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DUXBURY, MASS.

Town of Duxbury

Conservation Commission

Minutes of September 15, 2015

The Conservation Commission met on Tuesday, September 15, 2015 at 7:00 PM in the Mural Room at the Duxbury Town Hall.

Members Present: Chairman Corey Wisneski; John Brawley; Sam Butcher; Robb D'Ambruoso; Tom Gill; Dianne Hearn; Holly Morris;

Members Absent: none

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

The meeting was called to order at 7:00 PM

DUXBURY WETLANDS REGULATIONS: Discussion

Joe Grady suggested that the Commission designate a few members to review the regulations and present those suggestions back to the Commission. Individual members can offer input as well. The Commission identified Sam Butcher, Robb D'Ambruoso, and Holly Morris to serve as reviewers.

CONTINUED PUBLIC HEARING; EARLEY; 80 SEABURY POINT ROAD; RECONSTRUCT SEAWALL SE18-1708

Brad Holmes of Environmental Conservation & Restoration represented the Earley's, the homeowners. Some more detailed information was provided to the Commission as requested at the last hearing. Joe Grady said he had asked for 3 cross-sections showing the existing wall in relation to the proposed wall, showing where the toe of the wall now meets the beach and the slope of the well. In order to install the below grade section of the wall, there will be excavation along the beach and a replanting plan and schedule should also be provided.

Sam Butcher asked about how the toe of the wall at the eastern end will meet up with the neighbor's wall. The toe of the proposed wall cannot extend out beyond the existing wall. Tom Gill felt there should be an approved plan in place before the Commission issues Orders of Conditions. Mrs. Earley, the property owner, suggested the hearing be continued so plans can be prepared and the applicant can understand the impacts this wall will have on their yard. Some lawn area is going to be lost because of the slope of the wall.

Joe Grady wondered why the wall was 4.4' above the level of the yard. Sam Butcher pointed out that the work will be within 5 feet of the salt marsh at the east end of the wall. Joe Grady suggested as an option that the wall not extend the entire way up the slope; that a shorter wall be built and native plantings be used at the top.

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On a motion by Sam Butcher, seconded by Holly Morris, it was voted 7-0-0 to continue SE18-1708 until October 6 at 7:05 pm.

**PUBLIC HEARING; DUDLEY: 80 PILGRIM BYWAY: SINGLE FAMILY HOME
SE18-1710**

Shane McGlone, representing the homeowner, presented the project which is to raze the existing house and rebuild a house that will have the same square footage in the buffer zone as the existing house. Joe Grady agrees with the wetlands line on the plan. The coverage is 2.3%. The project meets the Commission's rules and regulations. Sam Butcher asked if there is adequate room to do the work with the erosion control in place as shown on the plan; Mr. McGlone said there was adequate room.

On a motion by Sam Butcher, seconded by Dianne Hearn, it was voted 7-0-0 to write Orders of Conditions for SE18-1710.

**PUBLIC MEETING; MARTIN; 59 GURNET ROAD; BEACH NOURISHMENT OF A COASTAL
BANK**

Candace Martin, the property owner, described the project. They have Orders of Conditions to rebuild the house on this property with a full basement. They wish to use the sand from the basement excavation to re-nourish the coastal bank that is eroding. Approximately 250 cubic yards of sand will be moved. Tom Gill asked about the longevity of the bank; Ms. Martin replied that later they may wish to build a wall but for now this will add protection. Joe Grady said the Commission has given permits to the previous owners to truck in materials to re-nourish this bank two times.

On a motion by Sam Butcher, seconded by Tom Gill, it was voted 7-0-0 to issue a Negative Determination so that a Notice of Intent is not required for the nourishment of the coastal bank at 59 Gurnet Road.

**PUBLIC HEARING; CARTY; 344 TEMPLE STREET; PERMIT EXISTING DECKS
SE18-1713**

This hearing was not opened because the applicant did not get all necessary documentation to the State in time; the date and time of the Hearing will be re-noticed for a later date.

PUBLIC MEETING; VANCINI; 17 SURFSIDE WEST; DECK REPLACEMENT

Arthur Vancini, the applicant, described the project which is to replace a previously existing deck that was unsafe with a new wood deck of the same size using the existing pilings. The coverage will remain unchanged. A shed that was previously on the property floated away and is not being replaced.

On a motion by Sam Butcher, seconded by Tom Gill, it was voted 7-0-0 to issue a Negative Determination so that a Notice of Intent is not required for the deck at 17 Surfside West.

CONTINUATION OF PUBLIC HEARING; PATEL; 20 BRADFORD ROAD; REVETMENT SE18-1698

This hearing will be held concurrently with the 30 Bradford Road hearing; see below

CONTINUATION OF PUBLIC HEARING; BRADFORD ROAD REALTY TRUST; 30 BRADFORD ROAD; REVETMENT SE18-1697

This hearing is being held concurrently with the 20 Bradford Road hearing above.

