

TOWN CLERK

**Duxbury Seawall Committee Minutes – May 8, 2018**

2018 JUN 11 AM 8:17

Present: DSWC Members: Alicia Babcock, Paul Brogna, Steve Callahan, Candace Martin, Don Norris, Mary Shiebler, Tim Spellman, Timothy Tedeschi

DUXBURY, MASS

The meeting was called to order at 7:05PM in Mural Room at Town Hall.

The minutes of 04/17/18 meeting were approved as presented.

**1. Open Forum**

Larry Dullea, a long-time beach resident, distributed documents regarding seawall ownership to the committee. This documentation from the State Attorney General and the Massachusetts Department of Environmental Management indicate that the State owns the seawall. He also provided these same documents to the Board of Selectmen and Town Manager at their meeting last night, Monday 5/7/18. Mr. Dullea questions that it is State responsibility to repair the seawall and encourages Town Council to be proactive in pursuing this definition of ownership. Mr. Read indicated that he had seen this information during his research and that he had previously submitted ownership documentation and there had been no response from Town Council.

Jim Ryan raised issues regarding need for “full picture” perspective of seawall issues and infrastructure maintenance.

**2. Emergency Repairs**

Mr. Buttkus stated that all allotted deficit spending funds for emergency seawall repairs was spent and no further work could be done. Worst sections of seawall were armored and backfilled and metal plates (as available) were placed. He indicated that if money is available at end of fiscal year, it will be used to further secure the seawall. At this time, the town states there is no more that can be done to stabilize the seawall without additional funds.

Mr. Buttkus stated that the cement stairs which provide public access through the right of way on Ocean Road North are taped off and remain closed indefinitely. Since there is no access for the public, he intends to remove one of the steel plates at the seawall break to provide access for the summer. There is a no trespassing sign posted at the stairs, but safety remains a general concern since the curious public is not heeding the warning. The town is aware of the situation but states nothing further can be done without additional funds.

There was discussion of wall cap loss at the north end of the wall. The sandbags that had been placed there were displaced during the last high tides in March. Mr. Buttkus indicated that sandbags can be refilled and adjusted and replaced on missing cap. The town states there is no funding for emergency cap repair, concrete topping, or jersey barriers to stabilize the seawall. If additional funds were to become available, DPW would place more armor stone along the length of the wall.

The committee pointed out that the same armor stone could later be repurposed and incorporated into the new seawall design if planned properly by the engineer the town selects.

There were concerns raised by the committee about the armor stones that were quickly dropped on the beach as a result of the storm emergency. For these stones to offer maximum protection they need to be reworked in an interlocking position at the toe. Mr. Buttkus estimated that to do this it would cost \$300,000 and the town has no money. There was an action item request made by the committee of DPW/Town to

get a price for this work using one piece of equipment and one operator and designate the 700 feet of critically damaged wall as Phase 1 priority.

Many residents expressed their concerns about this hurricane season and another winter if no additional measures are taken. The town explained that further deficit spending can only be requested after an emergency takes place.

### 3. Engineering

The committee shared that CLE Engineering had made an impressive power point presentation to the town and that they had submitted a proposal to Mr. Read. Mr. Read provided copies of the proposals submitted by Amory Engineering and CLE Engineering stating that both proposals were similar in scope and cost. While passing out the materials, he noted the town had already made the decision to select Amory. When questioned by the committee as to how they arrived at this decision, he noted that the town has had dealings with Amory for 40 years and that the decision was based on their relationship. The Chair asked Mr. Read for Amory's resume pertaining to the seawall projects they have done and how they have performed. Mr. Read had no answer and said he didn't know. Our Committee requested the town to consider CLE Engineering based on their extensive experience and qualifications. The Chair suggested that the town consider using both engineering firms cooperatively, CLE for the seawall portion of the project and Amory for the drainage portion, so that both companies are hired to do what they each excel at. Mr. Read was not willing to enter into further discussion or the option to use CLE. He instead suggested that CLE be used to perform a peer review. At the last meeting, the committee asked Amory to prepare a timeline for the project to be presented at this meeting. No representative from Amory was present nor timeline delivered. There has been no formal assessment/report on the seawall from FEMA so a full wall assessment was determined a priority for Amory Engineering.

