

Approved May 6, 2014



# Town of Duxbury Conservation Commission

TOWN CLERK  
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DUXBURY, MASS.

## Minutes of April 15 2014

The Conservation Commission met on Tuesday, April 15, 2014 at 7:00 PM in the Mural Room at the Duxbury Town Hall.

**Members Present:** Joe Messina, Chair; Thomas Gill, Vice-Chair; Sam Butcher, Dianne Hearn; Barbara Kelley, Corey Wisneski (arrives 7:10)

**Members Absent:** Holly Morris

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

The meeting was called to order by Chairman Joe Messina at 7:00 PM.

### ADMINISTRATIVE MATTERS:

**Minutes:** On a motion by Sam Butcher, seconded by Tom Gill, the minutes of March 18 were approved by a vote of 5-0-0.

**Certificate of Compliance: Thompson, 151 King Caesar, SE 18-1508.**

Joe Grady reported that he has visited the site and the project conforms to the Orders of Conditions and that as-built plans have been received.

On a motion by Barbara Kelley, seconded by Tom Gill, the Commission voted 5-0-0 to issue a Certificate of Compliance for DEP File SE18-1508.

**Administrative matters continue below**

### PUBLIC MEETING: MCCARTHY, 2 KING CAESAR, ELEVATED DECK NEAR SALT MARSH; 7:00 PM

At 7:04 PM Freeman Boynton of Duxbury Construction, representing Stephen McCarthy, described the project as an elevated deck 82.2 feet from the edge of the wetland resource area; the upper area will be seating and below the deck a shaded patio. Four precast concrete piers will be installed with a minimum of digging; they will be dug and backfilled the same day. Joe Grady reported that he reviewed the area calculations, and there are no changes to coverage because this project will be on top of existing patio. The project also meets the setback requirements.

On a motion by Sam Butcher, seconded by Tom Gill, the committee voted 5-0-0 to issue a Negative Determination so that a Notice of Intent is not required for the proposed project of installing an elevated deck at 2 King Caesar Road.

**PUBLIC MEETING: LEWIS, 1 ABRAMS HILL, PIER REPAIR, POSTS AND DECKING  
7:05 PM.**

At 7:07 PM, Mark Sears, representing Susan Lewis, presented the project which is to replace 5 broken poles on a pier that has been damaged by ice. The poles will be dug by hand, not using machinery, and will be replaced with 8" round pressure treated poles. Some damaged decking may also need to be replaced. Sam Butcher asked if any railing would be added to the decking and Mr. Sears said no railing will be added.

On a motion by Barbara Kelley, seconded by Tom Gill, the committee voted 5-0-0 to issue a Negative Determination so that a Notice of Intent is not required for the proposed project of repairing a pier by replacing poles and some decking at 1 Abrams Hill.

**PUBLIC MEETING: O'CONNELL, 65 HITT TOM ROAD, SEPTIC SYSTEM REPLACEMENT  
7:10 PM.**

At 7:10 PM, Terry McGovern of Morse Engineering, representing the Rita and William O'Connell, presented the project which is to replace an existing septic system; the proposed system has been approved by the Board of Health. The replacement tank will and pump chamber will be within the 100' buffer (where the existing tank is); the rest of the system has been moved out of the 100' buffer zone.

On a motion by Sam Butcher, seconded by Dianne Hearn, the committee voted 5-0-0 to issue a Negative Determination so that a Notice of Intent is not required for the proposed project of replacing an existing septic system at 65 Hitty Tom Road.

**CONTINUANCE OF PUBLIC HEARING; REED, 120 PATTEN LANE, HOME, DECKS,  
LANDSCAPING. DEP FILE SE18-1665, 7:10 PM**

At 7:13 PM, Stan Humphries of LEC Environmental Consultants Inc., representing Cynthia Reed, Trustee of the Cynthia Reed Revocable Trust, presented the project which is to reconstruct a single family home on a concrete pier foundation with 2 decks and up to 4" of fill provide coastal landscaping. The Conservation Commission conducted a site visit on April 1; some additional materials have been submitted since the last hearing date to address some of the questions raised by the Commission. Sarah Weihman of Drake Design Studio reviewed a series of handouts that had been submitted to the commission with additional views of the proposed project. It is possible that work will be done on the revetment which would extend it back a further 6 feet and plans showing the amount of the house that is in the existing 35' setback and the proposed 35' setback should the revetment be changed (which would then change the setback) were explained. With the existing revetment, the reduced building size would result in a 76% reduction in the square footage of the house that is in the 35' setback. There would also be a reduction in the amount of deck and walkway square footage in the setback.