Rick Grady introduced Attorney Tom Callahan representing Mr. Patel and Attorney Gene Guimond representing Mr. Bradford and Peter Rosen, a coastal geologist who worked with Rick Grady to reformulate the plan for the revetment to meet the requirements of the Commission.

The revetment is for a pre-1978 house. At 30 Bradford Road, the house is on the coastal bank; the foundation itself is an existing vertical seawall. The changes that have been made to the plan that was originally proposed include taking away the groin structure at the end of the revetment and changing the rock structure itself to a rough surface from a smooth surface for better wave dissipation. The coastal bank provides sediment to the beaches at and adjacent to the property, so the proposal is to cover the wall with 12" of sand that would serve as a source of sediment across the wall with a permanent Condition attached to the properties' deeds requiring periodic replenishment of the sand over the top of the wall. The continuing condition would include a trigger that would be a mark on the stone at elevation 8. Applicant stated that as a condition of approval of the permit, the applicant would agree to the ongoing replenishment of sand over the top of the structure in a manner described on the plans provided.

At 30 Bradford Road, the foundation is a vertical seawall and the proposed sloping structure is an improvement and meets the interests of the Wetlands Protection Act and helps protect the neighbors. The applicant changed the design of the wall ends so that the wall goes around and faces out. Mr. Rosen believes Mr. Baker's property is a coastal bank and not a dune. Another marker would be on the stone at the end of the wall which would also be a trigger for additional beach nourishment as noted and conditioned above.

According to Peter Rosen, at 20 Bradford Road, there is a high rate of erosion. The re-nourishment requirements will also apply here, with a marker at elevation 8.0' and nourishment required up to elevation 12.

Tom Gill asked if the nourished areas require plantings. Mr. Rosen recommends plantings from the top down to elevation 10 feet only; this preserves the recreational value of the beach.

Joe Grady asked how to ensure sand is replaced once the marks become visible. Mr. Rosen suggested the neighbors will be able to see the marks and the permanent Condition attached to the deed will require re-nourishment when the mark is visible. Joe Grady commented that it then falls on the Town to enforce these provisions, and could result in an expensive legal issue. He asked for ways to make it more iron-clad, perhaps by permanent deed restriction. Robb D'Ambruoso asked about funding and the approximate cost of re-nourishment; the estimate is \$40-\$50,000 per re-nourishment event. Robb D'Ambruoso then asked how frequently it might be needed based on historical information; Mr. Rosen said it could be as often as every year. Robb D'Ambruoso suggested that it may not be an affordable solution.

Gene Guimond, Mr. Baker's counsel, said they would be fine with a deed restriction. Tom Hammond, representing Mr. Patel, also said a deed restriction would be acceptable, and it is not arguable so legally simple to enforce. Joe Grady said the scope of the replenishment would need to be spelled out with very specific requirements including provisions for either replenishment of the sand in the event that the property owner declines the obligation to complete the work or provisions.

Rick Grady presented the plan revisions. The revetment with the sand in place will be at a slope of 2.5:1; with a thick layer of sand at the base of the stones. There are specifications for plantings, and the vertical concrete wall around the deck has been eliminated; they will taper the stone back down to the deck.

Joe Grady asked how far out the wall at 30 Bradford Street goes before sloping down; it appears that it goes out 7 feet before tapering down. Joe Grady wanted to know how much of the beach will be occupied by the wall; it appears that 14-15 feet will be covered before the wall goes below grade. Rick Grady said the high tide line is 25' from the deck and the wall will be 15-20 feet from the high tide line; Joe Grady said the wall will be occupying a lot of the beach and perhaps it should be brought closer to the deck.

Rick Grady said they focused on the Duxbury Wetlands Regulations and not the Wetlands Protection Act because the Town regulations are more restrictive than the State regulations.

Corey Wisneski asked why there are 2 ramps; at Bradford the ramp is for foot traffic, but wanted to know the purpose of the second ramp. The second ramp is a private ramp for Mr. Patel, and in addition the stairway on that property will stay in place. Joe Grady said the ramp to the north protrudes significantly on the beach, and suggested turning it perpendicular to the bank or find other ways to shorten the ramp.

Joe Grady said that the plans are confusing and that existing conditions should be darkened and proposed work lightened.

Stan Humphries of LEC, a coastal geologist and the consultant hired by the Conservation Commission, said he believes talking about beach nourishment is 'putting the cart before the horse.' The Bylaws require minimum or no adverse effects, and the loss of beach is an adverse effect; beach nourishment is done as a way to minimize adverse impacts. The area between the revetment and the house is lost, and the question is whether nourishment compensates for this and whether the Commission can interpret that as no adverse effect.