### 4. Funding Update

Environmental Bond Bill – The State has not opened application process as yet.  
Major Disaster Declaration-FEMA-Submitted by Governor 4/30/18-awaiting signature of president.

### 5. Committee Charge

Seawall Committee purpose was discussed and suggestions from the committee to update the charge were read. The current charge was compared to similar committees in surrounding local communities which have broader coastal scope and input. Currently the committee charge gives the talent on the committee little ability to have meaningful impact other than to act as a conduit of information between the community and the town and to make suggestions. The Town Manager was receptive to revising the charge to include a broader range of responsibility and suggested that a new charge be drafted for consideration. A revised charge will be drafted by Candy, with input from the committee. It will be presented to Town Manager at the next meeting.

Possibility of forming subcommittees as outside working groups was raised to help the committee operate more efficiently. It was noted by the Town Planner that any subcommittee would also be subject to open meeting law rules. Committee to decide if this is the most productive approach.

Establishing a committee liaison to attend Amory Engineering meetings was agreed upon by Mr. Read. Candace Martin, Tim Spellman volunteered to be our representatives and Dimitri Theodossiou was nominated by Chair in his absence. They will determine who is primary and alternates and notify Mr. Read.

6. Easements - Mr. Read reported Town Council is still working on unrecorded easements.

7. Miscellaneous

Climate Action Plan-most of the previous studies done do not include the Duxbury Beach seawall areas. There have been negative impacts to the community from raising the public beach access road (2-2.5 feet). There was a request that engineers evaluate the impact of displaced tidal waters- approximately 100,000 sf. Committee also requests that any future work plans to be done by the DBR should include input from this committee and abutting neighbors.

It was noted that to be strategic in future planning, there should be a line item for the seawall included in the next budget. There will be ongoing seawall replacement and maintenance costs that the town should anticipate and plan for in years to come.

There was also concern that the town prepare for property assessment abatements. Mr. Read indicated there is an overlay account by the town to handle abatements.

8. Next Meeting will be Tuesday May 15 at 7PM. Location TBD.  
Public Relations will be the only agenda item.

The meeting was adjourned at 9:14 PM.



SEAWALL

Commonwealth of Massachusetts  
Executive Office of Environmental Affairs  
Department of Environmental Management

349 Lincoln Street  
Bldg. #45  
Hingham  
Massachusetts  
02043  
(617) 740-1600  
Fax: 727-2950

June 8, 1992

Abdul C. Hamadeh, Chairman  
Board of Selectmen  
Duxbury Town Hall  
878 Tremont St.  
Duxbury, MA 02332

~~Bureau of~~

~~Coastal Engineering~~  
Office of  
Waterways

Re: Duxbury - Repair of Seawall  
on Ocean Road North

Dear Chairman Hamadeh:

In December of 1991, I met with Charles Buckley of 648 Commercial Street in Braintree, who owns property at 55 Ocean Road North to discuss his request to repair the seawall built across his property as well as other abutters in 1954, by our agency when we were part of the Department of Public Works. At that time we had advised him that the town owned the wall and was responsible for maintenance. This information was also provided to Ms. Christine Heanue of the Massachusetts Emergency Management Agency (MEMA) in a letter dated January 31, 1992.

However, since that time, we have received information from the Department's legal office, who at our request, reviewed the original contract documents and the Attorney General's Opinion of 1939. The Department's legal position is that the structure is owned by the Commonwealth and is responsible for the maintenance which is to be cost-shared with the municipality and the county as was the original construction project. The Commonwealth contributed fifty (50) percent while the municipality and county each contributed twenty five (25) percent.

We have requested MEMA to schedule an inspection of the structure along its entire length to determine the damage caused by the October, 1991 storm and to request the funding to make the necessary repairs. We request that the town identify a contact person, who can attend the inspection with us.

As you are aware, the Federal Emergency Management Agency will be providing funding for the repairs in the amount of seventy five (75) percent. The Commonwealth will provide twelve and one-half (12.5) percent and the municipality will have to

Abdul C. Hamadeh, Chairman  
Duxbury Board of Selectmen

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provide the remaining twelve and one-half (12.5) percent.

We look forward to working with your staff in this matter and if you have any questions, please contact me at (617) 727-3160, ext. 529 or Ms. Catherine Kelly at ext. 541.

