



Town of Duxbury
Conservation Commission
DUXBURY, MASS.

TOWN CLERK
2021 JUL -7 AM 10:14

Minutes of October 27, 2020

The Duxbury Conservation Commission met on Tuesday, October 27, 2020 at 7:00 PM via remote Zoom meeting.

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

Members Absent: none

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

Chair Corey Wisneski called the meeting to order at 7:00 pm.

Corey Wisneski read the following: Pursuant to Governor Baker's March 12, 2020, Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020, Order imposing strict limitation on the number of people that may gather in one place, the Town of Duxbury's Board and/or Committee meetings will be conducted via remote participation to the greatest extent possible with members. For this meeting, members of the public who wish to watch the meeting may do so via the ZOOM meeting information that has been provided. No in-person attendance of members of the public will be permitted. Every effort will be made to ensure that the public can adequately access the proceedings to the best of our technical abilities.

CONTINUED PUBLIC HEARING; DUXBURY CONSTRUCTION LLC; 230 MARSHALL STREET; SEAWALL SE18-1891

Freeman Boynton Jr. representing the applicant and Lenore White of Wetland Strategies, Inc., peer review consultant for the Commission, were present to discuss this project. Joe Grady said at this site there is a beach area that separates the bay from a small pond; there is erosion occurring and the project is to build a wall to protect the pond. The question is whether this is a dune or a coastal bank. Brad Holmes and Stan Humphries were hired by the applicant to do reviews; Lenore White was hired by the Commission as its peer reviewer.

Lenore White summarized that the applicant's consultants have concluded that this is part of a coastal bank. Her findings are that it is a coastal dune, and a dune can't be armored with a wall. She believes the methodology used by the applicant's consultants, reviewing maps, is a valuable process but that it can't be used to draw a conclusion without consideration of the physical area. This site meets the characteristics of a dune in that it is a hill or mound in proximity to other wetland resources, in this case seaward of a coastal beach. The definition of a dune allows it to be comprised of artificial fill, and the applicant over time has added fill. So based on site observations, DEP guidance, and the regulations, she believes this is a Coastal Dune.

Joe Grady recommends the Commission conduct a site visit and then discuss this at a continuation of the Public Hearing.

Sam Butcher made a motion to continue this hearing until November 17 at 7:20 pm. The motion was seconded by Holly Morris. The roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Tom Gill, yes; Holly Morris, yes; Mickey McGonagle, yes; Scott Zoltowski, yes. The motion carried by a vote of 7-0.

CONTINUED PUBLIC HEARING; DUXBURY CONSTRUCTION LLC; 184 MARSHALL STREET; PATIO SE18-1910

Robb D'Ambruoso recused himself from this hearing.

Freeman Boynton Jr. said a wall was built and there is a flat area at the top of the wall so the top of the Coastal Bank has now moved to the top of the wall. On the As-built the wall is at elevation 15 and there is less than a 4:1 slope above it and therefore the top of the Coastal Bank is at the top of the seawall.

Joe Grady said the applicant has applied for a Certificate of Compliance for the wall. Looking at the original proposed plan for the wall, section A-A shows the wall at elevation 17 and the slope above it continuing without a break to elevation 25. On the as-built plan the wall goes to elevation 15 and the slope stops at 15; the Coastal Bank is 10' lower than it was proposed to be on the plan and therefore the wall was not constructed as proposed in this section; the bank was supposed to continue. Section B-B was built as proposed. Therefore Joe Grady does not think the location of the Coastal Bank can be moved because the wall was not built in accordance with the approved plan for the original NOI.

Freeman Boynton agreed the wall is not built according to the proposal, but was built to marry to the neighbor's wall. Holly Morris asked if the flat spot on the hillside was created by human effort and said she is concerned with this work having created a new coastal bank. Corey Wisneski said this changes the buffer zone on the property. Mr. Boynton said Greg DeCesare of DEP agreed that this happens with the construction of most seawalls, the top of the Coastal Bank is moved by the wall. Mr. Boynton said he would contact Mr. DeCesare to try to get his opinion in writing. Mickey McGonagle cautioned that the fundamental issue is that the wall was not constructed as proposed.

Joe Grady said there are 2 issues. They need a Certificate of Compliance for the wall built in 2011. Mr. Boynton has filed an after the fact NOI for the patio that was constructed without a permit. The Commission needs to first decide if it will issue the Certificates of Compliance, and then consider the impacts on Resource Areas as the NOI for the patio is considered.

