collapse. He suggested an angle top to bottom by tapering the wall from the bottom to the top would reduce scour.

Freeman Boynton Jr. said that this wall was constructed in this fashion because they believed it would be continued onto the next property. The Langeland's wanted elevation 13, the Chase's wanted elevation 18, so through the easement the wall goes from elevation 13 to elevation 18. Mr. Boynton said perhaps the last stone could be tipped into the slope to make the situation more stable.

Corey Wisneski asked if there was an agreement that the 6' section in Easement A could be kept and Easement B could be mitigated with plantings. Mr. Langeland said he wants something done with the 6' of wall in Easement A because it is much steeper than the bank. Mr. Boynton suggested tipping the rocks into the slope to blend the wall with Easement B, and then put the topsoil back and use coir logs and Rosa Rugosa. Jim O'Connell said more is needed. He suggested pulling the soil back and tapering the wall into the Langeland's property using an erosion control mat, and then plant a variety of salt tolerant plants. Gene Guimond said a revised plan showing these changes is necessary for them to review.

Corey Wisneski asked Stan Humphries for his opinion on Mr. O'Connell's suggestions, and he said he thinks the suggestions are an effective solution. Corey Wisneski said a plan is required showing the changes at the end of the wall; Mr. Boynton said this is hard to show on a plan. Scott Zoltowski suggested a narrative describing in words exactly what is being proposed. Sam Butcher asked if an alternatives analysis should be provided; Mr. Humphries said it is ECR's position that this is a developed waterfront so no alternatives analysis is needed; Mr. Boynton thinks the alternatives analysis has already been done.

Jim O'Connell suggested that a draft plan be prepared by Mr. Boynton and that a working meeting be held with Joe Grady to review the plan before the next meeting. He asked if there is an example of how the wall can be tapered into the bank that he can look at and Mr. Boynton will try to locate one for Mr. O'Connell to see.

Mr. Grady reminded everyone that all materials are due to the Conservation Office by July 17th at noon. He further stated that additional funds for the peer reviewer will be necessary and a cost proposal will be forwarded to the applicant as soon as possible.

On a motion by Corey Wisneski, seconded by Holly Morris, it was voted 5-0-0 to continue the hearing for SE18-1797 until July 24 at 7:05 pm.

PUBLIC MEETING; DUXBURY CONSTRUCTION LLC; 46 BEAVER BROOK LANE; DAM REPAIR

Freeman Boynton Jr. said there is a rotting wooden headwall on a sluiceway, and they intend to pull out the rotted pieces, add new posts and timbers on two sides. Scott Zoltowski asked if there would be any changes to the dimensions and Mr. Boynton said no. Corey Wisneski asked how the work will be done and Mr. Boynton said using an impact hammer and shovel, but no large machinery.

On a motion by Corey Wisneski, seconded by Sam Butcher, the Commission voted a Negative Determination for 46 Beaver Brook Lane by a vote of 5-0-0.

PUBLIC MEETING; DUXBURY CONSTRUCTION LLC; 184 MARSHALL STREET; SEAWALL REPAIR

Freeman Boynton Jr. said the recent storms have caused a section of the seawall to slump. He intends to fix this area with new fabrics and stones.

On a motion by Corey Wisneski, seconded by Sam Butcher, the Commission voted a Negative Determination for 184 Marshall Street by a vote of 5-0-0.

PUBLIC MEETING; KYES; 27 TEMPLE STREET; DRIVEWAY SE18-1817

Tim Kyes explained the project which is to move the driveway entrance away from the intersection at West and Temple Streets. The driveway is more than 25 feet from the resource area and coverage will be about 7%.

On a motion by Corey Wisneski, seconded by Scott Zoltowski, it was voted 5-0-0 to write Orders of Conditions for SE18-1817, 27 Temple Street.

PUBLIC MEETING; EVERSOURCE; 249 LINCOLN STREET; CONDUIT

Amanda Poole of Tighe & Bond explained the project. There are substations and Eversource wants to install fiber optic lines for communication. This will involve work in the 100' buffer, digging a 2' wide trench for the line. Erosion control will be used beside the substation. Scott Zoltowski asked how long the project will take, and Ms. Poole said a few weeks; the project is 1100 linear feet and they can do about 100' per day.

