



Town of Duxbury Conservation Commission

Minutes of December 5, 2017

TOWN CLERK
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DUXBURY, MASS.

The Conservation Commission met on Tuesday, December 5, 2017 at 7:00 PM in the Mural Room at the Duxbury Town Hall.

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

Members Absent: Scott Zoltowski

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

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

PUBLIC HEARING; BRIDGESTONE DEVELOPMENT INC.; 74 BAY ROAD; ANRAD SE18-1788

Joe Grady reported that the applicant has requested a continuance until December 19 because the wetlands flags, which had been placed, were removed and the property must be reflagged.

On a motion by Corey Wisneski, seconded by Tom Gill, it was voted 6-0-0 to continue the hearing for SE18-1788 until December 19 at 7:30 pm

PUBLIC HEARING; DUXBURY CONSTRUCTION LLC; 170 MARSHALL STREET; SINGLE FAMILY HOME SE18-1790

Freeman Boynton representing the property owner described the project. There is an existing pool at the top of a Coastal Bank that will be maintained. The septic tank is being moved as well as the pool house to the 50' setback. The coverage is at 21.9% and it will not be increased. Holly Morris pointed out that the coverage numbers on the plan are not in the right columns, so there actually is a slight decrease in coverage. The new house will be further away from the resource area. They are proposing to keep the pool. Joe Grady said the riprap wall along the toe was built years ago, and they are moving the house back from the resource area. The project meets the Commission's Rules & Regulations.

On a motion by Sam Butcher, seconded by Tom Gill, it was voted 6-0-0 to write Orders of Conditions for SE18-1790, 170 Marshall Street.

PUBLIC MEETING; UTE REALTY TRUST; 44 POWDER POINT AVE; NO WORK PROPOSED (Chapter 91 license)

Paul Brogna of Seacoast Engineering representing UTE Realty Trust explained that no work is proposed but a Negative Determination is required in order to start the permitting process for a Chapter 91 license for the pier at this location. Mr. Brogna said he has spoken to Joe Grady regarding some questions about the wetlands delineation for the site. Brad Holmes and Joe

Grady will meet in the field to determine the resource area delineation. This is a technical issue to memorialize the Resource Areas for future work, but has no impact on this RDA application. No work is proposed on the pier at this time, this is to get it ready for licensing.

Joe Grady explained that Massachusetts and Maine are the only states that allow ownership of property to the mean low water line. In exchange for rights on the bottom of the bay, the state held back rights for all citizens to fish, fowl, and navigate. Ownership was allowed to promote commerce but to preserve rights for others, permits are required for areas between mean high water and mean low water. In the late 1990's there was an amnesty program and most piers were licensed, but some were not. The licenses are good for 99 years.

Because there are questions on the wetlands delineation, Joe Grady said the options are to continue the meeting and try to reach an agreement or to remove the wetlands delineation from the plan. Mr. Brogna preferred to reach an agreement and keep the wetlands on the plan.

On a motion by Corey Wisneski, seconded by Holly Morris, it was voted 6-0-0 to continue the Public Meeting for 44 Powder Point Ave until December 19 at 7:32 pm.

PUBLIC HEARING; SULLIVAN; 307 BAY ROAD; PIER SE18-1791

Paul Brogna of Seacoast Engineering, representing the Sullivan's, described the project. The existing pier is substandard construction and will need to be replaced in the next 1-2 years. They want to relocate the new pier; the existing pier has a dogleg, and they want to relocate it 24-25 feet to the south in an area where there is a mosquito trench but less marsh. By moving the pier they can eliminate the dogleg. The new pier will end where the existing one currently ends. If the location is changed, a minor modification to the Chapter 91 license will be required.

Sam Butcher asked if the pier is reconstructed in the same location whether the Chapter 91 license has to be modified; Mr. Brogna replied that any increase of 20% or more in size requires refiling for a new Chapter 91 license.

Tom Gill asked about the purpose of the stairs on the side of the piers; Mr. Brogna said that if there is not 5 feet of room underneath for passage, stairs over the pier are required for public access. Holly Morris asked what happens to the pilings from the old pier if it is relocated; Paul Brogna said the pilings can either be removed and the holes filled, or they can be cut off at grade. Corey Wisneski asked why it is not an option to keep the pier in its current location, Mr. Brogna replied that aesthetically, the owners do not want the dogleg. Corey Wisneski asked why the pier can't go straight out and Mr. Brogna said the Sullivan's don't want to interfere with their neighbor's navigation.

Joe Grady said the Commission doesn't usually allow a pier over a tidal flat, but if it is already impacted by a pier, raising a pier to the height required in the current regulations can improve the situation. This area is all phragmites. He suggested if the pier is moved to a new location, it should go the shortest distance over the marsh, or the new pier should remain in the location of the existing pier. Sam Butcher suggested the pier be kept in its current location where there are mostly phragmites, rather than having it go near a tidal creek. Paul Brogna said with new installation techniques, there would be little disturbance to the tidal creek. Joe Grady added that a lot of shellfish habitat would be impacted by relocating the pier.