Eric Pontiff, the property owner, said that Joe's outline of steps makes sense. He wants to get Certificates of Compliance for the wall project. The wall was built to 'marry' the wall next door. He doesn't want to destabilize the bank with further work.

Tom Gill made a motion to continue the hearing for SE18-1910 until December 8 at 7:15. The motion was seconded by Sam Butcher. The roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Tom Gill, yes; Holly Morris, yes; Mickey McGonagle, yes; Scott Zoltowski, yes. The motion carried by a vote of 6-0.

CONTINUED PUBLIC HEARING; HAMOR; 46 WINSOR STREET; WOODEN BULKHEAD REPLACEMENT

SE18-1918

Joe Grady said he has solicited a review proposal from Amory Engineers who will review the application and oversee the construction. He asked the applicant to provide further information about how the construction will be performed and the resource areas protected during construction.

Sam Butcher made a motion to accept the proposal from Amory Engineers to provide peer review and construction oversight as described in a letter dated 10/15/2020. The motion was seconded by Tom Gill. The roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Tom Gill, yes; Holly Morris, yes; Mickey McGonagle, yes; Scott Zoltowski, yes. The motion carried by a vote of 7-0.

Tom Gill made a motion to continue the Public Hearing for SE18-1918 until December 8 at 7:20 pm. The motion was seconded by Holly Morris. The roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Tom Gill, yes; Holly Morris, yes; Mickey McGonagle, yes; Scott Zoltowski, yes. The motion carried by a vote of 7-0.

PUBLIC HEARING; LARKIN, TTE; 10 PINE POINT PLACE; SINGLE FAMILY HOME & GARAGE

SE18-1917

Paul Brogna described the project which is to tear down the main house and build a new house on an open pile foundation in the footprint of the old house. The 2 proposed stairways comply with the building code and meet the Commission's requirements. The existing house is 3.5' from the resource area and is a pre-existing non-conforming house. To the right they propose a screen porch where there is an existing deck which was part of a project in 2007. There are stairs proposed to the rear and on the west side. An elevated deck is proposed in the existing footprint. The coverage will increase as they square off the left rear part of the house where there was an outside shower stall right at the 35' setback limit.

Joe Grady said there are a lot of problems with this proposal. The plan itself is really hard to read. What is proposed is darker than the existing structure so you can't see the outline of the existing structure. More than 90% of the house is closer than 35 feet to the resource area, and therefore the Commission needs to look very carefully at this project. On a site visit he noted that the existing house walls are not straight as shown on this plan. He wants confirmation that the proposed porch is the same size as the existing deck. The plan shows a cantilevered way where there is now no structure and it is only 3' from the marsh. On the west side there is decking shown inside what was in 2008 a planter, not a deck, and if there is now a deck there it was not permitted so it can't be captured in the proposed footprint.

Joe Grady continued that the location of the stairs make no sense. To the east side the plan shows 4 stairs, on the west side is a large staircase with lots of stairs; why are there 12-14 stairs on the west side in the 35' setback? A small portion of the outdoor shower to be enclosed is in the 25' buffer zone. Right now that is an enclosed shower with a pallet on the ground, it is not part of the house structure. The Commission should not allow 1 inch of this structure beyond the footprint of the existing structure because it is in the 35' setback.

Paul Brogna said the stairs in the back come up through the foundation within the footprint of the house which is why on the plans it appears that there are fewer stairs. Joe Grady suggested that if access can be achieved in a smaller footprint that this be done on the west side of the house as well. Joe Grady said the plan presents coverage but there is no coverage in terms of the Conservation regulations here because the project is on the barrier beach so this should be taken off the plan. There was a garden area at this site that is now a deck that seems to have been built without a permit and now will be a second story deck. Originally there was a retaining wall for a garden here.

Tom Gill said the existing and proposed structures need to be made more clear on the plan. Corey Wisneski suggested they be placed side by side. Paul Brogna said the 42" cantilevered walkway was on the previous plan that was approved many years ago in another filing but not built.

John Madden of 19 Pine Point Road said there is an existing structure and the plan proposes to elevate the new structure which offers more protection for the wetlands and they want quick approval. Lee Larkin said that when the existing structure floods it is very expensive.

Joe Grady summarized that there are pieces of this proposed project outside the existing structure such as deck over a garden, a cantilevered walkway, enclosing a shower area, that need to be carefully looked at to be sure they are within the existing structure's footprint. Some of the Commissioners expressed interest in a site visit.

Sam Butcher made a motion to continue the hearing for SE18-1917 until December 8 at 7:25 pm. The motion was seconded by Tom Gill. The roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Tom Gill, yes; Holly Morris, yes; Mickey McGonagle, yes; Scott Zoltowski, yes. The motion carried by a vote of 7-0.

