



Town of Duxbury  
Conservation Commission DUXBURY, MASS.

TOWN CLERK

2019 OCT 22 AM 10:10

**Minutes of September 10, 2019**

The Conservation Commission met on Tuesday, September 10, 2019 at 7:00 PM in the Mural Room at the Duxbury Town Hall.

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

**Members Absent:** Scott Zoltowski

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

At the opening of the meeting, Chair Corey Wisneski asked if anyone was video or audio recording the meeting; this is allowed but has to be disclosed. Matthew Nadler, reporter for the Duxbury Clipper, disclosed that he was recording the meeting.

**PUBLIC MEETING; PHEASANT HILL REALTY TRUST; 10 PHEASANT HILL LANE; PATIO**  
Kathy Muncey, the attorney for the applicant, was present for the project. Joe Grady explained that a request for a Certificate of Compliance was requested for a different project at this site and an unpermitted patio was discovered. This patio does comply with the Commission's Rules and Regulations, and Joe Grady advised Paul Brogna, the applicant's representative, to have them file an RDA for the patio, and they have complied and filed an RDA. The project complies with the Rules and Regulations, it meets all coverage and setback requirements, and Joe Grady recommends a Negative Determination such that a Notice of Intent is not required for this project.

Sam Butcher made a motion to issue a Negative Determination such that no Notice of Intent is required for this project. The motion was seconded by Tom Gill and approved by a vote of 6-0.

**CONTINUED PUBLIC HEARING; MCGRATH; 16 PINE POINT; SINGLE FAMILY HOME SE18-1866**

The quorum for this hearing is Sam Butcher, Robb D'Ambruoso, Mickey McGonagle, and Holly Morris.

Joe Grady explained that in 2018 the house was damaged in a storm and was condemned and must be torn down. The FEMA maps currently incorrectly have it in a velocity zone which under the Commission's regulations would not allow for any expansion of living space. Joe Grady explained that Marshfield, Scituate, and Duxbury hired a consultant because they felt some panels of the maps were not accurate. FEMA reviewed and accepted the changes requested by the Towns and issued revised maps that should be effective as of January 10, 2020. This property will be in an A-zone following these map revisions. Joe Grady suggested the Commission could write Orders of Conditions for this project, with a condition requiring that no reconstruction of the house can be started until after the maps become effective. The engineer

for the project has the house up 3 feet, it can be brought down to 1 foot should they choose to make this change without requiring any changes to the Orders of Conditions because that would not change the footprint.

On a motion by Robb D'Ambruoso, seconded by Sam Butcher, it was voted 4-0 to write Orders of Conditions for SE18-1866, 16 Pine Point Road. Voting yes were quorum members for this hearing Sam Butcher, Robb D'Ambruoso, Mickey McGonagle, and Holly Morris.

**CONTINUED PUBLIC HEARING; GREAT CAMANOE LLC; 766 & 782 TEMPLE STREET;  
ANRAD  
SE18-1869**

Corey Wisneski explained that all that has been received is an ANRAD which is a request to review the wetlands lines and where they fall on the property. There has been no project submitted for the site, and the Commission can't talk about potential projects because there is nothing submitted for the site. She said the Commission hired a consultant, BETA, to look at the wetland delineations and they have made some comments and suggested some changes.

Mark Casey and Brad Holmes, representing the applicant, said they received a copy of BETA's review letter. In response they have reflagged some of the site and replaced some flags that were missing. A new plan stamped by a land surveyor has been prepared. Regarding BETA's comment about land subject to flooding, Mr. Casey said this is an A zone and no base flood elevations are provided by FEMA, so the only option is to take the data from GIS. Some of the resource areas are not on this property, some are on abutting property. Joe Grady said there is conservation land abutting the property and he grants them permission to go on the site to locate the resource areas.

Joe Grady said that if no flood zone is determined, it may limit what areas the applicant can propose to work in, so either the Commission and Mr. Casey need to agree with where this zone is or the line has to come off of the plan. Mark Casey said his preference is to reach an agreement as to where it is, Joe Grady suggested that Mr. Casey work with BETA to help determine the location.