Corey Wisneski felt that of the available options, the best option is to rebuild the pier in its current location, at a higher elevation to meet the current regulations. Paul Brogna said that because of the height of the salt marsh, the height of the walkway will have to be about 16.5-17 feet which is higher than for most piers.

Mr. Sullivan, the property owner, said they want to minimize resource area impacts, and the Commission's comments make sense to him and he is fine with keeping the pier in its current location.

On a motion by Corey Wisneski, second by Holly Morris, it was voted 6-0-0 to continue the hearing for SE18-1791, 307 Bay Road until December 19 at 7:35 pm so that new plans can be prepared.

**PUBLIC HEARING; DUXBURY CONSTRUCTION LLC; 298 POWDER POINT AVE;
SEAWALL
SE18-1792**

Freemen Boynton of Duxbury Construction LLC, representing the Langeland's, described the project. The Langelands decided they wanted a seawall, and the neighbors filed to build a seawall. There are easements between the properties that are located on the Langeland's property. The neighbor's project (290 Powder Point Ave) is about halfway completed, and the easement was disturbed. They are discussing what to do with the easements and asked that the hearing be continued.

Joe Grady said that DEP had some comments and want proof that the house existed before 1978 and that the applicant show that there are no other feasible alternatives. Freeman Boynton said the house was built long before 1978 and is 102 feet from mean high water. Robb D'Ambruso asked why the slope of the wall is different in different sections, and Mr. Boynton explained that they are trying to match the slope of the neighbor's wall and also trying to meet the rise and run necessary for stairs. Holly Morris asked if there is a wall on the other side of the property and Mr. Boynton said that there is lawn and a driveway, and it is not steep and does not need a wall.

Brooks Chase and Angela Chase of 290 Powder Point Ave said their project is in process. Two 40' cedar trees and all the vegetation was taken down, and the bank is eroding. The top of the bank is 6 feet from the house and they are concerned about the safety of their children. They don't agree on allowing the Langeland's to have access to the Langeland's project through their yard. They want the project finished and feel time is of the essence. Their expectation is that when Mr. Boynton finishes their project the yard will be closed up. Corey Wisneski asked if the access to their project is through their own yard, and Mr. Boynton said yes.

Wes Langeland, the applicant, of 298 Powder Point Ave said he never agreed to have Mr. Boynton cut down the cedar trees and opposed it. He was out of the country but did not want any work on any of the easements. He hopes they can agree to allow him access over the easement, but wants a legal agreement. Mr. Chase said they are not in agreement. Corey Wisneski said this is a dispute between property owners and not an issue for the Commission to resolve. It was suggested the hearing be continued to allow further discussion between the property owners.

On a motion by Corey Wisneski, seconded by Sam Butcher, it was voted 6-0-0 to continue the hearing for SE18-1792 until December 19, 2017 at 7:35 pm.

DISCUSSION WITH RESIDENT ABOUT CRANBERRY FARMING

Brent Watts of 33 Church Street requested an opportunity to discuss some issues related to cranberry farming with the Commission. He lives across from the Merry Bogs and wants to know how to keep it in farming and how to enhance it. He believes it needs rehabilitation, and wants to know how to improve it and how to save the red barn, and how to ensure it gets flooded for skating. There is a pile of piping on the property that he is concerned about. Corey Wisneski explained that the bogs are leased to a cranberry farmer, and he has the authority over how it is farmed. Brent said the Town bought the land, and he questioned whether the farmer has the sole responsibility for the property. Mickey McGonagle said the signed contract sets out the terms of the agreement.

Joe Grady said there are 170 acres of farmed bogs in Duxbury under 8 different farming agreements. The primary purpose is for farming, the public can use the property for walking and other recreation but the priority is farming. He said that what may seem like 'unsightly' weeds may be the result of deciding not to use herbicides that also affect bog plants, there has to be a balance of using herbicides and fertilizer for the plants. He added that some pristine looking bogs are the worst producing bogs. He said the Town leases the bogs for farming and no Town money is used to invest in the bogs.

Mr. Watts said he had spoken to Joe Grady who had told him this was an important bog, but the farmer is not putting in any effort to maintain it. Joe Grady said there are market forces at work; cranberry farming is not profitable right now. Without the current farming agreement, it would be hard to find anyone else to farm it. Mickey McGonagle said that market forces are affecting the bog, and the long-term prognosis for bogs is not good. Joe Grady is doing his best to ensure he bogs are actively farmed, but in his (Mr. McGonagle's) opinion at some point in the future there is a strong chance the bogs may be abandoned. Sam Butcher suggested that Mr. Watts talk to the Duxbury Agricultural Commission; Mr. Watts said he has an appointment with Jeff Chandler of that Commission.

Joe Grady said the bog is under agreement until 2035, and if the land is not farmed it will become a red maple forest. He thinks the farmer is using creative marketing ideas and hopes it will continue to be farmed. He cautioned Mr. Watts not to expect quick changes, but said perhaps the Town could mow around the footpaths and do work on the pump house. He said he will look into the pipes that Mr. Watts has mentioned. The cranberry market is so bad that this year 15% of the crop is being thrown away and 25% next year; he feels fortunate that the town has a farmer for the bogs.

