

**APPROVED MINUTES - CONSERVATION COMMISSION
TUESDAY, JANUARY 21, 2020 7:00 p.m., HEARING ROOM 3
TOWN HALL, 870 MORaine ST., MARSHFIELD, MA**

APPROVED 2/4/2020 5-0-0

MEMBERS PRESENT – James Kilcoyne (JK) Chair, Bert O'Donnell (BO) Vice Chair, Frank Woodfall (FW), Rick Carberry (PC), Craig Hannafin (CH), Bill Grafton (BG) Conservation Administrator

MEMBERS NOT PRESENT – Arthur Lage (AL)

CALL TO ORDER

- JK makes a motion to open the meeting at 7:00 pm. PC second. Approved 5-0-0.

MINUTES

- The minutes of the January 7 meeting were presented for approval. No changes were made on the floor.
- JK motions to accept the January 7, 2020 minutes as written. CH second. Approved 5-0-0.

CHAIRMAN'S ADDRESS

- JK announces to all present that starting on February 4, 2020 Commission meetings will start at 6:30 PM.
- DPW has booked Hearing Room 3 on April 21ST as Monday, April 20th is a holiday. BG is trying to secure a different hearing room for that date.
- The Commission briefly discussed the annual MACC Spring Conference on February 29th at Holy Cross. JK encourages attendance and option to complete Fundamental courses and beyond via online sessions.
- JK advises all present that he intends to meet with various committees and subcommittees, including the Agriculture Commission, Recreational Trails Committee, Open Space and CPC over next the 6 months. JK asks if any Commissioners are associated with these Committees? BO is a member of the CPC and attends RTC meetings.
- The Commission continued its discussion on moving certain business items to front of meeting at 6:30, plus a possible 30 minute limitation for each discussion. BG feels this may give the Commission an opportunity to address the least time consuming items prior to the start of the public hearings at 7.
- BG presents volunteer and picture release document that has been approved by Town Counsel and Town Administrator. BG advises that there may be changes introduced by one or so members of other committees. BG has advised that this was based on MIIA at the suggestion of the Town Administrator then revised by BG with review and final approval by Town Counsel and Town Administrator. JK states he is satisfied and will complete and sign the form. All Commissioners present sign for future use. CH has already completed and signed.

PUBLIC HEARINGS

- Prior to the start of the hearings, JK advises that the hearings for 922 Summer Street Realty Trust (2842), 613 Careswell Realty Trust (2841), Holbrook (2816), Tedeschi (2850), Gomes (2829) and Curtis (2825) are being continued. Continuations are also posted outside the entrance to the meeting room

19-48 Wood, 430 Holly Road (Garage & Deck).....NEW (Bert)

- JK reads the legal ad. Hearing Officer BO confirms administrative requirements are complete.

- Applicants Julie Wood (JW) and Andrew Wood (AW) present. The proposed activity is to construct a two-car garage and deck over existing driveway with living space above. There are two prior Orders of Conditions associated with this property, SE4-202 and SE42-1891, both with recorded COCs. JW indicates that there are trying expand living space for their children. JW indicates that they understand that the process may require a Notice of Intent and additional time to meet deadlines will be required.
- BG provides background. BG was made aware of the proposed work through a building permit review. BG requested a revised site plan with a new wetlands delineation, as the old line under SE42-1891 was expired; he also requested the addition of conservation markers to the rear of the lot so as to prevent further encroachment to the wetlands. BG agrees with the wetlands delineation. The revised site plan was received by the filing deadline for this meeting. At a site visit on 1/13, BG observed the wetland delineation flags but not the conservation marker stakes; he also noted multiple temporary structures, including a domed cloth covered shelter, staked firewood, and fencing surrounding a bee hive colony, to the rear of the lot within the buffer zone. In a conversation with BG on 1/17, the applicant indicated he wished to further modify the plan to alter steep grades in the rear of the lot and add a retaining wall; BG advised that this would require a Notice of Intent.
- BG suggests that the Commission deny the proposed work by issuing a Positive Determination #1 requiring a Notice of Intent, approve the wetland delineation by issuing a Positive Determination #2A and Positive Determination #5 as the Chapter 294 Wetland Bylaw applies.
- BO asks for comments from the public; none.
- BO motions to close and require a NOI, Pos. #1, Pos. #2A and Pos. #5. FW second. Approved 5-0-0.

