



Town of Duxbury
Conservation Commission

Minutes of May 15, 2018

The Conservation Commission met on Tuesday, May 15, 2018 at 7:00 PM in the Mural Room at the Duxbury Town Hall.

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

Members Absent: Tom Gill; Scott Zoltowski

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

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

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

Joe Grady said a peer review consultant has been hired to review this application and has identified deficiencies in the application and asked for additional materials. Additional money is needed in order to continue with the Peer Review. He recommended the hearing be continued until the additional materials and review funds are available and the consultant can be present at the meeting.

On a motion by Corey Wisneski, seconded by Sam Butcher, it was voted 5-0-0 to continue the hearing for SE18-1797 until June 19th at 7:05 pm.

PUBLIC MEETING; WHITE; 35 WINSOR STREET; PIER REPAIR

Mark Ferrari of Ferrari Landscaping, representing the applicant, described the project which is to repair a pier. He also wants to bring cobble in along the grass line and plant Rosa Rugosa in front of the wall, and then loam and seed behind it. All the work will be done from the grass side.

On a motion by Corey Wisneski, seconded by Sam Butcher, it was voted 5-0-0 to issue a Negative Determination for the project at 35 Winsor Street.

PUBLIC MEETING; ISLAND CREEK OYSTERS; 0 WASHINGTON STREET; CLEARING & PATIO

Chris Sherman of Island Creek Oysters explained the project which is to install a patio of crushed stone and then have a raw oyster bar there. The patio will be 4-6" higher than the current grade, framed by landscape timbers and filled with stone dust. One corner of the patio encroaches on the 100' buffer zone. There will also be some clearing relating to agricultural activities; the brush will be entirely cleared except for a few trees; this is necessary for the onshore upwellers. This is an agricultural use and they will be removed in the fall.

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Corey Wisneski asked about the extent of clearing; Mr. Sherman clarified that they will be clearing 100% of the growth in the area for the upwellers and about 50% in other areas where they will leave the trees. Sam Butcher asked what the construction of the upweller foundations will be, Mr. Sherman said they will be made of block.

On a motion by Sam Butcher, seconded by Holly Morris, the Commission voted a Negative Determination such that a Notice of Intent is not required by the project at 0 Washington Street by a vote of 5-0-0.

**UPDATE: DUXBURY BEACH RESERVATION
SE18-1198**

Chris Luttazi, Executive Direction of the Duxbury Beach Reservation conducted the presentation in compliance with Special Condition #59 of the Orders of Conditions for this project which requires updates on new projects. One project will be for dune nourishment for which a CZM grant has been received. This will increase the elevation of the dunes along a section of the beach. A second action is that a draft has been filed for a Certificate of Inclusion in a Habitat for Conservation Plan for the Piping Plover and Least Tern. This allows for more flexible recreation management and beach operations on beaches with nesting Plovers. The Certificate of Inclusion will replace some pieces of the current Habitat Conservation Plan.

On a motion by Robb D'Ambruoso, seconded by Sam Butcher, it was voted 5-0-0 to allow these projects to proceed under the current Orders of Conditions.

**PUBLIC HEARING; MURPHY; 170 WASHINGTON STREET; GRADING
SE18-1814**

Michelle Murphy explained she is seeking permission to grade the property. There is a lot of tree damage and dead vegetation and a tree company removed the trees; a berm was built around the back. The property is in a Riverfront Area and Buffer Zone. They hope to bring in fill so they can level the land and plant grass and trees. The berm will be left in place and trees will be planted along the top of the berm, the other side of the berm will be graded. Joe Grady explained that the project proceeded without any permits, but the applicant stopped and contacted the Conservation office as soon as they were made aware that they needed to file.

Holly Morris asked why the berm was built; Mrs. Murphy said they wanted to have a flat area of yard so they built the berm and filled behind it. Corey Wisneski asked if any work would be done on the other side of the berm and Mrs. Murphy said no. Jane Hinckley of 154 Washington Street, an abutter, said she had no problem with the project.

