

TOWN CLERK

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DUXBURY, MASS.



# Town of Duxbury Conservation Commission

## Minutes of August 22, 2017

The Conservation Commission met on Tuesday, August 22, 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; Scott Zoltowski

**Members Absent:** Holly Morris

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

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

### **PUBLIC MEETING; O'CONNOR LANDSCAPE; 321 CONGRESS STREET; REMOVE GROUNDCOVER**

Nick O'Connor of O'Connor Landscape described the project which is to remove groundcover and install crushed stone in its place along the edge of the pond. The homeowners have a problem with rats and it was recommended that they remove the ivy that is growing near their house and along the water. On either side of the bed of ivy near the pond there is crushed stone, and he would like to replace the ivy with additional crushed stone. Corey Wisneski asked if the existing crushed stone extends to the edge of the pond, and Mr. O'Connor said yes it does. Joe Grady said he felt the stones will mitigate any erosion issues due to the removal of the plants.

On a motion by Tom Gill, seconded by Sam Butcher, it was voted 6-0-0 to issue a Negative Determination such that a Notice of Intent is not required for the project at 321 Congress Street.

### **PUBLIC HEARING; DUXBURY CONSTRUCTION LLC; 994 UNION STREET; SEPTIC REPAIR SE18-1762**

Freeman Boynton of Duxbury Construction, representing the homeowner Frederick Hunt, described the project which is to repair a failed septic system. The Board of Health has approved the project. Brad Holmes delineated the wetlands. The tank and pump chamber are in the buffer zone to a seasonal stream. The pump is located as far from the wetlands as is possible, and the system will have a slight mound. The new system will be an improvement over the existing conditions. The existing tank will be caved and filled and the existing leaching field will be abandoned.

Joe Grady reported he had inspected the wetlands line and recommends it be accepted. Robb D'Ambruoso asked if the tank can be moved further from the wetlands, Freeman Boynton said it is not possible to re-plumb the entire house which would be required if the tank was moved.

On a motion by Sam Butcher, seconded by Scott Zoltowski, it was voted 6-0-0 to issue Orders of Conditions for SE18-1782, 994 Union Street.

**PUBLIC HEARING; DUXBURY CONSTRUCTION LLC; 93 ABRAMS HILL ROAD; SINGLE FAMILY HOME  
SE18-1783**

Freeman Boynton Jr. of Duxbury Construction LLC, representing the Murphy's, described the project. There is a coastal bank to the rear of the house and a salt marsh at the bottom of the bank. The woods will be thinned by removing pine trees but the oaks to the south of the house will remain. A deck will extend over the bank but no vegetation on the coastal bank will be cut. The bank is stable except for some scouring near the south end where the marsh is compromised due to shading of oak trees and dead phragmites that float in and sit on the marsh. The proposed house is on the footprint of the existing house. There will be 400 square feet of new house within the 50' buffer and the house will be 80' from the edge of the salt marsh at its closest point. The pool will be outside of the 50' buffer. The existing coverage is 6.54%; the proposed coverage is 14.73%. All components of the septic system are outside of the 100' buffer to the coastal bank; no Board of Health approval is needed because the septic system meets the Duxbury supplemental regulations so the Health Agent is able to approve the system.

Joe Grady explained there will be a full foundation 25-50' from the top of the coastal bank which normally is not allowed, but the Commission's regulations allow structures closer to a non-eroding coastal bank. Freeman Boynton said for mitigation downspouts and drywells will be included for roof runoff so there will not be any increased flow over the coastal bank. Sam Butcher asked about changes to the lawn, and Mr. Boynton said there will be no lawn within the 25' buffer but the lawn area is being expanded. A retaining wall around the swimming pool will be the limit of work. Sam Butcher said that 14.73% coverage is close to the allowable 15%, so he suggests an As-built plan of the house be required to be submitted for review before any final landscaping is done. Freeman Boynton said the size of the walkway can be adjusted if necessary to stay within the allowable coverage.

Sherm Hoyt of 51 Abrams Hill said that Mr. Boynton referenced a 'fort' to be removed, but in fact the 'fort' is a 2 story A-frame structure with toilets. Walter Zaverucha, neighbors to the north of this lot, said they support the project.

On a motion by Sam Butcher, seconded by Tom Gill, it was voted 6-0-0 to write Orders of Conditions for SE18-1783, 93 Abrams Hill Road.