19-49 Patrolia, 2 Trouant's Island (Septic Repair).....NEW (Rick)

- JK reads the legal ad. Hearing Officer PC confirms administrative requirements are complete.
- Greg Morse (GM), Morse Engineering, presents for applicant. The proposed activity is the construction of a new septic system which will be located almost entirely outside the setback to the coastal bank. The only work proposed within the setback is abandonment of the existing system.
- BG notes that he became familiar with the property during a site walk pursuant to a Certificate of Compliance associated with the previous work at the property; he also noted there had been some clearing of shrubs but that a vegetated area remains. Conservation markers may prevent future encroachment. With respect to the septic upgrade, BG recommended that the project be approved with the standard conditions of approval including the state exemption 310 CMR 15 presumption concerning Title V.
- PC asks for comments from the public; none.
- PC motions to close and approve the project as a DOA, Pos. #5 for the Bylaw, Neg. #5 for the state exemption and Neg. # 3, with special conditions drafted by BG. FW second. Approved 5-0-0.

28 Martin, 200 Oak Street (replace existing in ground pool).....NEW (Frank)

- JK reads the legal ad, and advises that the matter must be continued pending receipt of a DEP file number.
- JK motions to continue the hearing to February 4, 2020. PC second. Approved 5-0-0.

2847 Deprossino 556 Holly Road (Lot 8) (New SFH).....NEW (Bert)

- JK reads the legal ad. Hearing Officer BO confirms administrative requirements are complete.
- Frank Gallagher (FG), Gallagher Engineering, present for applicant along with Rich Flynn (RF), applicant's son-in-law. The proposed activity is the construction of a single-family home and septic disposal system. The subject property is located within the Chestnut Hill subdivision and FG has been

involved with the subdivision since 1998. The proposed work is the first single family home lot within the subdivision that has come before the Commission. FG discusses the variance request letter as the septic piping run will be within the 100 foot setback of a potential vernal pool and 50-foot no disturbance associated with the undeveloped property. FG states not approving the project will result in an unconstitutional taking.

- BO asks BG for comments. BG notes that, as a new and undeveloped lot, Town Bylaw Section 505-10B applies, requiring no disturbance within the 50 foot setback, as well as 505-10C, imposing additional restrictions within the 100 foot setback to vernal pools. The proposed piping and septic system are both within the 50 to the BVW and 100 to the VP. Applicant has recently submitted a variance request letter stating that the property has been heavily tested for adequate soils for the septic system; BG agrees that the proposed septic location may be the only viable location on the lot, but has requested alternative locations which have not yet been provided. A NHESP response letter for the Commission file and a MESA filing will also be required. Town Counsel (TC) has provided an opinion that there is not enough evidence to conclude that there is a constitutional taking with regard to a denial by the Commission. Pending additional input, TC seriously doubts that there is any valid taking claim.
- BG provides a marked Planning Department Plan to the Commission depicting a portion of Lot 8 will be merged with 781 Ferry Street. The area to be merged is an intermittent stream and buffer zone.
- BO asks if the septic system can be located on Lot 9. FG notes that this lot is owned by a private owner not the subdivision owner. BG notes Lot 7 is owned by Chestnut Hill Estates which is currently a possible alternative location for the septic system.
- PC asks about other locations on the lot for the septic system.
- FW and PC ask for soil logs to confirm FG's comments that the site has been heavily tested for compatible soils for the septic system.
- The matter was continued pending receipt of additional information/documentation to include NHESP response letter, MESA Review filing, septic test pit logs, alternative locations for septic system, and site plan revision to include conservation markers; and possible conservation easement prohibiting any disturbance beyond the 100 foot setback.
- BO motions to continue the matter to March 3, 2020. CH second. Approved 5-0-0.