Joe Grady offered those attending the meeting in the audience a background about what is going on and what the process is. The Commission's role is to protect wetlands. The first step is to determine where they are; specialists hang flags to define the resource areas. Either Joe Grady or a hired consultant reviews the flagging and makes recommendations to the Commission about the accuracy of the flagging. For this ANRAD, the types of wetlands and where they are on the property are being identified and then confirmed by the Commission, this official determination is good for 3 years and is the first step taken before developing property.

Brad Holmes explained that at this site, there is a Bordering Vegetated Wetland (BVW) system that is large on the western portion of the site and it merges into the powerline easement then back onto the site. There are 2 perennial streams and the banks have been delineated and there is a 200' Riverfront Area around the streams. Joe Grady asked about the FEMA flood zone; Brad Holmes said he thinks it is within the BVW but he is working on this.

Joe Grady said the Commission's consultant identified missing flags and had questions about the flood zone. He recommends continuing the hearing

Kathleen Robinson of Laurel Street said the GIS map show rare habitats and species on that land and wondered if that would be discussed. Joe Grady said the State Natural Heritage office in Westboro administers the state Endangered Species Act and they will provide comments if a project is submitted, but this is not the Conservation Commission jurisdiction which is limited to 100 feet from wetlands and 200 feet from streams. He said the Commission does not rely on Mass GIS because it is not as accurate as going out in the field to actually identify and flag wetlands resource areas. Kathleen Robinson said her biggest concern is that she has had a home affected by development previously where water became an issue, Joe Grady said there is no project proposed at the site yet.

Mark Casey said this site is not within any priority habitat or any estimated habitat for rare and endangered species.

Scott Dunlop of 724 Temple Street thanked the Commission for their diligent review of the ANRAD; he further complimented the Commission's consultant, BETA, for their diligent review. Corey Wisneski said it is a site of interest to many people and the Commission will do its due diligence.

Kerry Dowling of 756 Temple Street asked how many acres of wetlands are on the parcels. Joe Grady said the plan says there are about 16 acres on the site, with 4.33 being wetlands and 11.61 upland. Elizabeth Shed of Franklin Street asked if the easement is developable; Mark Casey replied that it is not developable. Jack Deloid of Laurel Street asked about possible impacts of this project on the aquifer; Joe Grady said there is no project application before the Commission. Mr. Deloid said he is concerned with the 40B process and Joe Grady said there is no project before the Commission. Pam Walsh of Bay Farm asked about impacts on plants and animals, and Corey Wisneski said this application is only to determine wetlands lines and the Commission doesn't enforce the Rare & Endangered species regulations. Sheila Lynch-Benttinen of West Street asked what control the Conservation Commission has for a 40B project and how it would be different from a non-40B project. Joe Grady said the Conservation Commission normally operates under two sets of laws; the State Wetlands Protection Act and the Duxbury bylaws. Communities that want further protection than the State WPA offers adopt local bylaws, and Duxbury's were adopted in around 1982.

There are 2 different appeal mechanisms; under the State act, the DEP reviews the permit and can, if they choose, issue superseding orders any 10 citizens can appeal the permit. Under the Town Bylaw, the appeal goes to Superior Court.

The 40B process is administered through the ZBA by a Comprehensive Permit process. The developer can ask the ZBA to cast aside some or all of the local regulations because it makes the project unaffordable. So if for instance the local Conservation Commission regulations are set aside, the project proceeds only under the State Act.

Jack Deloid asked about the process of reclamation where a number of acres can be given up in place of destroying wetlands. Joe Grady said for certain projects called limited projects, wetlands can be destroyed. He said this is only in very specific cases, for example for airports, hazardous waste sites, or for certain access. The Town bylaw doesn't allow filling of wetlands and nobody normally proposes that.

Joe Grady said the Commission is going to vote to continue this hearing, and no further notice beyond the date of the continuation during this vote will be given. If people have questions, he encouraged the group to identify a couple of representatives to contact the Conservation office

and then relay information to others. Also, the deadline for submission of materials for a hearing is the Tuesday prior to the hearing at noon; 8 copies of any documents are required and electronic submissions are not accepted.

A resident asked about who protects the aquifers; Joe Grady said there is an Aquifer Protection District in Duxbury. The aquifer in the area of this property is for wells that are in Marshfield. The Conservation Commission doesn't administer this law.

On a motion by Tom Gill, seconded by Sam Butcher, it was voted 6-0 to continue the hearing for SE18-1869, 766 & 782 Temple Street until October 8 at 7:05 pm.