On a motion by Corey Wisneski, seconded by Sam Butcher, it was voted 5-0-0 to issue a Negative Determination for the work at 249 Lincoln Street by a vote of 5-0-0.

ADMINISTRATIVE MATTERS

ENFORCEMENT: 140 HIGH STREET

Joe Grady reported that the house next to Swanson Meadows has placed loam and stumps on Conservation Land. Since February 27, Joe Grady has been trying to get them to remove the materials which are a violation of the Rules and Regulations for Use

of Town of Duxbury Conservation Lands, Rule #4 ('No work of any type is permitted without written permission from the Conservation Commission'), and fines can be imposed. Joe Grady is able to issue a ticket and file it at the courthouse. The property also had been deeply rutted by that was repaired.

The language for the fine is: "Rules & regulations for Use of Town of Duxbury Conservation Lands Rule #17 states; "A fine of not more than \$100 per day shall be imposed for any violation of these regulations according to the following schedule: \$50 for a first offense, \$75 for a second offense, and \$100 for a third or subsequent offense."

Sam Butcher made a motion to begin imposing fines on Mr. Robert Turner, of Turner Brothers Construction, for violations of the Rules & Regulations of the Duxbury Conservation Commission, as per the schedule defined above, commencing on June 19, 2018. The motion was seconded by Scott Zoltowski and approved by a vote of 5-0-0.

REQUEST: SE18-1759; 140 MARSHALL STREET; REPAIR PIER UNDER EXISTING ORDERS OF CONDITIONS

Joe Grady explained that there are Orders of Conditions for a house at 140 Marshall Street, and the pier on the property sustained ice damage during the winter as shown on the plan. The request is to allow reconstruction of the pier under the existing Orders of Conditions.

Sam Butcher made a motion to allow a revision of the Orders of Conditions for SE18-1759 to allow reconstruction of the pier under the existing Orders of Conditions. The motion was seconded by Corey Wisneski and approved by a vote of 5-0-0.

CERTIFICATES OF COMPLIANCE:

SE18-1742; 44 Wirt Way: Joe Grady reported that this project is complete, all required documentation has been received, and it complies with the Orders of Conditions and he recommends Certificates of Compliance for this project. On a motion by Scott Zoltowski, seconded by Sam Butcher, it was voted 5-0-0 to issue Certificates of Compliance for SE18-1742, 44 Wirt Way.

DISCUSSION: COMMISSION 5-YEAR PLAN

Joe Grady proposed the idea of having the Commission develop a 5-year plan through a subcommittee to show the extent of the work required by the Conservation Department and its administrator. He said he will likely be retiring in the next few years and thinks it is important to define the scope of the position and its responsibilities. Corey Wisneski said she would like to create a 3-person subcommittee to take on this task; it was decided the subcommittee will consist of Corey Wisneski, Sam Butcher, and Holly Morris. A meeting will be set up in the near future for this group.

MINUTES: January 23, 2018: On a motion by Sam Butcher, seconded by Scott Zoltowski, it was voted 5-0-0 to approve the minutes of January 23, 2018 as amended with the addition of a name.

RIGHT OF FIRST REFUSAL ON CHAPTER 61A LAND

Joe Grady explained that this land belongs to Polly Harrington and there was interest in purchasing it for Conservation purposes, but the cost to purchase it was prohibitively expensive. Joe Grady recommends the Commission recommend to the Board of Selectmen that they not exercise their Right of First Refusal for this land.

Sam Butcher made the following motion: That the Conservation Commission recommend to the Board of Selectmen that they do not exercise the Right of First Refusal for open space purposes for the following parcels of land: Lots 2 & 3 located on Laurel Street and shown on a plan entitled 'Plan of Land in Duxbury, MA, Laurel Street LLC' dated December 4, 2017 by South Shore Survey Consultants, Inc. The motion was seconded by Corey Wisneski and approved by a vote of 5-0-0.

Adjournment: On a motion by Sam Butcher, seconded by Corey Wisneski, it was voted 5-0-0 to adjourn the meeting at 9:15 pm.

MATERIALS REVIEWED AT THE MEETING

NOI materials for SE18-1797; SE18-1817

RDA materials for 46 Beaver Brook Lane, 184 Marshall Street, 27 Temple Street, 249 Lincoln Street

Revised plan for SE18-1759, 140 Marshall Street

Draft minutes of January 23, 2018

Purchase agreement for land on Laurel Street