



TOWN CLERK
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DUXBURY, MASS.
Town of Duxbury
Conservation Commission

Minutes of February 23, 2016

The Conservation Commission met on Tuesday, February 23, 2016 at 7:00 PM in the Mural Room at the Duxbury Town Hall.

Members Present: Vice-Chairman Tom Gill; Sam Butcher; Dianne Hearn; Holly Morris; Robb D'Ambruoso

Members Absent: Corey Wisneski; John Brawley

Staff Present: Susan Ossoff, Administrative Assistant

The meeting was called to order at 7:00 PM by Vice Chairman Gill

CONTINUED PUBLIC HEARING; DUXBURY CONSTRUCTION FOR CATALDO; 30 SPRING STREET: STONE SEAWALL SE18-1722

Joe Grady is waiting for advice from Town Counsel about how to implement ongoing conditions in Orders of Conditions.

On a motion by Sam Butcher, seconded by Holly Morris, it was voted 5-0-0 to continue the hearing for SE18-1722, 30 Spring Street until Tuesday, March 8 at 7:10 pm.

251 GURNET ROAD: DISCUSSION

The Commission received a letter from attorney Steven Lundbohm representing Patrick and Maureen Fitzgerald of 247 Gurnet Road. The letter asks for an Enforcement Order for 251 Gurnet Road, next to the Fitzgerald's property. The Commissioners had copies of photos submitted by Mr. Fitzgerald showing a hand dug trench on the 251 Gurnet Road property along the property line between 251 Gurnet Road and 247 Gurnet Road. The trench had cinder blocks stacked inside along one side. Sam Butcher reported that he and Joe Grady visited the site. The Kimballs, who live at 251 Gurnet Road, are trying to direct water so there is no sheet flow over their land but the flow is channelized; Mr. Fitzgerald believes the channelized flow caused erosion along the property line and in his driveway during a recent storm event.

Mr. Fitzgerald stated that he is requesting an Enforcement Order from the Commission requiring the Kimballs to fill in the trench and remove the cinderblocks. He said the trench is 3' wide and 2' deep in places.

Sam Butcher said that at the site visit he observed that some of the cinderblocks are being removed by the Kimballs. In this area several of the neighbors and other people living in the area are doing many things to keep water from coming onto their property during storm events, including installing jersey barriers, raised garden containers, and using gravel to redirect water

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that flows over the seawall and across the properties. He questions whether the Commission wants to have to regulate all these small activities and suggested it is best resolved between neighbors. He and Joe Grady spoke with Mrs. Kimball who said she would pick up the cinderblocks; therefore he does not recommend the Commission issue an Enforcement Order. There are lots of properties in this area where residents are redirecting water. The threshold that is sometimes used in deciding if the Commission should regulate the activity has been whether a machine was used in the process, and whether it is a permanent structure.

Robb D'Ambruosos asked if the Kimballs are amendable to removing the cinderblocks and Sam Butcher said he believes they are but they do not want to remove the trench.

Mr. Fitzgerald said the edge of his yard is falling into the excavated trench. He has attempted to reach out to Mr. Kimball but has not had success. The fence between the properties is listing toward the Kimball property as a result of the erosion. He further believes this qualifies as an excavation; landscapers were hired to do the work over a period of several days, it is not inconsequential. By the definition of not using machinery, he pointed out that a foundation could be dug by hand with enough time. He has owned the house since 2009. He stated that the recent installation of the trench and the cinder block wall created erosion along his property line and in his driveway that did not occur during previous storm events. Mr. Fitzgerald believes Section 3 of the Rules and Regulations regulate the trenching and the block wall construction activities that he concludes are causing the erosion on his property and it is his understanding that this work was conducted without a permit.

Holly Morris asked whether the trenching goes to the property line. Sam Butcher said the fence is the Kimball's but it is unclear whose property it is on. The excavation does go up to the fence.

Robb D'Ambruoso asked if there is an alternative remedy to issuing an Enforcement Order if the neighbors can't work it out between themselves; is there a way to encourage them to settle this matter between themselves. Holly Morris said that the digging is altering the land subject to Coastal Storm Flowage, Section 2 #7 of the regulations.

Tom Gill asked if an Enforcement Order might get the neighbors to talk.

Robb D'Ambruoso asked about the protocol for an Enforcement Order. He asked if the order would be to restore the area back to its original condition or require them to file a Notice of Intent in order to get approval for the trench.

Sam reiterated that he is reluctant to have the Commission involved in disputes between neighbors for this sort of activity.

Holly Morris said these structures are not permanent structures and there is nothing in the regulations about altering water flow or putting up temporary structures.

Mr. Fitzgerald said he understands that property damage is a matter for civil litigation. However the root cause is work done under the jurisdiction of the Conservation Commission.

Robb D'Ambruoso made a motion to issue an Enforcement Order requiring the Kimballs to remove the cinderblocks and fill the trench or to file a Notice of Intent with the Commission for this work. The motion was seconded by Dianne Hearn and the vote was 4-1 in favor of issuing the enforcement order.

ADMINISTRATIVE MATTERS

MINUTES:

On a motion by Sam Butcher, seconded by Holly Morris, it was voted 5-0-0 to approve the minutes of February 9, 2016.

CONSERVATION FUND EXPENDITURES

Banner Environmental

On a motion by Holly Morris, seconded by Sam Butcher, it was voted 5-0-0 to approve the expenditure of \$500 from the Conservation Fund for Banner Environmental to conduct an environmental assessment of the Merry Barn before demolition.

Phillips Tree Removal

On a motion by Sam Butcher, seconded by Robb D'Ambruoso, it was voted 5-0-0 to rescind the vote of February 9, 2015 that approved the expenditure of \$1500 from the Conservation Fund for Phillips Tree Removal to demolish the barn on the Merry Property.

On a motion by Robb d'Ambruoso, seconded by Sam Butcher, it was voted 5-0-0 to approve the expenditure of \$3000 from the Conservation Fund for Phillips Tree Removal for the demolition of the barn on the Merry Property.

South Shore Disposal

On a motion by Sam Butcher, seconded by Holly Morris, it was voted 5-0-0 to approve the expenditure of an additional \$1000 for South Shore Disposal (\$2631 was previously voted on 1/26/2016) to pay for an additional dumpster with an allowance for extra tonnage for removal of a barn on the Merry Property.

Adjournment: On a motion by Sam Butcher, second by Dianne Hearn, it was voted 5-0-0 to adjourn the meeting at 7:45 pm.

MATERIALS REVIEWED AT THE MEETING

251 Gurnet Road pictures and letter
Draft minutes of February 9, 2016