**PUBLIC HEARING; CADIGAN; 380 CHURCH STREET; POOL
SE18-1920**

Joe Grady said the applicant has requested a continuance. In reviewing the application he thought the coverage wasn't accurately calculated so he had Patrick Brennan review it and the wetlands were included as part of the buffer zone. The applicant is updating the calculations and will submit new plans.

Sam Butcher made a motion to continue the hearing for SE18-1920 until December 8 at 7:30 pm. The motion was seconded by Holly Morris. The roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Tom Gill, yes; Holly Morris, yes; Mickey McGonagle, yes; Scott Zoltowski, yes. The motion carried by a vote of 7-0.

**PUBLIC HEARING; DUFFY; 59 OCEAN ROAD N; SINGLE FAMILY HOME
SE18-1923**

Rick Grady of Grady Engineering described the project which is to raze the existing house and rebuilt the house in a similar footprint. The project is in a VE and AO zone. The proposed house is 18' x 58' with decks similar to the existing decks. The bumpout will be removed and a concrete patio removed and replaced with vegetation. The house will be on pilings above the flood zone. A 355 square foot asphalt driveway and walkway is proposed.

Joe Grady said the project meets the Commission's Rules and Regulations. Additional detail on the pilings is required, no continuous footings are allowed. The Orders should require a foundation plan be submitted for approval before the project can begin. Rick Grady said the house will be on individual piles and that plan will be provided to the Commission.

Tom Gill made a motion to write Orders of Conditions for SE18-1923 to include the requirement for a foundation plan. The motion was seconded by Sam Butcher. The roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Tom Gill, yes; Holly Morris, yes; Mickey McGonagle, yes; Scott Zoltowski, yes. The motion carried by a vote of 7-0.

**PUBLIC HEARING; NEWCOMB; 21 SUMMER STREET; WORKSHOP
SE18-1924**

Larry Newcomb of 21 Spring Street described the project which is to replace an existing workshop with a 35' x 65' workshop. Joe Grady said the wetlands delineation is accurate and the project meets the Commission's Rules & Regulations. Corey Wisneski noted the coverage will increase from 0.21% to 1.25%.

Scott Zoltowski made a motion to write Orders of Conditions for SE18-1924. The motion was seconded by Holly Morris. The roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Tom Gill, yes; Holly Morris, yes; Mickey McGonagle, yes; Scott Zoltowski, yes. The motion carried by a vote of 7-0.

**PUBLIC HEARING; DUXBURY CONSTRUCTION LLC; 373 KING CAESAR ROAD; GROINS
& BEACH NOURISHMENT
SE18-1925**

Freeman Boynton Jr. described the project which is to construct groins where groins used to exist and add sand on the coastal beach. The posts will be installed with a backhoe. There is an error on the plan that shows two 2 x 12 boards attached one on top of the other on the posts; these will actually be installed next to each other on the posts. Corey Wisneski asked how much sand will be brought in and Mr. Boynton estimated about 150 cubic feet; about 10" of sand near the wall tapering to no sand at elevation 2.

Joe Grady said the Commission allows the reconstruction of groins in this area. He reminded Mr. Boynton that he is required to submit letters from any property owners whose property will be crossed in the construction process. The Orders will require a new plan be submitted showing the boards on the posts stacked and not on top of each other so it will accurately represent the construction.

Tom Gill made a motion to write Orders of Conditions for SE18-1925 to include the requirement that a correct plan be submitted. The motion was seconded by Sam Butcher. The roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Tom Gill, yes; Holly Morris, yes; Mickey McGonagle, yes; Scott Zoltowski, yes. The motion carried by a vote of 7-0.

**PUBLIC HEARING; BAY FARM CONDOMINIUMS; 70 PARKS STREET; PARKING LOT
SE18-1927**

Paul Brogna described the project which is to raze a garage and reconstruct a parking lot. Stormwater calculations were done to meet the State stormwater requirements. There will be an

upper lot with 7 spaces and a lower lot with about 13 spaces and a slope down the embankment of about 2.5' to 3'. There will be a raingarden for stormwater collection.

Joe Grady said the Commission's concern is the wetlands. He asked how the bank will be maintained if water is running down the slope. Mr. Brogna said it will be sheet flow of water and will be stabilized with plantings. Joe Grady said normally stormwater isn't run over the slope and asked the time of year this will be built. Mr. Brogna said it would be built as soon as possible with landscaping to be done in the spring. Joe Grady reiterated his concern is the water running down the steep slope and into the raingarden, and wants to determine how to condition this project to make sure the raingarden functions well and isn't filled with silt due to the runoff over the slope until the plantings are established.