**CONTINUED PUBLIC HEARING; WELCH HEALTHCARE & RETIREMENT GROUP; 298 KINGS TOWN WAY; MEMORY CARE FACILITY  
SE18-1870**

Peter Glick of Symmes Maini & McKee Associates, representative for the applicant, reviewed that they did a project presentation at the last meeting but the DEP File Number had not been issued so the hearing couldn't be closed. Joe Grady said he suggests an infiltration trench around the dumpster be included in the Orders of Conditions as a recommendation only because the dumpster is located beyond the jurisdiction of the Commission.

On a motion by Sam Butcher, seconded by Robb D'Ambruoso, it was voted 6-0 to issues Orders of Conditions for SE18-1870.

**PUBLIC MEETING; CALISTA; 315 KING CAESAR ROAD; PHRAGMITES TREATMENT & REMOVAL**

Brad Holmes of Environmental Consulting and Restoration, representing the applicant, said they wish to remove phragmites from an isolated wetland. They will treat with herbicides and remove and then restore the wetland. A licensed herbicide applicator will do the work with a wetlands specialists overseeing the work. It will be 'treat, cut, and remove' with ongoing management. The goal is to bring back the wet meadow marsh system. The phragmites have just flowered so the plants are stressed which makes it a good time to do treatment.

On a motion by Sam Butcher, seconded by Holly Morris, it was voted 6-0 to issue a Negative Determination such that no Notice of Intent is required for the phragmites treatment and removal at 315 King Caesar Road.

**PUBLIC HEARING; BANNER CONSTRUCTION COMPANY; 761 TEMPLE STREET; ANRAD  
SE18-1871**

Corey Wisneski said the Commission intends to hire a peer review consultant to review this filing, and explained that the only action the Commission will take will be voting to hire the consultant. Scott Dunlap of 724 Temple Street asked if it will be the same consultant as hired for the other Temple Street project, and Corey Wisneski said yes, it would. Mr. Dunlap said he had submitted a document about this area being priority habitat and he wanted to confirm that the Commission had received the document; Joe Grady said it will be distributed but it came after the submission deadline for this meeting, which is not an issue since this hearing is being continued. Mark Casey of South Shore Survey, the applicant's representative, said the entire area is in priority habitat.

Sheila Lynch-Bettinen of 344 West Street asked about bogs; if they are sometimes flooded does that affect the delineation. Joe Grady said a number of indicators are used in determining wetlands, including staining of leaves and leaf litter, and on this Temple Street site the delineator would use the appropriate indicators to determine seasonal high water.

Mike Karlsburg of 702 Temple Street asked how the Commission decides which consultant to hire. Joe Grady said the Commission can hire whoever they want and the applicant pays for the work. The Commission tries to find consultants that focus on representing Commissions; in this case BETA who the Commission will be hiring for this review has not done any work in Duxbury for applicants before the Commission.

Sheila Lynch-Bettinen asked if 10 citizens can hire a consultant. Joe Grady said anyone can hire a consultant, but it is unlikely that the property owner will give permission for a privately hired consultant to go on their property; the issue becomes one of access.

Pam Walsh of Bay Farm asked if the number of bedrooms is limited by ledge and if there is ledge at the site; Joe Grady said the Conservation Commission doesn't administer the sanitary code, the Board of Health does.

Ted Donnelley of 10 Amado Way asked if bordering vegetation changes over the course of a year. Joe Grady said the methodology used to identify wetlands is good at any time of the year, there are strict criteria and it is remarkably accurate.

Mark Casey asked that the hearing for this project be continued until October 29. Robb D'Ambruoso said a lot of people have interest in this project and the 766 & 782 Temple Street project, and it seems like the hearings should be on the same night. The 766 & 782 Temple Street hearing has been continued until October 8. Tom Gill agreed the hearings should be on the same day and be scheduled back to back. Mickey McGonagle said he believes they should be on the same day unless there is a compelling reason to keep them separate. Mark Casey said the reason for the longer continuation is time. Sam Butcher suggested rescinding the previous continuation and moving both hearings until October 29<sup>th</sup>; these are proximal properties and are related even if there are different applicants.

On a motion by Sam Butcher, seconded by Robb D'Ambruoso, it was voted 6-0 to approve the ANRAD Peer Review Scope and Fee proposal from BETA dated August 27, 2019 for 761 Temple Street. The motion was seconded by Robb D'Ambruoso and approved by a vote of 6-0.

