

**MINUTES - CONSERVATION COMMISSION
TUESDAY, NOVEMBER 24, 2015 7:00 p.m.
TOWN HALL, HEARING ROOM 3, 2ND FLOOR
870 MORaine ST., MARSHFIELD, MA**

Approved 3/1/16 4-0-0

Members present: Robert Conlon, Chairman (RC), William Levin (WL), Frank Woodfall (FW), Chad Haitzma (CH), Bert O'Donnell (BO'D), and Jay Wennemer, Conservation Agent (JW).

RC motioned to open the meeting at 7:00 p.m., FW second, motion passed 5-0-0.

MINUTES 1/6/15; 1/20/15; 2/3/15; 2/17/15; 3/10/15; 3/24/15 RC motion to accept, WL second, passed 5-0-0.

BUSINESS

- Vote & sign Orders of Conditions for closed hearings
 1. 2590 MacKinnon, 658 South River Street – FW good
 2. 2592 Morris-Hipkins, 955 Careswell Street – item D – talked about 100' CR – add to Orders
 3. 2595 Tetrault, 304 Ocean Street – porous pavers item D (to park under)
 4. 2594 Kittredge, 3 Atlantic Street – FW good
- Scheduled Meetings: December 8, 2015, December 22nd
- Arthur Hale – Did not attend meeting

EXECUTIVE SESSION

ENFORCEMENT ORDERS

REQUESTS FOR CERTIFICATES OF COMPLIANCE

Backburner:

1. 1658 Heaney, 29 Farragut Road
2. 2324 Wallace, 110 Damon's Point Road
3. 1090 Peterson, 219 Ridge Road
4. 1827 L. L. Smith, 60 Macomber's Ridge
5. REQ-PCC-1925, Cushing Construction (Parsonage St.) Garden Gate
6. 2381 NSTAR, Pine Street
7. 1318 Darman, Chestnut Hill Trust, Holly Road
8. 2546 Hutchinson, 499 Union Street

Current:

1. 1051 Hale, 10 Hutchinson Road
2. 1258 Driscoll, 10 Hutchinson Road
3. 2003 Driscoll, 10 Hutchinson Road
4. 2511 O'Brien, 1215 Ferry Street
5. 2543 Reed, 58 Keene Road

RC motioned to issue 1,2,3, and 5 – FW second, passed 5-0-0. Hold off on SE42-2511

REQUESTS FOR DEVIATION

REQUESTS FOR EXTENSION

SE42-2190 Flagg, 42 Cove Street

SE42-2191 Flynn, 46 Cove Street

SE42-2195 Arsenault, 50 Cove Street

RC motion to issue all extensions, WL second, passed 5-0-0.

NEW BUSINESS

Update on Kaufman, Ocean Street – wanted to add 2 feet to existing foundation. JW recommended pilings. They wanted to jack it up and save the structure so they couldn't drive pilings. Pictures taken yesterday show what's left of the house, 10 x 8 or 10 x 12 piece of the flooring left and turret. House is gone. Had quite a discussion about the foundation that should be there; Building Inspector determined it should be pilings; was appealed to the State and over-ruled. JW said it is significant that we were misled about what was going to happen on site. WL asked what can the Commission do. JW said 'be more careful in the future'.

Advice from Rebecca Haney, Coastal Zone Management - Conservation can decide what's required to protect resource area; we can over-rule Building Code in such cases. Building code is about the structure. We can require pilings and the Building Inspector must incorporate our Orders of Conditions in his construction documents.

PUBLIC HEARINGS

7:00 2593 Wienert, 145 Revere Street – had been continued until Board of Health approved their plan. CH motion to close, with conditions of moving shed, etc. FW second, passed 5-0-0.

7:00 2589 Leatherbee, 22 Acorn Street - BOH still reviewing. RC motioned to continue to 12/8 WL second, passed 5-0-0.

7:00 RDA 15-08 Howard, 18 9th Road – RC read notice of public hearing. CH hearing officer. Ellen Howard present. There's been an existing wall, about 3' at the highest, starts between her property and the property next to her and runs almost all the way to 10th road. Sand slopes down to about 1'. Robert Brown and Herbie Ott owned the houses at the time and they built the wall. Wall is now falling down, south end has separated and falling into her yard. The proposal is that all five properties that are affected chip in and fix the wall. No obstruction of water flow; it's at dune level and drops down 3' into her yard, where the new seawall is.