**CONTINUED PUBLIC HEARING; DUCKS BERRY LLC; 1065 SUMMER STREET; DRIVEWAY ENTRANCE, INFILTRATION BASINS  
SE18-1757**

Joe Grady reported that revised plans for this project were received past the deadline for submission for tonight's meeting. These plans need to be reviewed by the Commission's peer reviewer, and he recommends this hearing be continued. On a motion by Corey Wisneski, seconded by Sam Butcher, it was voted 6-0-0 to continue the hearing for SE18-1757 until September 19 at 7:15 pm.

**CONTINUED PUBLIC HEARING; DIAMOND SINACORI LLC; 0, 397, 401, AND 40 WASHINGTON STREET; RESIDENTIAL SUBDIVISION  
SE18-1774**

This hearing was opened on July 11 when 4 members of the Commission were present. It was continued until July 25 but no discussion occurred on that date and the hearing was continued

until August 22. In order to establish a new quorum, the presentation of the project will be started over.

Brad MacKenzie of MacKenzie Engineering, described the project which is an 8-lot subdivision off Washington Street at the former Battelle site. There are 9 or 10 existing buildings on the site. The proposal is to retain 3 buildings including houses at 405 and 397 Washington Street and the boathouse which will be an ancillary building for all residents of the subdivision. The roadway will be 630' long and according to Mr. MacKenzie meets all of the subdivision rules and regulations. A letter from the Planning Board's reviewer, Amory Engineering, dated July 10 was received and they responded to that on July 31. Amory Engineering followed up with a letter on August 3, and the applicants submitted their response to that review yesterday. Mr. MacKenzie believes all concerns of the reviewer have been satisfactorily addressed.

Brad Holmes has done the wetlands evaluation and delineation at the site. The resource areas on the site are salt marsh, bordering vegetated wetland, coastal dune, and coastal bank. The proposed stormwater management system complies with all DEP requirements though as this is a redevelopment they were not required to fully comply according to Mr. Holmes. All road runoff to a 100 year storm volume is retained on site and therefore peak runoff will be reduced by 50-60% to the Bay from existing conditions. There will be more stormwater treatment than now exists. There is no subdivision infrastructure within the 100' buffer zone. There are 4 single family home lots within 100' of the wetlands or in Zone AE.

The revised plans that have been submitted have minor revisions to the stormwater system. A test pit was dug near the existing Bordering Vegetated Wetland to determine if it is fed by groundwater. No waivers from the Planning Board are necessary for the project.

The existing stormwater basin is degraded and contains phragmites and has had untreated runoff for 30 years. The test pit showed seasonal mottling 27" below ground, and seasonal high groundwater is at 7.8-8'. The basin bottom is at 7' to 8' elevation. In wetter months, there is a groundwater influence and surface water influence.

The applicant in the August 15 submittal to the Commission provided a wetland restoration and replication plan. The intent is to fill the stormwater pond and replicate a wetlands area along the existing bordering salt marsh which will enhance the bordering vegetated wetland by removing invasive species.

Sam Butcher asked if there is any contribution to this basin that won't be picked up by the stormwater collection structure under the cul-de-sac. Mr. McKenzie said the water from the back yards of some of the houses won't be picked up by the system. The front yards of the houses slope towards the roadway so that water and some of the roof water will go to the stormwater collection system. Joe Grady asked if the square footage of vegetated wetlands was calculated, and Mr. MacKenzie said the C series flags were used for this calculation. Joe Grady asked what the size of the wetland would be if the stormwater contribution to the wetland is removed. Mr. MacKenzie said there would be less stormwater runoff with the project and no water might exit the pipe. Joe Grady asked if it is a protected wetland, what will happen if the pipe is turned off. He further commented that the Commission does not allow wetlands to be filled and the State and Town regulations would have to be reviewed to see if this would be allowable. Brad Holmes of Wetlands Strategies Inc., wetlands specialist for the project's applicant, said the delineation is based on the bowl and on the phragmites.

Joe Grady said this wetland was not maintained as a stormwater basin and therefore is a bordering vegetated wetland by definition. In Section 10.55 of the State regulations up to 5000 square feet of bordering vegetated wetlands can be replaced if replicated according to very specific criteria. Normally wetland replication projects are for something such as a driveway; for a limited project more than 5000 square feet of wetlands can be filled.

Brad Holmes said this is not a limited project so less than 5000 square feet can be filled. He designed the wetlands replication plan to comply with the DEP guide called 'Inland Wetland Replication Guidelines.' His proposal mirrors the regulations. The State regulations require replication at 1:1, the Duxbury regulations require 2:1. His proposal is a 2:1 ratio. The most successful projects require a wide connection to the resource areas, so this is proposed along the bordering salt marsh with proposed enhancements such as removal of 30-40' of phragmites. He met with Sam Butcher and Joe Grady and discussed the replication and believes this meets all State and local bylaws.