Sam Butcher suggested requiring a temporary detention area for surface runoff until the raingarden and plantings are established. The contractor can determine how to construct the temporary detention area. Joe Grady suggested using rip rap on the slope instead of vegetation. The Orders will include a requirement that if there is damage to the raingarden because of siltation it will have to be dug out and reconstructed. Mr. Brogna suggested building a temporary raingarden, stabilizing the slope, and then install the permanent raingarden. Joe Grady said that would work.

Sam Butcher made a motion to write Orders of Conditions for SE18-1927 to include the requirement for a temporary detention area to manage surface water runoff until the raingarden and slope leading to the raingarden are established. The motion was seconded by Holly Morris. The roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Tom Gill, yes; Holly Morris, yes; Mickey McGonagle, yes; Scott Zoltowski, yes. The motion carried by a vote of 7-0.

PUBLIC MEETING; DUXBURY CONSTRUCTION LLC; 163 MARSHALL STREET; PHRAGMITES REMOVAL

Freeman Boynton Jr. said there are phragmites to the rear of the property near the salt marsh. They will be treated with herbicide by a licensed applicator using a chemical recommended by Brad Holmes.

Scott Zoltowski made a motion to issue a Negative Determination for the phragmites removal at 163 Marshall Street. The motion was seconded by Sam Butcher. The roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Tom Gill, yes; Holly Morris, yes; Mickey McGonagle, yes; Scott Zoltowski, yes. The motion carried by a vote of 7-0.

ADMINISTRATIVE MATTERS

Minutes for Approval:

August 25, 2020 Executive Session: Sam Butcher made a motion to approve the Executive Session Minutes of August 25, 2020 but not for public release. The motion was seconded by Tom Gill. The roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Tom Gill, yes; Holly Morris, yes; Mickey McGonagle, yes; Scott Zoltowski, yes. The motion carried by a vote of 7-0.

September 15, 2020 Regular Session: Sam Butcher made a motion to approve the Regular Session Minutes of September 15, 2020 but not for public release. The motion was seconded by Tom Gill. The roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Tom Gill, yes; Holly Morris, yes; Mickey McGonagle, yes; Scott Zoltowski, yes. The motion carried by a vote of 7-0.

September 15, 2020 Executive Session: Sam Butcher made a motion to approve the Executive Session Minutes of September 15, 2020 but not for public release. The motion was seconded by Tom Gill. The roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Tom Gill, yes; Holly Morris, yes; Mickey McGonagle, yes; Scott Zoltowski, yes. The motion carried by a vote of 7-0.

October 6, 2020 Regular Session: Sam Butcher made a motion to approve the Regular Session Minutes of October 6, 2020 but not for public release. The motion was seconded by Tom Gill. The roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Tom Gill, yes; Holly Morris, yes; Mickey McGonagle, yes; Scott Zoltowski, yes. The motion carried by a vote of 7-0.

Certificates of Compliance

SE18-1688; 55 Mayflower Road (now 7 Spring Street): Joe Grady reported that all required documentation has been received, he has done a site inspection, the project complies with the Orders of Conditions, and he recommends the Commission issue Certificates of Compliance for SE18-1688. Tom Gill made a motion to issue Certificates of Compliance for SE18-1688, 55 Mayflower Road. The motion was seconded by Sam Butcher. The roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Tom Gill, yes; Holly Morris, yes; Mickey McGonagle, yes; Scott Zoltowski, yes. The motion carried by a vote of 7-0.

SE18-1810; 0 Gurnet Road: Joe Grady said this request for Certificates of Compliance was recently discussed at a meeting after which the Request was withdrawn. The property owner, Candace Martin, wanted to further discuss the situation with the Commission.

Candace Martin said she submitted the Certificates of Compliance request in February to begin a dialog to bring the project into compliance and discuss their options. The wall at the property next to hers in the past eroded the toe of slope of her property. The wall was designed to transition to the top of her neighbor's revetment. The permit is still open until April, and she wanted to know how to permit the portion of her wall built on her neighbor's property. The wall is within the toe of the slope for conditions in years past.

Gilbert Martin said the contractor didn't follow the permit drawings and wants to know if the wall has to be rebuilt. Mrs. Martin pointed out that if they move the wall back there will be a gap between this wall and the wall next door.