On a motion by Sam Butcher, seconded by Robb D'Ambruoso, it was voted 5-0-0 to write Orders of Conditions for SE18-1814, 170 Washington Street.

**PUBLIC HEARING; RYALLS; 13 INDIAN COVE ROAD; POOL
SE18-1813**

Rick Grady of Grady Engineering described the project which is an in-ground pool. The house is outside the buffer zone and about 60% of the pool will be within the buffer zone. The coverage is 8.6% now and with an additional 1.9% for this project there will be 10.5% coverage after

construction. The closest distance is 81' from the pool and 65' from the pool deck to the wetlands. Holly Morris asked about grading and Rick Grady said the elevation is 62 now and the proposed elevation is 62.3 so very little fill is needed. Sam Butcher asked why the limit of work line is so close to the wetlands, and asked that it be relocated to be 50' from the buffer and Rick Grady said that will be done.

On a motion by Holly Morris, seconded by Sam Butcher, it was voted 5-0-0 to write Orders of Conditions for SE18-1813 with the requirement that the limit of work line be moved to outside of the 50' buffer.

PUBLIC MEETING; CAMPANELLI; 195 BAY ROAD; PIER REPAIR

Ralph Campanelli said there was storm damage to his pier and about 14' of decking needs to be replaced and 4 pilings replaced. There will be no changes to the pier.

On a motion by Holly Morris, seconded by Sam Butcher, it was voted 5-0-0 to issue a Negative Determination for the pier repair at 195 Bay Road.

PUBLIC MEETING; O'CONNOR LANDSCAPE: 1 ABRAMS HILL; PIER REPAIR

Nick O'Connor presented the project which is to repair damage to a pier from ice. The work will include replacing up to 6 pilings and to straighten the pier where it is tilted. The piles will be driven using a powered jackhammer and the pier will be straightened by hand-digging or driving in the pilings.

On a motion by Corey Wisneski, seconded by Sam Butcher, it was voted 5-0-0 to issue a Negative Determination for the pier repair at 195 Bay Road.

ADMINISTRATIVE MATTERS

MINUTES

December 19, 2017: On a motion by Sam Butcher, seconded by Robb D'Ambruoso, the minutes of December 19, 2017 were approved by a vote of 5-0-0 as written.

January 9, 2018: On a motion by Robb D'Ambruoso, seconded by Sam Butcher, the minutes of January 9, 2018 were approved by a vote of 5-0-0 as written.

January 9, 2018 Executive Session: On a motion by Corey Wisneski, seconded by Sam Butcher, it was voted 5-0-0 to approve the Executive Session minutes of January 9, 2018 as written.

CERTIFICATES OF COMPLIANCE

SE18-1664; 53 Ocean Road North: Joe Grady reported that this project has issues with the size of the house and decks not being in compliance with the Orders of Conditions and so no action should be taken at this time.

SE18-1471; 15 Quail Run: Joe Grady reported that there are issues with a patio for this project and recommends no action be taken at this time.

SE18-1569; 892 Franklin Street: 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 Corey Wisneski, seconded by Sam Butcher, it was voted 5-0-0 to issue Certificates of Compliance for SE18-1569, 892 Franklin Street.

CHANGES TO PLAN: SE18-1764; 106 KING PHILLIPS PATH

The applicant has requested modifications to the original permit which increases coverage and moves the project closer to the wetlands as shown on the revised plan. Joe Grady recommends acceptance of these revisions as part of the existing Orders of Conditions. On a motion by Sam Butcher, second by Robb D'Ambruoso, it was voted 5-0-0 to accept the revised plan under the existing Orders of Conditions for SE18-1764.

WEBSTER POINT VILLAGE CONSERVATION RESTRICTION REQUEST

Joe Grady reviewed the background of the CR request. Webster Point Village is a proposed 40B development on the Duxbury/Marshfield town line. The State Natural Heritage and Endangered Species Program and the Duxbury Zoning Board of Appeals both require a Conservation Restriction be placed on about 6 acres of land in Duxbury. In 2015 the developer offered to sell the CR to the Conservation Commission for 2.1 million dollars and the Commission voted not to accept the CR. The applicant is back again, offering to pay \$20,000 and an additional \$1000 per year.