Brad MacKenzie said the replication is on the same waterbody at the same elevation; the wetland is now at an elevation of 7-8 and the bordering vegetated wetlands along the salt marsh is proposed at the same elevation. He said there is some seasonal groundwater influence to the basin, but it is dry 9-10 months of the year. It is primarily fed by stormwater and won't survive without the stormwater inflow. The new bordering vegetated wetland will intercept the groundwater and is more likely to survive.

Brad Holmes said the finished elevation of the proposed wetlands must meet the existing bordering vegetated wetlands elevation and so soils will be brought in. Test pits will be dug and the elevation will be pinned; they will then dig to that level and form the replication area which does not have to be flat. Not much excavation is required. He said there are two criteria in the State regulations for filling: the first is an analysis of the wetland to see if it meets any of the wetlands interests of the act; if not it is possible they can be filled. This is a low quality wetland but this is a hard argument to make because wetlands are always of value. This is not the argument the applicant is trying to make. The second criteria is for degraded wetlands, and then if you fill it must meet the requirements for replication.

Robb D'Ambruoso asked if the pit is manmade, and Brad MacKenzie said it was. Corey Wisneski said the Town regulations allow for filling of 2500 square feet of wetlands for a limited project, but this is not a limited project as defined in the State regulations. Brad Holmes said a limited project is something such as dam removal and a limited project can exceed the limit of 5000 square feet of allowable under the state regulations if the standards are met. This is not a limited project and it does not need to be because it is under 5000 square feet and complies with applicable performance standards.

Sam Butcher said the Town regulations for a limited project allow up to 2500 square feet to be filled, for a project that is not a limited project there is no filling of BVW. If it is not a limited project, the regulations don't allow it. Corey Wisneski concurred with this interpretation. Sam Butcher asked how it can be allowed if it is not a limited project and the regulations don't allow it unless it is a limited project.

Brad Holmes said he believes the Commission may not be reading the regulations correctly, and thinks a legal interpretation would help. He asked what the definition of a limited project is in the Town bylaw, and Corey Wisneski answered that if the bylaw doesn't define the term, it defers to the State definition. Sam Butcher said he believes the Town bylaw only allows filling for a limited

project up to 2500 square feet. Brad MacKenzie said Section 23.7 of the regulations implies the Commission has discretion and gives latitude to the Commission.

Brad Holmes said the Bylaw is poorly written. This is a stormwater basin that is not maintained and that is degraded and overcome with invasives. Sam Butcher said there is a hurdle of regulatory interpretation. Robb D'Ambruso said he thinks there is no discretion allowed in the language of the regulations. Corey Wisneski said it is not a question of environmental benefits but the Town's regulatory language supercedes the state regulations and seems to not allow filling of wetlands. Sam Butcher asked if the storm drainage was turned off to the basin, what would happen to the basin. Brad Holmes answered that even with less water, the phragmites will remain. Corey Wisneski asked if there were other wetlands plants in the basin, and Brad Holmes said it is nearly all phragmites in the basin.

Sam Butcher asked about the sequencing of the wetlands replication project – does the replication happen first and then filling of the existing wetland. Brad Holmes said more detail about the sequencing can be prepared. Brad MacKenzie said the road would be built and the basin would be used as a sedimentation basin during construction. Sam Butcher said if the Commission can get past the hurdle of the regulations, 2:1 mitigation is required, and added that wetlands mitigation rarely works as it is supposed to and added the Commission would need to ensure that the mitigation will work prior to allowing the filling of any wetlands.

Brad MacKenzie said that no individual Notices of Intent have been filed for lots. This filing is for the footprints as shown, as final designs are made they will come back with new Notices of Intent. This application includes the houses as shown on the plan; the limit of work line won't change but the footprints likely will.

Joe Grady said that no decision is going to be made tonight and the Commission has not had feedback from Amory Engineers, the Planning Board's peer reviewer who also is looking at this for the Conservation Commission. He recommends a site visit.

Corey Wisneski asked Brad Holmes how he believes the Town's bylaw to be flawed. Brad said that a limited project must meet certain standards. It doesn't make sense that the regulations say that for a limited project only up to 2500 square feet of wetlands can be filled.