On a motion by Sam Butcher, seconded by Tom Gill, it was voted 6-0 to continue the hearing for SE18-1871 until October 29 at 7:10 pm.

Robb D'Ambruoso made a motion to amend an earlier motion to continue the hearing for SE18-1869 from October 8 at 7:05 until October 29 at 7:05 pm. The motion was seconded by Sam Butcher and approved by a vote of 6-0.

## **ADMINISTRATIVE MATTERS**

### **Minutes:**

On a motion by Sam Butcher, seconded by Holly Morris, the minutes of August 13, 2019 were approved as written by a vote of 6-0.

On a motion by Sam Butcher, seconded by Robb D'Ambruoso, the Executive Session minutes of August 13 were approved as written but not for public release by a vote of 6-0.

### **Certificates of Compliance:**

**SE18-1323; 10 Pheasant Hill Lane:** (Note: this vote was delayed until after the RDA Public Meeting at 7:05 pm). 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 SE18-1323. On a motion by Sam Butcher, seconded by Robb D'Ambruoso, it was voted 6-0 to issue Certificates of Compliance for SE18-1323; 10 Pheasant Hill Lane.

**SE18-1708; 80 Seabury Point 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 SE18-1708. On a motion by Robb D'Ambruoso, seconded by Holly Morris, it was voted 6-0 to issue Certificates of Compliance for SE18-1708, 80 Seabury Point Road.

**SE18-1099; 621 West 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 SE18-1099. On a motion by Holly Morris, seconded by Tom Gill, it was voted 6-0 to issue Certificates of Compliance for SE18-1099, 621 West Street.

**SE18-1274; 621 West 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 SE18-1274. On a motion by Robb D'Ambruoso, seconded by Sam Butcher, it was voted 6-0 to issue Certificates of Compliance for SE18-1274, 621 West Street.

**SE18-1595; 621 West 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 SE18-1595. On a motion by Tom Gill, seconded by Holly Morris, it was voted 6-0 to issue Certificates of Compliance for SE18-1595, 621 West Street.

**SE18-1772; 109 Abrams Hill 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 SE18-1772. On a motion by Sam Butcher, seconded by Robb D'Ambruoso, it was voted 6-0 to issue Certificates of Compliance for SE18-1772; 109 Abrams Hill.

**Conservation Fund Requests**

**Jaycox Tree Farm:** Joe Grady explained that this request is to fund the purchase of materials needed to erect electric fence around the tree farm to prevent deer damage.

Sam Butcher made a motion to approve the expenditure of up to \$3,350 from the Conservation Fund to pay Premier 1 Supplies for materials for fencing at the Jaycox Tree Farm. The motion was seconded by Robb D'Ambruoso and approved by a vote of 6-0.

**Green Harbor Path Signs:** Joe Grady explained that the Town 400 Committee is preparing signs to mark the historic Green harbor path. There will be a dedication in October; this is an ancient footpath that went from Kingston to Green Harbor.

Sam Butcher made a motion to approve the expenditure of up to \$1,550 from the Conservation Fund to pay Pannier for work on the Green Harbor path signs. The motion was seconded by Robb D'Ambruoso and approved by a vote of 6-0.

**Executive Session:** Robb D'Ambruoso made a motion to go into Executive Session to consider the taking, purchase, exchange, lease or value of real property, and also to discuss strategy with respect to litigation, as an open meeting may have a detrimental effect on the negotiating and litigating position of the Commission, and to reconvene in open session at the conclusion of the Executive Session in accordance with the Massachusetts General laws Chapter 30A, Section 21. The motion was seconded by Sam Butcher, and the roll call vote was: Sam Butcher, yes; Robb D'Ambruoso, yes; Tom Gill, yes; Mickey McGonagle, yes; Holly Morris, yes; Corey Wisneski, yes.

**Adjournment:** On a motion by Robb D'Ambruoso, seconded by Sam Butcher, it was voted 6-0 to adjourn the meeting at 8:30 pm.

**MATERIALS REVIEWED AT THE MEETING**

NOI Materials for SE18-1866; SE18-1869; SE18-1971

RDA Materials for 10 Pheasant Hill Lane and 315 King Caesar Road

Draft minutes of August 13, 2019