

Approved 8/19/2014



**Town of Duxbury**  
**Conservation Commission**

TOWN CLERK  
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DUXBURY, MASS.

**Minutes of July 15, 2014**

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

**Members Present:** Chairman Joe Messina; Sam Butcher; Tom Gill; Holly Morris

**Members Absent:** Dianne Hearn, Barbara Kelley, Corey Wisneski

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

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

**CONTINUANCE OF PUBLIC HEARING, SANMARCO, 48 GRANDVIEW AVE, PIER, 7:05 PM  
SE18-1636**

Joe Grady reported that the applicant has decided to move forward with this project; the Committee has previously voted to approve a peer review to be conducted by Nover-Armstrong and Associates and that will now proceed.

On a motion by Tom Gill, seconded by Sam Butcher, it was unanimously voted to continue the Public Meeting for SE18-1636 to August 19, 2014 at 7:05 PM.

**PUBLIC MEETING, TOWN OF DUXBURY CONSERVATION COMMISSION, 0 TREMONT  
STREET, PHRAGMITES CONTROL, 7:07 PM**

At 7:09, Joe Grady explained that this is a salt marsh owned by the Town off Tremont Street. An abutter has offered to donate the necessary services to control the Phragmites which are an invasive, exotic weed. This will involve cutting them down physically and applying herbicide in September. The area is approximately ¼ acre in size. Sam Butcher asked who will supervise the work and Joe Grady said he will be supervising the work.

On a motion by Sam Butcher, seconded by Joe Messina, the Commission voted 4-0-0 to issue a Negative Determination so that a Notice of Intent is not required for the proposed project of controlling Phragmites at 0 Tremont Street.

**CONTINUANCE OF PUBLIC MEETING, FITZGERALD, 247 GURNET ROAD, SECOND  
FLOOR ADDITION, 7:10 PM**

At 7:13 PM, Pat Fitzgerald presented the project which is a second floor addition to expand a bedroom by adding about 100 square feet of space. In response to a question by Joe Messina,

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 5471; Fax: 781-934-1137

Mr. Fitzgerald confirmed that there will be no work done at ground level. Joe Grady pointed out to the Commissioners that in their packets was a copy of an email and photographs from a neighbor, Mr. Lawrence Dullea, expressed his concerns about a prior order having to do with removing landscaping walls. Joe Grady explained that he had checked and could find no record of any previous application or order from the Conservation Commission. Therefore, any fencing or walls that were removed were not done at the request of the Conservation Commission, and the Commission does not regulate fences. In some cases where it is appropriate and site work is being done, the Commission will require that fences be elevated 6 inches above the ground. For this application, no site work is proposed.

Mr. Dullea said that the fence is lower than it was 8 months ago and is now only 2 inches off the ground and that it impedes and has changed the over wash. The applicant says he has not changed the fence and it was in existence when he purchased the property. Mr. Dullea then provided some pictures showing sections of fence.

Joe Messina explained that this particular issue is unrelated to the Request for Determination of Applicability before the Commission. The addition, which is on the second story of the house only, is not subject to regulation by the Conservation Commission.

On a motion by Sam Butcher, seconded by Holly Morris, the Commission voted 4-0-0 to issue a Negative Determination so that a Notice of Intent is not required for the proposed project of adding a second floor addition at 247 Gurnet Road.

**PUBLIC HEARING, HOFFMAN, 5 CONGRESS STREET, SINGLE FAMILY HOME, 7:15 PM  
SE18-1675**

AT 7:28 pm Rick Grady of Grady Engineering, representing the applicant Garth Hoffman, presented the project. He introduced wetlands scientist John Zimmer. This is a 6.8 acre parcel with 5.3 acres of upland. The Notice of Intent is for construction of one single family home. The Watershed Protection Overlay District (WPOD) is towards the upland portion of the lot, with 2 areas elevated above the WPOD. The applicant wants to divide this parcel into two lots and says there is enough frontage, and to do this may go to Town Meeting to alter the WOPD; however in the meantime this application is for one single family home outside the WPOD. The driveway will follow the existing gravel road but traverses the 200 foot Riverfront Zone. There are a number of 100 foot buffer zones and the house is located in a 100 foot buffer zone. The septic and driveway are outside the 100 foot buffer and 200 foot riverfront zones. The driveway, the gas and underground electric, and the house are within the buffer zones.

The Department of Environmental Protection (DEP) offered some comments on this application and wanted an alternatives analysis. Mr. Grady provided a handout of that analysis.