There are significant problems with this CR. The restriction wraps around houses, in many cases it extends between houses to the street. It allows no cutting of grass, trees, or vegetation and in some instances the restricted area is within 12' of the house. The site is also on an extreme grade so some houses will be much higher than the street (36') and that includes area within the restriction. This restriction will be impossible to enforce. The Town has about 40 CRs and they are all for large contiguous pieces of land. To accomplish the goal of a CR, the subdivision would need to be reconfigured to provide larger areas of habitat for the Eastern Box Turtle.

Attorney Bob Shelmerdine representing Webster Point Village LLC said that much of what Joe Grady said is true. He explained there are 3 categories of restricted areas, some required by NHESP, some required by the ZBA in response to abutter concerns, so there are 2 CRs. They are unable to find a holder for the CR.

Corey Wisneski said it is a CR that is impossible to enforce unless the project is redesigned. A discussion followed about whether the request is for one or both CRs, and about which areas of the plan represent which CR. There was much confusion about this and it was not made clear which CR is represented by which shading on the plan. Joe Grady said it is impossible to understand the documents and plans, and if the Commission can't understand it the homeowners won't be able to either.

Frank Gioioso, the developer, said he expected the Conservation Commission to hold the CR. Sam Butcher said the issue is that the CR is not enforceable. Jon Witten, representing an abutting neighborhood association, said Mr. Gioioso was making representations that are not accurate and that he can provide the documentation if necessary.

Mr. Shelmerdine wondered if the Commission could agree to what he called a 'settlement' in which the developer could protect the 5 vernal pools on the property (1 in Duxbury and 4 in Marshfield) instead of having a CR. Robb D'Ambruoso pointed out that they are offering a proposal that protects even less wetlands than the original CR. Mr. Shelmerdine said Town Counsel suggested this as a possible solution; Mickey McGonagle said he would want to consult with Town Counsel directly regarding her position on this matter. Robb D'Ambruoso suggested if they are offering a different proposal, they need to officially submit a plan for the Commission to consider, and advised the plans be much clearer and be submitted in advance.

Corey Wisneski made a motion to not accept the CR for Webster Village as presented in its current form for a fee of \$20,000. The motion was seconded by Sam Butcher and approved by a vote of 5-0-0.

Joe Grady said a good approach would be to look at Natural Resource values and protect those areas and develop the other areas. In this case they choose the areas for development and what was left over was called important natural resources.

Mr. Shelmerdine said that for their purposes a 'no' vote is as good as a 'yes' vote; they are establishing that the conditions in the Special Permit are impossible. Jon Witten of 156 Duck Hill Road said the applicant is looking for the Commission to deny the CR in order to claim it is an impossibility to the ZBA; but it is not necessarily impossible with a revised layout as the Commission indicated by their motion to not accept the CR in its current form.

ENFORCEMENT ORDER: 98 HARRISON STREET; REILLY

Joe Grady reported a violation of Orders of Conditions for SE178-1796, 98 Harrison Street. At least 12 trees, likely more, were cut beyond the limit of work line in the Buffer Zone and in the Riverfront Area. An Enforcement Order has been issued and Joe Grady is asking the Commission to reaffirm the vote. At this time he is not recommending a fine be issued but the Commission can revisit that.

Sam Butcher made a motion to affirm the Enforcement Order for 98 Harrison Street; the motion was seconded by Robb D'Ambruoso, and the motion was approved by a vote of 5-0-0.

Adjournment: On a motion by Mickey McGonagle, seconded by Holly Morris, it was voted 5-0-0 to adjourn the meeting at 9:00 pm.

MATERIALS REVIEWED AT THE MEETING

NOI materials for SE18-179; SE18-1814; SE18-1813

RDA Materials for 35 Winsor Street; 0 Washington Street; 195 Bay Road; 1 Abrams Hill

Duxbury Beach Reservation letter of proposed projects

Conservation Restriction request for Webster Point Village