Sam Butcher asked if the project is being proposed with no change in location of the top of the revetment, and Ms. Weihman said that was correct. The proposed building envelope is within the footprint of the existing building and is set on a pier foundation, and native dune species would be used as part of the planting plan.

Tom Gill commented that the site visit clarified the issues before the Commission; the size of the building is being reduced by a third, and there is minimal change to the deck space. The issue of the revetment and possible modifications to it in order to reduce erosion, and concerns about erosion near the Myles Standish Cellar Hole, are not part of what is before the Commission as part of this hearing.

Soren Jensen, of Puritan Road, expressed his concerns about erosion on the south part of Standish Shore. He feels that in this case, with the existing house being torn down, and a new foundation and house being built, that it is new construction of a house within the 35 foot setback. He believes that the seawall is deteriorating. The Cellar Hole is 'falling apart' and it has happened since the large volume of sand was brought in to the beach. The drainage has changed as a result of the work on the Reed property and that the Cellar Hole will fall in the bay within a few years; in addition a new freshwater pond has formed.

Joe Messina responded by explaining that the Conservation Commission works within the rules and regulations; and that the owners are allowed to do work that fits within the rules and regulations. Within the confines of the application, there is no adverse impact of the work that is proposed. Mr. Messina added that the Conservation Commission shares the concerns of the residents about the state of the Standish shoreline, but the solution is in the hands of the landowners. The Commission has limited jurisdiction; they oversee Town-owned lands, and act on applications: Requests for Determination of Applicability (RDAs) of the statutes, and Notices of Intent (NOIs) for work under the jurisdiction of the Commission. The Commission also writes Orders of Conditions about what you can or cannot do on a project or part of a project within the jurisdiction of the Committee.

Mr. Jensen said his letter has nine points that relate directly to the Notice of Intent. Joe Messina said the erosion concerns, while perhaps valid, don't relate to the NOI. For example, the riprap wall is not part of this NOI but the work being done is under Orders of Conditions from a separate NOI that was filed. Mr. Jensen pointed out that in one document the new dwelling is referred to as a 'family home' and in another as a 'beach house'; Mr. Messina responded that whether it is called a beach house or a single family residence has nothing to do with its wetlands impact from the perspective of the Conservation Commission.

A member of the audience asked whose jurisdiction it is to determine if it is a beach house or a family house. Joe Grady explained the Conservation Commission are 'on the ground' people; the work done above the ground, in this case the house, is a zoning issue. Mr. Jensen asked how a new house can be built in a 35' buffer zone, to which Mr. Messina responded that if something existed before the regulations came into existence, it is grandfathered by the General Court of the State of Massachusetts and another dwelling the same size or smaller can be built. The new house actually has less impact on the site because it will be on a pile foundation and is smaller in size.

Mr. Jensen asked what department in the Town can deal with the erosion issue. Joe Messina said an individual property owner can come with questions to the Conservation Commission about their own property.

Frances Burns of Mayflower Ave asked if a proposal will have to be submitted for the seawall wall that was discussed earlier. Sam Butcher said that the applicant can submit an application for further repair work to the wall should they chose to do that work. Mr. Humphries added that if additional or new work is proposed, an amendment or modification to the existing Order of Conditions for that work will be sought. Joe Messina added that the repair work done on the wall was done under an Order of Conditions, and that an applicant can come back to the Commission for permission to make changes to that.

Joe Messina commented that the activity at the Reed property is not necessarily the reason why the area is changing. Perhaps those that are concerned about the erosion along the shore could meet with the board of Selectmen and ask that a study group be formed for the Standish Shoreline. The property is owned by private landowners, and not something the Conservation Commission can address as it could if it were town-owned land. Mr. Jensen asked why the State funded a study on Duxbury Seawalls, and Joe Grady replied that the study was funded throughout the state, not just in Duxbury, and that Duxbury happened to be the first study that was done. Mr Grady added that the report recommends raising seawalls to a much higher height and covering beaches with riprap stone. He added this is a very important issue that is a national issue; the coastlines are eroding and it will get worse. The solutions to this problem are not fundable, and these solutions such as raising the seawalls to very high levels might not be something residents would support.