He said the State Regulations should also be addressed, as well as the regulations protecting pre-1978 structures. The regulations require a demonstration that there are no other feasible alternatives, which could include moving the house, using fiber logs to wrap the sand, to beach nourishment and vegetation. An analysis of the feasibility of the alternatives must be done. He questioned why the concrete wall is still shown on the plan view but not on the detail.

Stan Humphries also said that the commission is lacking information about how the project meets performance standards especially as regards the State regulations and also lacks an analysis of other alternatives. The structure at 30 Bradford Road has a coastal bank on the landward side of the house, the proposed work is on the beach. If a revetment is built into the slope, it should be kept off the beach. The revetment should not be built out onto the beach, it should be built into the upland.

Sam Butcher asked if the house foundation at 30 Bradford Road is a seawall, how can building something on the beach be permitted? There is a seawall present, how can another structure be allowed in front of it; this is counter to the regulations.

Mr. Rosen said rip rap is used in front of vertical walls in many places. Stan Humphries suggested that an alternative is to move the sloped revetment up tight to the house foundation and put the revetment under the deck. Rick Grady said this would prohibit access to the sliders and the boulders up against the foundation will affect the structure.

Tony Kelso of Elder Brewster Road said that where there are native, woody shrubs, the bank has held and not eroded. He also asked about the drainage on the property and the increased paving which has increased erosion. He suggested that plantings be tried before leaping to a major construction project. He said that the house at 30 Bradford Road was started in 1976 but was completed after 1978 (referencing a Land Court decision).

Stan Humphries said the damage to the bank is episodic, not a situation of continual sediment contribution to the beach, which lends itself to other measures such as fiber logs.

Mr. Patel, owner of 20 and 25 Bradford Road, said there has been 10-12 feet of upland loss in a year and wants clarity on the next steps to take, because of the time this process is taking. Sam Butcher responded that progress is being made, that a feasibility study of other ways to fix this is required by the regulations; there are steps that must be gone through.

Corey Wisneski asked that the applicant provide additional information about deed restrictions for beach nourishment, specific details of the proposed re-nourishment plan, and planting alternatives to only beach grass.

Joe Grady said he wants to know if this project meets the performance standards of the State and Local wetlands regulations, and an analysis of alternatives and why they are or are not feasible. Occupying a large area of the beach with a structure is a problem for the Conservation Commission; the amount of beach coverage must be minimized.

The applicant asked that the hearing continuation be to a date in mid-November due to travel plans of one of the consultants.

On a motion by Tom Gill, seconded by Dianne Hearn, it was voted 7-0-0 to continue the hearing for SE18-1698, 20 Bradford Road, to November 17 at 7:15 pm.

On a motion by Sam Butcher, seconded by Dianne Hearn, it was voted 7-0-0 to continue the hearing for SE18-1697, 30 Bradford Road, to November 17 at 7:16 pm.

**CONTINUATION OF PUBLIC HEARING; HUMMOCK LLC; 71 OCEAN ROAD NORTH;
SINGLE FAMILY HOME ON PILES, DRIVEWAY, UTILITIES
SE18-1707**

On the request of the applicant, the hearing is being continued. On a motion by Robb D'Ambruso, seconded by Dianne Hearn, it was voted 6-0-0 (with Sam Butcher abstaining) to continue this hearing for SE18-1707, 71 Ocean Road North, to 7:10 pm on October 6.

ADMINISTRATIVE MATTERS

SE18-1681; 237 King Caesar Road: Joe Grady has inspected the property, the required documentation has been submitted, the project conforms to the Orders of Conditions and he recommends Certificates of Compliance be issued. On a motion by Tom Gill, seconded by Diane Hearn, it was voted 7-0-0 to issue Certificates of Compliance for SE18-1681, 237 King Caesar Road.

SE18-1656; 192 Powder Point Ave: This is not ready for approval and will be on the next meeting's agenda

EXECUTIVE SESSION

Sam Butcher made the following motion: I move we go into Executive Session for the purpose of discussing strategy with respect to pending litigation since an open meeting may have a detrimental effect on the litigating position of the Town, if the Chair so declares, in accordance with Mass. General Laws Chapter 30A, Section 21. This Executive Session will adjourn when completed and the Board will reconvene in Open Session. The motion was seconded by Sam Butcher. Roll call vote: Corey Wisneski, yes; John Brawley, yes; Sam Butcher, yes; Robb D'Ambruso, yes; Tom Gill, yes; Dianne Hearn, yes; Holly Morris, yes.

Adjournment: On a motion by Sam Butcher, second by Tom Gill, it was voted 7-0-0 to adjourn the meeting at 9:20 pm.

MATERIALS REVIEWED AT THE MEETING

NOI materials for 80 Pilgrim Byway
RDA Materials for 59 Gurnet Road
NOI Materials for 344 Temple Street
RDA materials for 17 Surfside West
NOI materials for 20 Bradford and 30 Bradford Road