2849 Marsh, 110 Bartlett's Island Way (Revetment).....NEW (Jim)

- JK reads the legal ad and, as Hearing Officer, confirms administrative requirements are complete.
- Greg Morse (GM), Morse Engineering, presents for applicant. The proposed activity is the construction of a hybrid revetment wall with gaps to dissipate wave energy and plantings above and below the wall. The spring tide elevation is 5.88 feet. Stakes depicting the toe and top of the revetment stone were installed. The site plan includes native plantings species and use of coir logs. GM provides pictures depicting the stake locations.
- JK asks BG for comments. BG states that the subject site was the focus of Enforcement Order 19-04 for filling the buffer zone with stone revetment without a permit. The homeowner subsequently removed all of the stone and returned months later for a due diligence review with BG, at which time BG suggested the hybrid option. BG agrees that some degree of armament is required on the property. With respect to design, BG noted that there should be no synthetic materials used other than some geotextile installed behind the revetment wall. The sides of the revetment should be tapered to reduce impacts to the neighbors' properties and, if possible, rounded stones should be used to dissipate wave energy. He would like to see the proposed revetment pulled back into the lawn, while maintaining the top planting.

- BG and JK visited the site and observed the stakes and the established vegetation including high tide bush.
- JK polls the Commission on whether to require that the revetment be pulled back: FW no; PC yes; BO no; CH yes; JK yes due to possible impacts on neighbors. The matter was continued pending receipt of a revised site plan pulling the proposed revetment back into the lawn to save as much of the established native plants as possible.
- JK motions to continue the matter to February 4, 2020 pending receipt of a revised site plan pulling the revetment wall back into the lawn. BO second. Approved 5-0-0.

2835 Waterman Avenue Private Rd Assoc, 49 & 54 Waterman Ave (Fence).....cont from 11/5/19 (Jim)

- Continued Hearing. Hearing Officer JK confirms administrative requirements are complete.
- Commissioner CH recuses and leaves the hearing room.
- JK address the audience requesting that all parties respect one another and only speak to introduce new contributions. JK reminds the audience that the proposed activity is the installation of a fence within the buffer zone to coastal dune and within land subject to coastal storm flowage. An RDA was originally filed and approved by the Commission in April 2019, which was appealed to MassDEP, which issued a Superseding Determination of Applicability on August 21, 2019 requiring the filing of a NOI on grounds that the proposed fence is not a minor activity due to its location within land subject to coastal storm flowage, and should be constructed so as not to become a projectile during a storm event. The NOI was filed in a timely fashion, and MassDEP provided comments dated October 24, 2019 requesting details regarding fence material and spacing, and stated the fence should be designed so as to minimize impacts to the coastal dune.
- In response to feedback received at the November 26th public hearing, the applicant's representative, John Zimmer (JZ), South River Environmental, has provided revisions dated January 13, 2020 including the site plan to move the fence outside of the 25 ft setback to the coastal dune and introduce plantings within the setback to prevent the public from walking over the dune to reach the beach. Attorney Kimberly Kroha, representing John Cusick and other project opponents, has pointed out in her letter dated January 16, 2020 that there is a manhole in the same location as the proposed fence, and provided a narrative as to why the project should be denied under the WPA and town bylaw.
- JK asks for comments from the public.
- Bob Shaughnessy (BS), 231 Hampstead Way spoke about the sewer lines installed in the 1970s including the manhole referenced by Attorney Kroha. BS prefers a decision tonight so they can settle in court.
- John Cusick (JC), 12 Waterman Avenue reads Attorney Kimberly Kroha's letter for the record.
- Charles Pesko (CP), 41 Kent Avenue had a fence for many years. It was no issue for first responders nor sewer examination for Town officials.
- Jean Rufo (JR), 55 Vincent discussed police and EMT response obstructions.
- JZ added that dig safe would be called prior to any of the proposed work.
- JC provides rebuttal to CP.
- JC provides rebuttal to JZ that MassDEP is interested in posts not the panels.
- JZ states MassDEP provided comments and a response followed by a revised response was presented to the Commission. JZ states that property rights go to the center of the road.
- After confirming no more residents wishing to speak, JK takes a poll of the Commission to determine if the Commission has adequate information to vote. FW-yes; PC-yes; BO- yes; JK –yes. CH having recused.

- JK motions to close and issue Orders of Conditions with special conditions drafted by BG. PC second. Approved 4-0-0, CH having recused.

CH returns to the public meeting.

2842 Summer St. Realty Tr./Julie Tweed, 922 Summer St (Pier, Ramp & Float).cont from 12/03/19 (Rick)

- The hearing is continued per the written request by the applicant's representative until the next public meeting of the Marshfield Conservation Commission on February 4, 2020.
- JK motions to continue the hearing to February 4, 2020. PC second. Approved 5-0-0.