CH said this presents Conservation with the issue of do we have jurisdiction and environmental factors. Was out on site, but it was not possible to tell whose wall it is. JW said this is Land Subject to Coastal Storm Flowage. CH said this is a NOI process. Mrs. Howard said she was hoping, since she's not changing the landscape, there'd be no jurisdiction issue. RC noted Conservation does have jurisdiction – that's what the Notice of Intent is for. Mrs. Howard said they are proposing gravel footing and using interlocking cinder blocks.

JW said it is a Barrier Beach and LSCSF – any waves coming over the seawall flow through that area. If it was a new structure or didn't already exist, we would not permit it - State says 'no solid foundations on a Barrier Beach to stop flow of water or divert it'. The coastal storms put huge amounts of water into this area. Erosion capabilities of that system can be enormous. As we learn more about Barrier Beaches, they become more restrictive about what's allowed. The issue for Conservation is, should it be rebuilt – think safe answer is no, but what do you put in its place? Can use various plantings and stabilize sand dune with beach grass. We need to think about that – simple answer is we should find a positive determination and the proposed work needs a permit. We should look at some alternatives to a retaining wall you might consider. If this Commission approves a retaining wall, the State may supersede our decision and deny it. CH asked JW what kind of guidance can we give the applicants; JW said there is an outfit on the Cape that deals with plantings and "soft measures".

Mrs. Howard asked if she would appeal to the State, or send in the plans. Peter Howard said there are two garages above their property, and if this wall collapses, they'd slide down into his yard. Very top of this wall is at sand level. JW – under the State Wetlands Protection Act - DEP waits until there is an appeal. An appeal of the By-law of the Town for our decision is to Superior Court. JW – don't think the State would allow a solid wall. JW felt the Commission should find a Positive Determination #3.

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Maybe JW, the State and Mrs. Howard can see what they would allow; might be some other method. WL asked if it is possible that a firm like the one on the Cape could come up with a solution that would satisfy you and stabilize those buildings you're worried about? Marlene Howard – neighbor and relative – said the top of this wall doesn't deter the ocean because it's at the level of the street – they happen to be lower. Motion to issue Positive Determination #3 by CH – WL second, passed 5-0-0.

7:05 2596 Howes, 110 Riverside Circle - RC read notice of public hearing. Rick Grady, Grady Consulting, LLC, presented. This is an existing home with failed septic system. Adjacent to North River – flags depict wetlands. Lot slopes from elevation 18 down to elevation 8 on low side near the marsh. Flood Zone AE at elevation 9. Driveway is at elevation 12'; existing system is septic tank and leaching field. Proposing to install 1500 gallon tank and pump chamber in same location; pump up to front yard. Groundwater at 6 and 6.5 feet. Putting it in a location where existing grades can be restored. Balances setbacks to adjacent wetland areas. Did look at relocating septic tanks for this, had a plumber go in, but due to existing plumbing and finished basement, not feasible to relocate. Proposing silt sock for erosion control. Don't need to clear any trees; very little change in the grade. JW asked if the Board of Health has made a decision, and if not we should continue. Mr. Grady said they had not made a decision but he would like to close. RC motion to close, FW second, passed 5-0-0.

7:10 2588 McNeilly (Notre Dame) 542 Ocean Street - RC hearing officer – continued from 11/10. Rick Grady, Grady Consulting, LLC, presented. Met a couple weeks ago – failed stone and mortar wall. Met on site with JW. Has been a bit more erosion on back of property causing additional erosion – not significant depth, believes proposed wall will work. Base of the wall is deep enough and at proper elevation.

JW had suggested stone gabions – Mr. Grady said he looked at those but the cost is not significantly different than the blocks and would prefer to stick with the blocks. CH asked if all this is being done as a stop gap measure, hoping the Town will fix the revetment; Rick said it's a solution as long as the rip rap doesn't get eroded. Would like to put stones at the toe of slope. Town is considering some repairs if they come up with the funds. JW spoke with the Town Engineer who said they would have no issue with them working beyond the property bound and suggested Rick may want to send them an email or letter asking for permission to be on Town property.