Ned Lawson of Washington Street said to replicate means to duplicate exactly and it is not possible to duplicate an existing wetland. The applicant hasn't demonstrated the hydrology of the site will support wetlands restoration. There is no evidence that hydric soils exist and no test pits have been dug. He has been told that this area was filled with dredged fines, and there are no contour lines indicating the change of topography to support groundwater. This is coastal land subject to flooding and overwash with saltwater will occur, and no discussion of that has been included. He doubts that replicated wetlands will succeed here. There is a high failure rate for replication projects and the lack of information about the hydrology of the site is a problem.

Mr. Lawson said the narrative provided by the applicant does not comport with the State guidelines in terms of hydrology, seasonal inundation, seasonal groundwater, and there are no cross section plans of elevations that are proposed to be changed. It is not possible to determine if the wetland will succeed with the information provided. Eliminating the stormwater flow to the existing wetland is an alteration that has to be regulated, and the Commission must consider whether some drainage must continue to preclude an alteration to the wetland.

Corey Wisneski said the existing BVW is degraded, but there is no information about hydrology. She would like to see information about other successful wetlands creation projects and asked that the applicant prepare a report with examples. Brad Holmes said the approach he has presented is a tried and true approach and DEP has used it, that the project can have Special Conditions that require monitoring and if it does not work properly no Certificate of Compliance can be issued.

Brad MacKenzie said this presentation was intended as an introduction and no decision will be reached tonight. There is additional information required such as cross sections and a planting plan.

Tom Gill said that 5 years out if the wetlands replication project doesn't comply, it will be difficult to make anything change. He thinks it has to be clear from the start that the proposed solution will work.

Robb D'Ambruoso said he is struggling with the regulatory interpretation and asked that the applicant's lawyer provide an explanation of how they are interpreting the regulations. Brad MacKenzie said he would ask attorney Bob Galvin Jr. to look into this.

On a motion by Sam Butcher, seconded by Scott Zoltowski, the hearing for SE18-1774 was continued until September 19 at 7:20 pm.

## **ADMINISTRATIVE MATTERS**

### **CERTIFICATES OF COMPLIANCE:**

**SE18-1732; 287 Powder Point Ave.** Joe Grady reported that he has inspected the site, has all required documentation and plans and he recommends issuing Certificates of Compliance for SE18-1732. On a motion by Sam Butcher, seconded by Scott Zoltowski, it was voted 6-0-0 to issue Certificates of Compliance for SE18-1732, 287 Powder Point Ave.

**SE18-1682, 30 Bradford Road.** This project was for a garage and Joe Grady Joe Grady reported that he has inspected the site, has all required documentation and plans and he recommends issuing Certificates of Compliance for SE18-1682. On a motion by Tom Gill, seconded by Scott Zoltowski, it was voted 6-0-0 to issue Certificates of Compliance for SE18-1682, 30 Bradford Road.

**SE18-1697, 30 Bradford Road.** This was a project to install riprap and a protective dune that will have ongoing conditions, and partial Certificates of Compliance have been requested. However all the work on the project has not been completed, and Joe Grady recommends giving consideration to whether it is appropriate to issue partial Certificates of Compliance at this time. Only part of the wall that was proposed is shown as constructed on the As-built plans. Joe Grady recommends postponing action on this request at this time, and will provide additional background information about the project in the packets for the next Commission meeting.

### **Changes to Plan: SE18-1772, 109 Abrams Hill Road**

Joe Grady said the applicant has asked to relocate the deck for this project and is moving it closer to the wetlands. He recommends this change be allowed as there is

no change in coverage and the deck will be within the footprint of the existing house. On a motion by Robb D'Ambruoso, seconded by Scott Zoltowski, it was voted 6-0-0 to approve the requested change to the plan for SE18-1772, 109 Abrams Hill Road.

**Changes to Plan: SE18-1767, 850 Keene Street**

Joe Grady explained that the Board of Health's mounded system regulations require drainage on the property and the applicant has therefore proposed a rain garden on the south side of the property. This will extend the limit of work line closer to the wetlands and therefore requires the Commission's approval. Joe Grady said the proposed work meets the Commission's regulations and the rain garden is 50' from the wetlands. On a motion by Corey Wisneski, seconded by Sam Butcher, it was voted 6-0-0 to accept the changes to the plan for SE18-1767, 850 Keene Street.

**Adjournment:** On a motion by Tom Gill, seconded by Scott Zoltowski, it was voted 6-0-0 to adjourn the meeting at 8:36 pm.

**MATERIALS REVIEWED AT THE MEETING**

RDA materials for 321 Congress Street

NOI materials for SE18-1782; SE18-1783; SE18-1757; SE18-1774

Proposed changes to plans for SE18-1772 and SE18-1767