2841 613 Careswell St. R.T., 613 Careswell St (ATF Fence & Veg Removal).....cont from 11/26/19(Bert)

- The hearing is continued per the written request by the applicant's representative until the next public meeting of the Marshfield Conservation Commission on February 4, 2020.
- JK motions to continue the hearing to February 4, 2020. FW second. Approved 5-0-0.

2816 Holbrook, 26 Cove Street (Revetment Repair).....cont from 7/30/19 (Jim)

- The hearing is continued per the written request by the applicant until the next public meeting of the Marshfield Conservation Commission on February 18, 2020.
- JK motions to continue the hearing to February 18, 2020. BO second. Approved 5-0-0.

2850 Jan M. Tedeschi Trust, 100 Marginal Street (Pier, Ramp & Float).....NEW (Rick)

- The hearing is continued per the written request by the applicant's representative until the next public meeting of the Marshfield Conservation Commission on February 18, 2020.
- JK motions to continue the hearing to February 18, 2020. PC second. Approved 5-0-0.

2829 Gomes, 76 Carolyn Circle (Pier, Dock & Float).....cont from 10/15/19 (Rick)

- The hearing is continued per the written request by the applicant's representative until the next public meeting of the Marshfield Conservation Commission on February 18, 2020.
- JK motions to continue the hearing to February 18, 2020. BO second. Approved 5-0-0.

2825 Curtis, 3 Cove Creek Lane (Dock Repair).....cont from 10/1/19 (Rick)

- The hearing is continued per the written request by the applicant's representative until the next public meeting of the Marshfield Conservation Commission on February 18, 2020.
- JK motions to continue the hearing to February 18, 2020. BO second. Approved 5-0-0.

REQUESTS FOR CERTIFICATES OF COMPLIANCE & EXTENSIONS

1728 Rotondo, 256 Ocean Street [COC]

- BG notes that Special Condition G requires (6) 2ft X 3ft openings a minimum of 6' above the ground surface for the existing portion of the house. This has been partially completed, with 3 openings that do not meet the (6) 2ft X 3ft openings a minimum of 6' above the ground surface. As the Building Commissioner is satisfied with the construction, BG advises that a partial COC be considered by the Conservation Commission, with Special Condition G to be ongoing. Additionally, the applicant has installed a paver patio and gravel driveway without a permit. The Commission requires these to be restored to prior conditions. BG notes that the applicant has worked diligently to bring the house into conformance with the Special Conditions and suggests a partial COC leaving Special Condition G to be completed.

- PC suggests that Special Condition G shall be addressed through review of the original intent of the Orders of Conditions with contemporary standards to be presented by a Registered Professional Engineer or Professional Land Surveyor. The homeowner should get an opinion letter from the Building Commissioner and then apply for a complete COC.
- PC motions to issue a partial COC for the property including removal of the paver patio and asphalt driveway with Special Condition G ongoing. CH second. Approved 5-0-0.

1975 Titone (now Rogers), 372 Highland Street [COC]

- BG observed substantial vegetative removal in the resource area and buffer zone, and required the installation of four (4) permanent Conservation Markers inscribed with Red and White “Marshfield Wetland Resource, No Disturbance” on 4” by 4” rot-resistant, pressure treated cedar or equivalent posts as depicted on the revised As-Built Plan dated January 17, 2020 and prepared by Grady Consulting. He recommends that the COC be issued with this ongoing condition.
- JK motions to issue a COC with ongoing conditions as drafted by BG. PC second. Approved 5-0-0.

2692 Barry, 78 Beach Street [COC]

- BG observed a slight change in stair configuration but otherwise had no issues, and recommended issuance of the COC.
- JK motions to issue a COC for the property. FW second. Approved 5-0-0.

2746 Sleeper (now Ewell), 548 Pine Street [COC]

- BG recommended issuance of the COC.
- JK motions to issue a COC for the property. CH second. Approved 5-0-0.

2749 McGowan, 18 Paddock Way [COC]

- BG advises that he observed incomplete special conditions and recommended that the request be tabled.

2789 Flashner, 206 Carolyn Circle [COC]

- BG advises that he observed incomplete special conditions and recommended that the request be tabled.