Rick Grady said the driveway will be kept within the current existing driveway. No filling of wetlands will be required but some of the driveway is within the 200 foot waterfront area. The Zoning Enforcement Officer, according to Rick Grady, has said that he will be able to use the driveway being permitted under this NOI for access to the second lot that will be created, there will not have to be a second driveway.

For the alternatives analysis, not building is not an option because it renders the land 'worthless.' A subdivision is not viable nor is an open space residential development because they require a wider driveway, as would a 40B development.

The septic is more than 150 feet from the wetlands per the Board of Health regulations; the well is 90 feet from the wetlands.

Joe Grady commented that he has met with the applicant on a number of occasions about this property and has discussed various proposals for it. He had suggested to the applicant he not bring a proposal to the Conservation Commission until after Zoning has made its determinations. The applicant is at this time appealing the ruling of the Zoning Enforcement Officer regarding the two house lots and proposed grading at the site. Some of the grading work is within the jurisdiction of the Conservation Commission. The Conservation Commission unanimously voted at its May 20 meeting to affirm the denial of the building permit which included creating a second lot by elevating a portion of the lot because it is in direct conflict with the purposes of protecting groundwater and environmentally sensitive wetland areas.

Joe Grady continued to say that the Zoning Board of Appeals has yet to decide this case, and therefore he feels this application is premature. At this time there is a denial from the Building Department for a building permit. The grades shown on the plan are proposed, not existing; the applicant is changing the elevation to get out of the WPOD district. Cutting trees and changing the drainage characteristics of the property are important considerations as well.

The access described as a driveway by the applicant's engineer, according to Joe Grady, was a dike constructed by a cranberry farmer who needed to replace a culvert for farming purposes. There is no driveway in existence. Originally this parcel was a 60 acre contiguous piece with other access. There is a dike for the cranberry farmer's tailwater recovery system; the farmer was permitted an agricultural exemption to meet agricultural requirements; this however is not a driveway. Also, within the Conservation Commission's rules and regulations, there are no driveways allowed within 25 feet of wetlands.

Joe Grady continued to comment that the proposed 'driveway' on the plans is 12 feet wide with no drainage indicated or buffer. There are no details on the slope, how the utilities will be run, or what the surface is. There is approximately 24 inches of coverage over the culvert, and Joe Grady said it is unclear if the electric is going under or over the culvert, and it is crossing a flowing stream.

For the reasons above, Joe Grady said he is concerned with this proposal, and believes it is premature to have this project before the Conservation Commission while the Zoning Board of Appeals is making a determination. Additionally, the plan being presented to the Conservation Commission (for 1 house) is different than the plan before the zoning board; additionally Rick Grady has discussed a second home, a subdivision, and a 40B – it is unclear what is being proposed.

Engineer Rick Grady responded that the second lot that they want to have can't happen until the WPOD is modified which has to be done at a Town Meeting. So they are asking for a single house lot with this application. If the ZBA rules that they can fill areas on the site, they will proceed to file a second NOI for a second house.

Garth Hoffman stated that there are only 2 issues before the Zoning Board of Appeals; whether they can bring fill on site and whether they can bring utilities onsite without causing flooding. Rick Grady added that the fill is outside the jurisdiction of the Conservation Commission.

Joe Grady said there is no permit yet to do what is on the plan, and the grading that is before the ZBA is part of the proposal they have put before the Conservation Commission.

Chairman Messina suggested the plan before the Conservation Commission should match what is being presented to other boards. Regardless of the fill issue, there are concerns about the driveway that need to be addressed in more detail. There is no information or calculations about coverage. Based on the application that has been submitted, this project does not meet the rules and regulations of the Commission.

Rick Grady stated that normally under circumstances like these where the Commission wants additional information, the Commission would offer to continue the hearing.

Joe Messina said the Commission would like to see a more accurate plan that shows elevations. He will consider a continuation but wants to continue this hearing after there are rulings on other issues, so the extension should be set far enough out to be able to resolve those issues before this comes back to the Commission.

Rick Grady said the applicant has been trying to contact Joe Grady to discuss some of the issues without success. Joe Grady said that he has met with the applicant and engineer on several occasions to offer advice but the applicant chooses not to follow his advice, and therefore further meetings would likely be unproductive.

Tom Gill said the Commission needs a clear plan that is approved by the ZBA; the choices are for this NOI to be denied and then a new NOI resubmitted or a continuance of this NOI. This application is very unclear and is premature in his opinion.