Very truly yours,



Eugene F. Cavanaugh  
Director

EFC/mel

cc; Ms. Christine Heanue  
Mr. Charles Buckley ✓  
Mr. David Slegle, D.E.P.



Commonwealth of Massachusetts  
Executive Office of Environmental Affairs  
Department of Environmental Management

SEAWALL

June 8, 1992

349 Lincoln Street  
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Ms. Christine Heanue,  
Public Assistance Coordinator  
Disaster Recovery Team  
M.E.M.A.  
400 Worcester Road  
P.O. Box 1496  
Framingham, MA 01701-0317

~~Bureau of~~  
~~Coastal Engineering~~  
Office of  
Waterways

Re: Duxbury and Marshfield Seawalls Repair

Dear Ms. Heanue:

We have been advised by our Department's legal office that the Duxbury seawall referred to in our letter dated January 31, 1992 is under the ownership of the Commonwealth rather than the town as originally thought.

Based on this information, we respectfully request an inspection of the concrete seawall built under Contract No. 1339, in 1954, as soon as possible. We will be notifying the Town of Duxbury of the pending inspection and will request a representative of the town attend the inspection.

Please be further advised that this policy change also includes seawalls built in Marshfield and identified as Contract Nos. 302, 316 and 988, at Sunset Beach, Fieldston and Brant Rock sections of the town. The town Emergency Management Director, Sharon Connors, has requested a meeting with our staff to review the proposed repairs of some areas in these projects previously identified as well as another seawall project built in 1962 and identified as Contract No. 2560.

Please contact me or Catherine Kelly at 740-1600 to make the necessary arrangements. We will coordinate the meeting with the municipal officials, however, we would need at least a five (5) day advance notice.

Very truly yours,

  
Eugene F. Cavanaugh  
Director

EFC/mel

cc: Mr. Charles F. Buckley  
648 Commercial Street  
Braintree, MA 02184

# M.G.L. Chapter 80 - BETTERMENTS

## Section 1: Assessment of cost of public improvements

Section 1. Whenever a limited and determinable area receives benefit or advantage, other than the general advantage to the community, from a public improvement made by or in accordance with the formal vote or order of a board of officers of the commonwealth or of a county, city, town or district, and such order states that betterments are to be assessed for the improvement, **such board shall within six months AFTER the completion of the improvement determine the value of such benefit or advantage to the land within such area and assess upon each parcel thereof a proportionate share of the cost of such improvement**, and shall include in such cost all damages awarded therefore under chapter seventy-nine; but no such assessment shall exceed the amount of such adjudged benefit or advantage. The board shall in the order of assessment designate as the owner of each parcel the person who was liable to assessment therefor on the preceding January first under the provisions of chapter fifty-nine.

## Section 2: Assessment order; plan and estimate; recordation

Section 2. An order under section one which states that **betterments are to be assessed for the IMPROVEMENT shall contain a description sufficiently accurate for identification of the area which it is expected will receive BENEFIT OR ADVANTAGE, other than the general advantage to the community, from such improvement**, and shall refer to a plan of such area, and shall contain an estimate of the betterments that will be assessed upon each parcel of land within such area; and such order, plan and estimate shall be recorded, within ninety days from the adoption of the order, or from the acceptance by a town of the laying out, relocation or alteration of a way in case such acceptance is required before the establishment thereof, in the registry of deeds of every county or district in which the benefited area is situated. No betterments shall be assessed for such improvement unless the order, plan and estimate are recorded as herein provided, nor upon any parcel of land not within such area, nor for a greater amount than such estimate.

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P.D. 32.

Section 37 of said chapter 149, which is a re-enactment of section 43 of St. 1900, c. 514, provides: —

"In any town not subject to section thirty or thirty-one nine hours shall constitute a day's work for all laborers, workmen and mechanics employed by or on behalf of such town."

In the interpretation of those various provisions of law two questions arose, namely: —

*First:* Is the service of laborers, workmen and mechanics employed by or on behalf of the city of Malden restricted to eight hours in any one day, or is the city of Malden subject to G. L. (Ter. Ed.) c. 149, § 37?

*Second:* Are the exceptions enumerated in section 36 of said chapter 149 applicable to employees in the municipal institutions of the city of Malden?"