ENFORCEMENT ORDERS

Mahaney, 46 Preston Terrace (12/12/18 BG met with TC)	Tamara Macuch, 237 Webster Avenue
Drosopoulos, 7 Lady Slipper Lane (08/15/18 TC Final Notice)	White, 180 Atwell Circle (Escalation letter in Process)
Smith, 38 Liberty Street (11/19/18 KS will set early Dec visit)	Stifter, 102 Bartlett’s Is (unpermitted revetment)
Bednarz/Nouza, 65 Ireland Rd (Unpermitted Cutting <= 50 ft)	

BUSINESS

B1 251 Damon’s Point Road/Restoration Plan / Ed O’Cain and Brad Holmes

- Property owner Ed O’Cain (EO) present along with Brad Holmes (BH), ECR, to discuss the restoration plan prepared by BH in conformance with Enforcement Order 19-07. BH describes the restoration plan that is in conformance with MassDEP Guidelines for wetlands restorations.
- JK asks EO how he could undertake this level of cutting on the North River, a scenic river and home to numerous wildlife species including two nesting Bald Eagles? EO discusses how the cutting took place. He did not think twice about addressing the cutting as the forested area was loaded with vines. He was not aware that he needed a permit to cut the vegetation. He used hand tools and the work was

performed by his family and himself. The North River Commission contacted him and he responded right away to their request to meet.

- JK asks BG for his comments. BG states that the restoration plan was received on time and the applicant was scheduled to attend this Public Meeting on the Marshfield Conservation Commission by BG. BG notes that the restoration plan covers the entire wetland delineation but only 50% of the 0-25 foot setback and none of the 50-foot setback. BG notes that the spacing recommended in the MassDEP Guidelines for wetlands restoration diminishes overall coverage but apparently is the most effective planting method. BG notes that the Commission has been requiring 2-1 plantings in the case of Enforcement Orders and it is difficult to quantify the number and size of the trees cut. This makes it difficult for the Commission to determine if the restoration plan meets the 2-1 requirement. BG also noticed ponding water up gradient from the wetland delineation flags located by BH and the entire area has been cleared of vegetation making it difficult to determine if the wetland delineation is accurate. BG suggests the involvement of a third party consultant that would be paid by the Town as the Ch. 505 Regulations are not clear about who pays for third party consultants under Enforcement.
- The Commission discusses the restoration plan and the possibility of involving a third party. FW advocates for a third party in the case of this property. FW wants to topics to be discussed including the timing and extent of the restoration plantings, the resource area delineations, and the nature and duration of the ongoing monitoring and reporting.
- JK polls the Commission about the involvement of a third party consultant to review the restoration plan and field conditions. FW-yes, PC-yes, CH-yes, BO-yes, JK-yes. 5-0-0.
- JK motions to hire a third-party monitor for the matter. FW second. Approved 5-0-0.

B2 70 Little's Lane / SE42-2494 / Brad White, Nathan Sloane and Commissioners

- Realtor Brad White (BW) and present for Conservation Realty Trust, which manages the property, along with Gail McLaughlin, personal representative to the estate of previous owner R.C. Haufler. All parties review and discuss the planting plan prepared in response to guidance provided at the December 17, 2019 meeting. At that meeting, the Commission requested a detailed planting plan from a qualified wetland scientist that included plant species, caliber, and location. Applicant would like to do the plantings, and then receive a COC for previous filing SE42-2494 and sell the property.
- BG advised that there will be a requirement for two successive growing seasons with 75% success of plantings along with annual monitoring reports for two years. BG proposes the plantings should take place in Spring of 2020 under the guidance of a qualified wetland scientist. The first monitoring report should be prepared and submitted shortly after the Spring plantings.
- JK makes a motion to approve the proposed planting plan as discussed with two years of monitoring, two successive growing seasons and 75% successive planting growth. FW second. Approved 5-0-0

ADJOURNMENT – JK makes a motion to close the hearing. CH second. Approved 5-0-0.

Respectfully submitted,
Liz Anoja, Conservation Administrative Assistant
Marshfield Conservation Commission

Bill Grafton, Conservation Administrator
James Kilcoyne, Chair Bert O'Donnell, Vice Chair
Art Lage Frank Woodfall
Craig Hannafin Rick Carberry