Neal Doherty, of 8 Pleasant Hill Lane, an abutter said 30% of his land is standing wetlands. He is concerned with protecting the WPOD and the stream. He is concerned about the driveway through a forested area which will be a 50 foot wide swatch for a distance of 500 feet, and he believes this violates the wetlands bylaws. He attended the ZBA hearing and the leaching field that is proposed will be used for both homes and he wondered if that is allowed. He said in order to construct the driveway it will be necessary to fill because of the level of the water. He also is concerned that the project is being presented as 1 lot when the plan is to divide it into 2 lots.

Michael Quinlin of 10 Pheasant Hill land, another abutter, said he also attended the ZBA hearing and is concerned about the disturbance of the land for the driveway. The location identified for the well will require additional clearing and grading in order to bring a 12' truck to the site. The culvert and cart path were built in 2006-2007 by the bog owner to get equipment in, and it provides access by foot. It is now reforested and extends a total of approximately 120 feet though now is completely overgrown. The cart path the applicant is referring to no longer exists.

Sam Butcher suggested some points that need to be addressed at a continued hearing. These include:

- Vegetation: how much removal of vegetation is proposed including outside the jurisdiction of the Commission because that removal can impact things such as drainage within the jurisdiction and therefore does matter
- Information about the driveway – what is there now, what will be there, short-term construction impacts, longer-term potential impacts (for example, use of salt)
- Information on how the utilities will be installed

- Grade changes, evaluation and assessment of runoff from the driveway, septic construction, roof runoff
- Coordination of applications before the various boards

Holly Morris said she has a number of concerns about the project. She would like to know how much coverage is being removed on the site. She wants specific information about proposed elevation changes and remedial measures associated with making those changes.

The ZBA meeting about this project is July 24.

Mr. Hoffman said he will work with the board and the neighbors, and wanted to have a dialogue with Joe Grady. He said he is not presently trying to get 2 lots at the ZBA, he is trying to resolve the question of what areas can be filled.

Abutter Michael Quinlan said that while Mr. Hoffman is saying tonight he wants to work with people, that he told Mr. Quinlan to 'back off' or he would put a 40B housing development in there. Mr. Quinlan is troubled by what is happening and at what Mr. Hoffman has said.

Rick Grady suggested a site walk might be useful. Sam Butcher said he'd prefer to have a plan in place before having a site visit. Joe Messina suggested that the Commissioners can informally drive by the area for now to view the access point.

On a motion by Joe Messina, seconded by Sam Butcher, it was voted 3-0-1 with Tom Gill abstaining to continue the hearing for SE18-1675 until August 19 at 7:20 pm.

#### **PUBLIC MEETING, MONAGHAN, 523 WASHINGTON STREET, GANGWAY AND FLOAT 7:20 PM**

At 8:25 PM, Freeman Boynton representing the applicant presented the project which is to install an aluminum gangway and float. There will be no permanent pilings in the resource area and all work will be done by hand including digging the posts with a post hole digger.

Joe Grady said the float and gangway will only be present seasonally.

Joe Messina asked if the Harbormaster has been consulted. Mr. Boynton explained that the Harbormaster will be involved because it will be necessary to get a seasonal float permit from the harbormaster. Holly Morris asked if the float has skis so that it is not sitting on the tidal flat during low tide. Mr. Boynton explained that the float does have skids to elevate it above the tidal flat. He added that he has successfully done 4 other floats similar to this project.

On a motion by Tom Gill, seconded by Holly Morris, the Commission voted 4-0-0 to issue a Negative Determination so that a Notice of Intent is not required for the proposed project of a gangway and float at 523 Washington Street.

#### **ADMINISTRATIVE MATTERS:**

**Minutes:** On a motion by Sam Butcher, seconded by Tom Gill, the minutes of June 14, 2014 were approved by a vote of 4-0-0.

#### **Certificates of Compliance**

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

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**SE18-1630, 10 Hawkins Place** Joe Grady reported that all required documentation for this project (a pool) has been received and a site visit conducted, and he recommends the Certificates be approved.

On a motion by Joe Messina, seconded by Sam Butcher, it was voted 4-0-0 to approve the Certificates of Compliance for SE18-1630.

**Adjournment:** On a motion by Sam Butcher, seconded by Holly Morris, it was unanimously voted 4-0-0 to adjourn the meeting at 8:30 PM.

**MATERIALS REVIEWED AT THE MEETING**

Request for Determination (RDA) materials for 0 Tremont Street

Notice of Intent materials for SE18-1675, 5 Congress Street

Request for Determination (RDA) materials for 523 Washington Street

Draft minutes of 6/14/14

RDA Materials for 247 Gurnet Road