Are these blocks keyed or pinned one to another? Mr. Grady said they are a friction fit with a 4" lip so they do interlock. RC said he thinks it's a good system. WL asked what kind of equipment puts them in; medium sized crane Rick said.

JW said, regarding CH's question about the duration of the fix, might last a year or 50 years. On coastal issues we need to think more in terms of 50 year chunks – the coast is changing a lot, sea level rise, bigger and more frequent storms, beaches are disappearing – much more temporary than it was 20 years ago. JW – if you're going to replace rip rap in front, disassemble it and put in heavy geo-textile fabric, then replace the stones. Will put geo textile in Orders. RC motion to close, WL second, passed 5-0-0.

7:10 2566 Roderick, 2104 Ocean Street – Applicant has requested a continuance to 12/8. RC motion to continue to 12/8 at 7:30, WL second, motion passed 5-0-0.

7:10 25__ Mahaney, 46 Preston Terrace - continued from 11/10. Mr. Mahaney, Mr. O'Leary, Atty. Creed present. FW asked if Mr. Mahaney has talked to an engineer. Mr. Mahaney said they agreed to grade, no water through neighbor's yard.

Cutting back from road pitched from your property and a swale to keep the water off Mr. O'Leary's yard. Mr. Mahaney also submitted materials to State DEP that they needed before they would issue a file number. Small as built plan. FW noted the Commission can't close the meeting until we get file number from DEP. FW – sloping everything back to Mr. Mahaney's property so water won't go into neighbor's land.

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Atty. Creed asked for a time frame for the recommendations, and asked if Mr. Mahaney submitted an 8.5 x 11 plan to the DEP and Conservation. You both should have the same plan. FW – DEP just received it today. Plan is dated 10/13.

If we don't have it by the Thursday before the 22nd, ask for a continuance. Mr. Mahaney said he needs Conservation's input. Atty. Creed would like a copy of anything going out. FW motioned to continue to 12/22 at 7:05, WL second, motion passed 5-0-0.

7:15 2567 Wallace, 35 Water Street – JW said the applicant has gone back to the drawing board – does not want to go up on pilings. RC motion to continue to 12/8 at 7:15, FW second, motion passed 5-0-0.

Bert O'Donnell abstained from the following hearing:

7:25 2586 MYC, 11 Ridge Road - continued from 11/10. FW hearing officer. Had been continued for Div. of Marine Fisheries letter that was handed out at the previous meeting; Commission wanted to review. Kevin Maguire and Bill Kerrigan present. Only two items in letter – their first question is why the depth of the dredge. Mr. Maguire said the reason is the Town received authorization to dredge to minus 6 and we were going to try to get down to that level. Their second question was the frequency of the dredging occurring there – thought we'd have a longer stretch between dredging. Also, the idea that as this silts in, it's limiting the use of the slips and causing damage to the boats and motors. That's why we'd like to go deeper. Also, Marine Fisheries wanted them to go out 25' then start the dredging. Would eliminate about 14-15 slips.

Mr. Maguire stated he thought their requirements were unreasonable. CH – did you tell them that? Kevin – no. Will be filing with MEPA. WL asked what the environmental issue would be. JW – never heard of that 25' setback. Marine Fisheries are not regulatory in this matter, we are JW said. They are trying to protect bottom habitat; only impact JW can see is reducing the amount of shell fish habitat by a small amount. Marine Fisheries would like Conservation to incorporate their proposals in our Orders. FW motion to close and accept plan as is, RC second, motion passed 4-0-1, BO'D abstained.

7:30 2591 McGillicuddy, 64 Foster Avenue – Applicant has requested a continuance. RC motioned to continue to 12/8 at 7:20, FW second, motion passed 5-0-0.

7:40 2565 Vacirca, 20 Wilson Road - Applicant has requested a continuance. RC motioned to continue to 12/8 at 7:25, FW second, motion passed 5-0-0.

Jim Kilcoyne present – interested in being on the Commission. Went through permitting for a dock a few years back, familiar with the process. First dealing with the Commission was purchasing the property next door to stop development of a home there, then bought the next six acres.

RC motioned to adjourn at 8:50, WL second, motion passed 5-0-0.

Respectfully submitted,
Lois Keenlside
Marshfield Conservation Commission

Jay Wennemer, Conservation Agent
Robert Conlon, Chairman
William Levin
Frank Woodfall
Chad Haitsma
Bert O'Donnell