Your first question received the consideration of one of my predecessors, with respect to St. 1911, c. 494, the provisions of which have since been incorporated, with some modifications, in G. L. (Ter. Ed.) c. 149, § 31. III Op. Atty. Gen. 567. In substance that ruling was that the acceptance by a city or town of St. 1899, c. 344, did not constitute an acceptance of subsequent amendments of that statute, which were more stringent and contained penal provisions.

The ruling thus made with reference to St. 1911, c. 494, if sound, is equally applicable to G. L. (Ter. Ed.) c. 149, § 31. I am of the opinion that my predecessor's ruling was sound, and I am therefore constrained to rule that G. L. (Ter. Ed.) c. 149, § 31, is not applicable to the city of Malden unless and until it accepts the terms of the statute.

In that situation the provision of law which is applicable to the city of Malden is G. L. (Ter. Ed.) c. 149, § 37, which provides: "In any town not subject to section thirty or thirty-one nine hours shall constitute a day's work for all laborers, workmen and mechanics employed by or on behalf of such town."

Inasmuch as the city of Malden is not subject to said section 31, it follows that section 36, which contains certain qualifications upon the application of section 31, is also not applicable.

If the Legislature had intended that section 37 should not apply to the various occupations enumerated in section 36, it doubtless would have so declared.

Very truly yours,

PAUL A. DEVER, Attorney General.

*Department of Public Works — Sea Wall — Maintenance —  
Liability for Injuries.*

AUG. 3, 1939.

HON. JOHN W. BEAL, Commissioner of Public Works.

DEAR SIR: — A request for an opinion relative to a sea wall at Marshfield was made upon me by your predecessor, in which, with respect to such wall, the following questions were asked: —

"1. Is the wall the property of the Commonwealth or does it attach to the land and become the property of the owners?"

2. In view of the lack of any provision in the statute or in the releases for the maintenance of the wall, has the department any obligation to maintain it, or any authority to do so except that granted by G. L. (Ter. Ed.) c. 91, § 31?



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3. Has the department any responsibility for accidents that may result from the use of the top of this wall as a walk by the general public, and is this affected by the fact that the department has expended funds for the maintenance of the wall?

4. Has the department authority to post the wall by a notice against trespass?"

It is stated in the letter that no taking was made by the State of the land of the adjoining owners upon which the wall was erected, but that releases were secured from such owners. The giving of such releases would seem to grant to the Commonwealth an easement for the erection and maintenance of said wall upon land of the owners, so that the wall as such is to be treated as property of the Commonwealth. I accordingly answer your first question in the affirmative.

The provisions of section 31 of G. L. (Ter. Ed.) c. 91, appear to be sufficient to authorize the department to maintain the wall. There does not appear to be any other specific requirement placing upon the department the burden of such maintenance, but having erected it, there would appear to be an obligation on the department to use its authority under section 31 to keep the wall in proper shape, and I answer your second question to this effect.

Neither the Commonwealth nor the department as such can be liable for injuries resulting from the use of the top of the wall as a walk by the general public, and I answer your third question to this effect.

I answer your fourth question in the affirmative.

Very truly yours,

PAUL A. DEVER, Attorney General.

*Conviction of Offence involving Moral Turpitude.*

AUG. 3, 1939.

Mrs. MARGARET M. O'Riordan, Director of Registration.

DEAR MADAM: — You have forwarded to me a communication requesting my opinion, which reads as follows and emanates from the Board of Registration in Chiropody: —

"At the recent examination given by the Board of Registration in Chiropody-Podiatry for the purpose of examining candidates for registration, a question arose on which this Board desires a ruling.

The candidate in question, at the age of fourteen, was arrested and placed on probation for breaking and entering in the daytime. At seventeen years of age he was arrested, adjudged delinquent and placed on probation. From seventeen years of age to twenty-nine years of age (his present age) no further record has been placed against him.

The question arose whether this candidate is guilty of having been convicted of an offence involving moral turpitude, as outlined in G. L. (Ter. Ed.) c. 112, § 18, as amended by St. 1937, c. 425.

The Board desires an official opinion on this point."

If the candidate above mentioned was formally tried upon a charge of breaking and entering and was found guilty of the offence, this would constitute conviction of an offence involving moral turpitude, within the meaning of G. L. (Ter. Ed.) c. 112, § 18, as amended, irrespective of the fact that the candidate was placed on probation after having been found guilty.