ADMINISTRATIVE MATTERS**CERTIFICATES OF COMPLIANCE:**

SE18-1766; 143 Bay Road: Joe Grady reported there are issues with noncompliance with the coverage allowed in the Orders of Conditions; he will notify the applicant of this in writing. At this time he does not recommend the Commission issue Certificates of Compliance.

SE18-1746; 93 Harrison Street. Joe Grady reported that he has inspected the site and has all required documentation and plans and he recommends issuing

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Certificates of Compliance for SE18-1746. On a motion by Sam Butcher, seconded by Holly Morris, it was voted 6-0-0 to issue Certificates of Compliance for SE18-1746, 93 Harrison Street.

SE18-544; 56 Gurnet Road. Joe Grady reported there was a court action at this site in 1992, and the owner has complied with the Orders of Conditions that resulted from the court action. He recommends a Certificate of Compliance for the deck and fill for SE18-544, 56 Gurnet Road. On a motion by Tom Gill, seconded by Robb D'Ambruoso, it was voted 6-0-0 to issue Partial Certificates of Compliance for SE18-544, 56 Gurnet Road.

SE18-1728; 32 Maple Pond Road. Joe Grady reported that he has inspected the site and has all required documentation and he recommends issuing Certificates of Compliance for SE18-1728. On a motion by Tom Gill, seconded by Holly Morris, it was voted 6-0-0 to issue Certificates of Compliance for SE18-1728, 32 Maple Pond Road.

Right of First Refusal on Chapter 61A land

The Town has been notified of the conversion of land on Temple Street that is currently in Chapter 61. Chapter 61 is a property tax law that allows lower taxes for Open Space and gives the town the right of first refusal when the property is changing ownership. This property is not recommended for town acquisition; there are other parcels that take priority at this time.

Robb D'Ambruoso made the following motion: to recommend to the Board of Selectmen that they do NOT exercise the Right of First Refusal for a parcel known as Lot 4 located on Laurel Street and shown on a plan entitled 'Plan of Land in Duxbury, MA at 761 Temple Street' dated October 23, 2017 by South Shore Survey Consultants, Inc. containing 63,172 square feet which is a portion of Assessor's Parcel #037-022-000 for open space purposes. The motion was seconded by Sam Butcher and the vote was 6-0-0 to approve the motion.

Consultant Fee Discussion

Joe Grady wanted to discuss the hiring of peer consultants with the Commission. He said he recommends consultants based on the types and complexities of projects and the potential for litigation. It is hard to find consultants because he tries to find people that stay on '1 side of the table,' that do not also work extensively for applicants before the Commission, to minimize conflicts. He has lately recommended Nover-Armstrong for a few projects; they do all the review for the Rockland and Brockton Conservation Commissions, they specialize in peer review for Commissions.

Joe Grady said that there has been some pushback from applicants, particularly related to the costs. But these are very high priced projects with multiple consultants and attorneys, and it is the Commission's right to hire a consultant as needed, and the cost for this is minimal compared to the costs of the project. He asked the Commission if they have any concerns about the costs or quality of the consultants he has recommended.

Mickey McGonagle said that there are a number of Commissioners that are new and the peer reviewers are very helpful with technical issues, and in cases where there may be litigation. Corey Wisneski said the costs are minimal compared to the project costs, and is in total support of hiring consultants when Joe Grady thinks it is necessary. Tom Gill

asked if the applicant can veto the consultant, and Joe Grady said the consultant works for the Commission and the applicant can only contest the selection based on qualifications, and that goes before the Board of Selectmen. Holly Morris felt paying for a peer consultant is part of the cost of doing business, particularly for complicated projects. Robb D'Ambruoso agreed with Holly that it is the cost of doing business, and some more recent projects are on more marginal land as easily developed land becomes less available. Sam Butcher cautioned that he is concerned that the value of what the Commissioners bring to the table will be underestimated, and that decisions should continue to be made by the Commission. His opinion is that the experts can be hired for technical issues, but they should not make decisions. The consensus was that the Commission fully supports the hiring of consultants based on Joe Grady's recommendations.

EXECUTIVE SESSION:

Robb D'Ambruoso made the following motion: I move we go into Executive Session to consider the taking, purchase, exchange, lease or value of real property because such discussion may have a detrimental effect on the negotiating position of the governmental body, and also to discuss strategy with respect to litigation where an open meeting may have a detrimental effect on the litigating position of the governmental body and to reconvene in open session in accordance with MGL C.39, Section 23B, Subsection 6 to adjourn. The motion was seconded by Sam Butcher. Roll call vote: Corey Wisneski, yes; Sam Butcher, yes; Robb D'Ambruoso, yes; Tom Gill, yes; Mickey McGonagle, yes; Holly Morris, yes. The motion passed by a vote of 6-0-0.

Adjournment: On a motion by Corey Wisneski, seconded by Sam Butcher, it was voted 6-0-0 to adjourn the meeting at 8:55 pm.

MATERIALS REVIEWED AT THE MEETING

RDA materials for 44 Powder Point Ave

NOI materials for SE18-1788, SE18-1790; SE18-1791; SE18-1792