An audience member asked if the material that will be brought in to place under and around the house will be of a specific type that will not have environmental impacts, and whether the nature of that sand will be part of the Order. Joe Grady said that the material will be clean sand, and that will be included in the Order. The audience member then stated that she believes the material will be eroded away, and wanted to know where it goes and what is in the material and whether it would impact the clam flats. Mr. Grady replied that sand attracts spat, the young seed, in shellfish beds and gives them a substrate to attach to. He added that in the 1950's and 1960's the residents at Standish Shore built concrete and riprap walls that cut off the nourishing sediment to the beach, and so the beach is depleted and 'starving' for nourishment. He understands that the trucks that bring the sand to replenish the beach can be annoying, but that the lack of sand on the beach increases the rate of erosion, and that bringing in sand is nourishing the beach. The erosion is not the result of the activities of any one person, it is the result of activities that happened in the neighborhood before the Conservation Commission existed.

Sam Butcher commented that he visited the Cellar Hole site, and that the issues there are not within the context of this hearing. Tom Gill reiterated that the Commission judges proposals that are put before it and determines if a project falls under the rules, and that the concerned residents should approach the Board of Selectmen to ask them to put together a committee to deal with these erosion issues along the Standish shoreline. Joe Grady encouraged the residents to look into how to preserve the shoreline, that it is a very worthwhile cause but is not within the jurisdiction of the Conservation Commission.

Freeman Boynton, of 47 St. George Street and the contractor doing the revetment work said that the purpose of the work along the coastal dunes next to the Cellar Hole at 1 Spring Street was to prevent erosion at the Cellar Hole. It is not legally possible to put in a seawall. The intent of rebuilding the walls at 120 Patten is to help minimize erosion; the mortar in the wall will be removed and the rocks turned upside down, which together will help break up the wave action and minimize erosion. Mr. Boynton offered to meet with people to talk about the Standish

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property, and then can he get input from the Reeds and see if there is a way to work together to mitigate the issues, and Mr. Boynton volunteered his time to help get this done.

On a motion by Tom Gill, seconded by Dianne Hearn, it was voted 4-0-2 to write Orders of Conditions for SE18-1665 with Joe Messina and Corey Wisneski abstaining.

**ADMINISTRATIVE MATTERS (continued):**

**Continuance of Hearing, SE 18 - 1636:** At the March 18 meeting, a date for the continuance of the Sanmarco (SE 18-1636) hearing was not voted; on a motion by Tom Gill, seconded by Barbara Kelley, it was voted 6-0-0 to continue the hearing until May 20, 2014 at 7:15 PM.

**Discussion about next meeting**

The next meeting will be the continuance of the hearing for SE 18-1653, McLaughlin at 685 Washington Street. A large audience may be in attendance, so additional seating will be brought into the room. Joe Grady reported that there is now 1200 pages of material that has been submitted for this meeting, some of which will be distributed to Commission members in two packets so as to give adequate time for review. There was a general discussion led by Chairman Messina as to how the hearing will proceed; the first presenter will be the applicant and they will be given as much time as they need to do their presentation, and this will be followed by questions from the Commission, and then public participation and comment will be allowed – the same process done for all hearings. However it is likely this will not be accomplished in one night. Corey Wisneski asked for clarification about whether someone not part of the hearing quorum can ask questions, and Joe Grady is consulting with counsel to get an answer to that question, as well as seeing if the Mullin Rule will apply or if members that have missed meetings at which substantive issues are not discussed can continue as part of the quorum. Joe Grady believes there is a Town Meeting vote related to this issue, and wondered if the transcripts are given to members would enable them to continue as part of the quorum.

**Adjournment:** On a motion by Sam Butcher, seconded by Dianne Hearn, it was unanimously voted 6-0 to adjourn the meeting at 8:15 PM.

**MATERIALS REVIEWED AT THE MEETING**

Request for Determination of Applicability (RDA) materials for 2 King Caesar Road

Request for Determination of Applicability (RDA) materials for 1 Abrams Hill

Request for Determination of Applicability (RDA) materials for 65 Hitty Tom Road

NOI Application and materials for SE18-1665

Additional plans for SE 18-1665 brought to the meeting by the applicant

Certificate of Compliance for SE18-1508

Draft minutes of 3/18/2014 Conservation Commission Meeting

Respectfully Submitted, Susan Ossoff