

*Town of Norwell*  
**BOARD OF APPEALS**  
**Business Meeting Minutes**  
**Discussion Session– Damon Farm 40B**

TOWN OF NORWELL  
TOWN CLERK

2015 JUL 30 AM 9:05

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**MEETING DATE:** July 22, 2015  
**TIME SCHEDULED:** 7:30 P.M.  
**LOCATION:** Osbourne Room  
**MEMBERS PRESENT:** Lois S. Barbour, Chair  
David Lee Turner, Clerk  
Ralph J. Rivkind  
**MEMBERS NOT ON PANEL:** Philip Y. Brown, Vice-Chair  
Thomas P. Harrison  
**OTHERS PRESENT:** Nancy Hemingway, Conservation Agent  
John C. Chessia, P.E., Board's Consulting Engineer  
R. W. Galvin, Town Counsel teleconferenced at 8:42 by Chair's request  
**APPLICANT:** Jeffrey A. Tocchio, Esq. – Applicant's attorney  
James W. Burke, P.E. – The DeCelle Group

The Damon Farm business meeting discussion scheduled at 7:30 P.M. relating to the proposed project changes described in Attorney Tocchio's letter of May 12, 2015, to the Board of Appeals to add 2-car garages to certain units, was called to order at approximately 7:45 P.M. The Applicant has requested that the Board of Appeals make a determination as to whether adding a second bay to several unit garages constitutes a change that would require a new public hearing under 760 CMR 56.05(11).

Mr. Tocchio noted the owner's absence and stated Mr. Nick Trifone was unable to attend.

Mr. Tocchio noted at an earlier walkthrough on the site with Dan Gilmore of DEP relating to the currently in force Superseding Order of Conditions and Settlement Agreement, the site appeared to be in order except for removal of phragmites and concerns about certain areas of temporary filling.

An amended order request by the Applicant from the DEP has not yet been submitted, as Mr. Tocchio felt the ZBA needed to make a determination about whether the proposed change will require reopening of the public hearing or is a "minor" change under DHCD regulations. Certain details were presented relating to changes in the permanent and temporary no-touch areas. It was noted that Unit #11 is proposed to be very close to a no-touch area. Mr. Tocchio expressed a desire to present a more fine-tuned plan approximating those on the ground for the submission to the DEP. He pointed out that Condition 38 of the DEP order relating to deed restrictions and filling of wetlands provides limits of 4,506 sq. ft. with an additional 1,000 sq. ft. temporarily during construction. The 3,506 is a not to exceed number with the temporary number reduced to only 502' (6:00 on recording).

Conservation Agent Nancy Hemingway reminded those present that the site visit DEP statements only extended to the Order and not to any proposed change or modification.

Mr. Tocchio stated there is an ability to be flexible within the project design and the plans can be amended to offset any infringement on the wetlands and replication areas. The project attorney would like the Board of Appeals to make a determination of "insubstantial change" to present to the DEP and that the ZBA must make that determination prior to application to the DEP by the owner.

Mr. Tocchio indicated there are two units the Owner wants to place under agreement and, therefore, which is driving the push to move the permitting process along as quickly as possible.

In response to member questions, Mr. Tocchio confirmed, as previously discussed, A, B, and C-style units were permitted in the Board's original decision. The A and C units (now A-style only) are 1,769 sq. ft.; the B units are slightly larger with no specific square footage available during the discussion. However, Mr. Tocchio noted there is a



restriction in the Affordable Unit section under Condition No. 27, limiting those units to 2,200 sq. ft., which Board members indicated seemed odd and perhaps should have applied to all units.

Member Barbour stated the key issue should be whether or not the proposed changes "work" and that it is time for the Applicant to go to DEP. Although Mr. Tocchio says the project design does "work", Member Barbour noted there have been previous issues relating to incorrect elevations and drainage that did not work as designed. Project Engineer Burke agrees there have been differences but there have been improvements as a result. He noted that some earlier retaining walls have been changed to berms based on elevation. He further claimed that not much has changed but the detention basin design was improved.

Mr. Tocchio wants to match up conditions on the ground to what will be submitted to the DEP. The Board's consultant indicated that no building permit can issue until all of site work is satisfactorily accomplished.

There was a discussion about whether the local Conservation Commission should or can be involved, as Conservation Agent Nancy Hemingway stated no information about the proposed changes has been received except changes near wetlands, which the Commission believes are a "major" change to the project.

Member Turner wants the Applicant to go to the local Conservation Commission. Agent Hemingway indicated she would place this matter on the next meeting agenda on August 4, 2015.

Mr. Tocchio explained the situation with the potential buyers and indicated the Board can condition its determination "any way the ZBA wants" but is particularly concerned about the efficiency of the process.

The waivers on p. 21 of the Comprehensive Permit relating to Norwell Wetlands Protection By-law Article XVI-a §2B precludes activity within 15' of resource areas. Mr. Chessia stated concern about the practicality of completing work without disturbance of the "no touch" areas during construction and for later maintenance. Mr. Tocchio noted Section 3.4 (pp. 5-6) in Settlement Agreement, which on copies presented was signed by DEP and Town Counsel on 5/2/08.


Member Turner cited Sections 12, 13, 14 on p. 3 that "work shall conform to plans and any change in Condition 12 above shall require the applicant to file new notice of intent" and also with the ZBA. He also stated the ZBA relies on the Norwell Conservation for its input.

In response to a text request from the Chair, Town Counsel R. W. Galvin called in almost an hour into the meeting and was placed on speaker-phone to participate in the discussion about the Conservation Commission's past, present, and future involvement. Mr. Galvin noted he had been heavily involved in the Settlement Agreement with the DEP and still has all of his files. He confirmed the Board's wetlands technical expertise is obtained from the Conservation Commission and asked Mr. Tocchio if he would be willing to appear before the Commission, which was agreed upon. Mr. Galvin offered to attend the Conservation Commission's meeting on August 4, 2015 (1:20:25), especially as Mr. Tocchio would be on vacation out-of-state on that date to which Mr. Tocchio assented.

Mr. Galvin indicated the applicant should immediately provide a written extension of time that could be handwritten but must be filed with Town Clerk. After further discussion, Mr. Tocchio agreed to provide a written extension letter to September 16, 2015, to allow time for all to move forward. The Board agreed to schedule a meeting as soon as the necessary information became available.

The business meeting was adjourned at 9:15 P.M.

*These minutes have been approved with reading of the minutes waived by unanimous vote of the Board of Appeals at a public meeting duly held on 29 JULY 2015, in accordance with M.G.L. c40A, Section 11, and the Massachusetts Open Meeting Law.*

Signed:   
As Clerk/Assistant Clerk

Date: 29 JULY 2015  
TOWN CLERK  
TOWN OF NORWELL

Copy filed with: Office of the Town Clerk