Corey Wisneski said the wall is not built in the proper location and part of it is on a neighboring property. Sam Butcher said it is a difficult situation; a Notice of Intent

was filed and Orders of Conditions were issued. The project is not in compliance with those Orders. The Commission could issue an Enforcement Order. It isn't possible to issue Certificates of Compliance for a project that deviates from what is approved by the Commission.

Mr. Martin asked if the wall could be re-permitted with modifications. Sam Butcher said they can file to ask for a modification of the project, but the wall is in a resource area where these projects aren't permitted so it isn't likely it would be allowed. Mickey McGonagle suggested they go back to their contractor and have the contractor make the wall compliant. Robb D'Ambruoso said he is not inclined to approve an improperly constructed project; but the Commission needs to consider enforcement, the situation can't just be ignored and allowed to remain as is. He said the Commission should not set the precedent of allowing what isn't permitted to stay and the contractor should be made to fix the wall. Holly Morris said this has happened with other projects, for example with houses, and the Commission requires the project be brought into compliance. Mrs. Martin asked again if there is an option to file an amendment. Sam Butcher said technically an amended Notice of Intent can be filed, but he advised her that it won't be approved.

Request for Modifications: SE18-1904; 222 Powder Point Ave

Joe Grady said this request is to lower the house about 4 feet in the same location. This reduces the amount of grading required for the driveway. A stormwater drain has been added. He recommends accepting the modifications within the existing Orders of Conditions.

Sam Butcher made a motion to accept the requested modifications for SE18-1904. The motion was seconded by Holly Morris. The roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Tom Gill, yes; Holly Morris, yes; Mickey McGonagle, yes; Scott Zoltowski, yes. The motion carried by a vote of 7-0.

Request for Modifications: SE18-1912; 195 King Caesar Road

Joe Grady explained the Orders of Conditions for this project say the pavers for the bluestone patio can be up to 18" x 18" in size with 4" of space in between. This has been allowed by the Commission as an unwritten policy. The applicant is requesting to use 18" x 36" pavers with 5.5" in between the pavers. Coverage at this site is greater than 15%. Joe Grady said the stone dimensions seem to get bigger and 18" x 18" is what the Commission has been allowing and he recommends caution so as not to set any precedents.

Corey Wisneski is concerned with how changing the size changes the drainage characteristics and pervious nature of the patio. Paul Brogna said with this change there will be slightly more grass area, and it will look better and wear better. Sam Butcher said he would support accepting the changes.

Robb D'Ambruoso said he does not recommend allowing this modification because it sets a precedent. He said the Commission needs to be consistent. Mickey McGonagle agreed with Robb, as did Corey Wisneski. Scott Zoltowski also agreed that it sets a precedent, it can't be done in isolation.

Holly Morris made a motion to deny the request for modifications to the paver size for SE18-1912. The motion was seconded by Robb D'Ambruoso. The roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Holly Morris, yes; Mickey McGonagle, yes; Scott Zoltowski, yes. The motion carried by a vote of 6-0. (Tom Gill seemed to have lost his Zoom connection and did not vote).

Affirmation of Enforcement Order: 23 Eagles Nest Road

Joe Grady said on October 5 he issued an Enforcement Order at 23 Eagles Nest Road for cutting of trees and brush in the buffer zone to a Salt Marsh and in a Riverfront Area. He is asking the Commission to reaffirm that Enforcement Order.

Freeman Boynton Jr. said he will be visiting the site and will put together a restoration plan and apply for a permit to restore the area.

Sam Butcher made a motion to reaffirm the Enforcement Order for 23 Eagles Nest Road. The motion was seconded by Holly Morris. The roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Holly Morris, yes; Mickey McGonagle, yes; Scott Zoltowski, yes. The motion carried by a vote of 6-0.

Next meeting: The next meeting of the Conservation Commission will be Tuesday, November 17.

Adjournment: Holly Morris made a motion to adjourn the meeting at 10:00 pm. The motion was seconded by Sam Butcher. The roll call vote was: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Holly Morris, yes; Mickey McGonagle, yes; Scott Zoltowski, yes. The motion carried by a vote of 6-0.

MATERIALS REVIEWED AT THE MEETING

NOI Materials for SE18-1891; SE18-1910; SE18-1918; SE18-1917; SE18-1920; SE18-1923; SE18-1924; SE18-1925; SE18-1927;
Request for Determination of Applicability for 163 Marshall Street
Draft minutes of September 15, 2020; October 6, 2020
Draft Executive Session minutes of August 25, 2020 and September 15, 2020
Modification requests for SE18-1904 and SE18-1912