

TUESDAY, JULY 21, 2020 6:30 P.M., ZOOM VIDEO CONFERENCE (HELD REMOTELY)

MARSHFIELD TOWN HALL, 870 MORaine STREET, MARSHFIELD, MA

MEMBERS PRESENT – James Kilcoyne (JK) Chair, Bert O'Donnell (BO) Vice Chair, Arthur Lage (AL), Joe Ring (JR), Rick Carberry (PC), Craig Hannafin (CH), Bill Grafton, Conservation Administrator (BG)

MEMBERS NOT PRESENT – None

CALL TO ORDER – JK motions to open the meeting at 6:30 PM. PC second. Approved 6-0-0 by Roll Call Vote: JR-yes, AL-yes, BO-yes, PC-yes, CH-yes, JK-yes.

MINUTES

- The minutes of the July 7 meeting were presented for approval. No comments or suggested changes were received, and none were made on the floor.
- JK motions to accept the July 7, 2020 minutes as written. CH second. Approved 6-0-0 by Roll Call Vote: JR-yes, AL-yes, BO-yes, PC-yes, CH-yes, JK-yes.

CHAIRMAN'S ADDRESS

- JK notes for the record that meetings will be held remotely until further notice as per the Governor's Emergency Executive Order of March 12, 2020, suspending certain provisions of the Open Meeting Law. All votes will be taken by roll call. Commissioners should identify themselves before speaking, and all parties should mute themselves until they want to speak.
- JK advises that the Commission has reinstated the "three continuance" policy whereby "should an applicant request three continuances or should they fail to properly address questions of the Commission for three hearings, then on the third date the Commission, at their discretion, may open the hearing and deny without prejudice for lack of information." Applicant will be able to reapply when they have all the necessary information to proceed, without having to wait the two year period.
- JK notes that there are five continuances at this hearing and hopes the policy will reduce this number going forward. Applicants are responsible for submitting all required information/documentation, and should ask for a later continuation date if they need more than two weeks to be ready for the hearing. JK also notes that the filing deadline is two weeks prior to the meeting at which a project is being heard; one week prior for previous filings requiring more information. Applicants should request a later meeting date if they cannot meet the deadline.

BUSINESS

B1 Marshfield Police Department - Stormwater structure/ RDA or DeMinimis Activity – Steve Rustieka

- JP Parnas (JP), Weston & Sampson, present to discuss a stormwater basin system within the 100 ft buffer to an IVW but outside the FEMA flood zone; its location as such makes it eligible for an exemption within Chapter 505-10B(2b), but JP would like to know whether this redesign can be approved as a DeMinimis Activity or whether an RDA will be required. The rest of the remaining project work is outside the buffer zone and flood zone.
- JK notes that the standard RDA application has a check box that indicates a project qualifies for an exemption; given this, as well as the scope of the project, he recommends that the Commission request an RDA. BO agrees so as to maintain consistency with recent projects.
- JK moves that the Commission request the filing of an RDA for the Police Facility project. JR second. Approved 6-0-0 by Roll Call Vote: JR-yes, AL-yes, BO-yes, PC-yes, CH-yes, JK-yes.

B2 Request to Update Contact Info on MCC Suggested Qualified Wetland Consultant List – Commission

- This matter was addressed at the July 7 meeting and added to the agenda in error.

B3 230 Webster Street/Council on Aging Proposed Addition/RDA or DeMinimis Activity – Commission

- Applicant representative not present; tabled until August 4.

B4 Waterman Ave 45 & 54/ complaint removal of fence and vegetation removal – Kimberly Kroha

- Attorney Kim Kroha (KK) present to discuss a request for enforcement action related to the installation of a fence at the end of Waterman Ave, blocking access to a coastal dune and beach. As the fence location was in LSCSF and buffer to coastal dune, the Commission required the filing of an RDA and subsequently issued a determination of applicability; this was appealed to MassDEP, which required the filing of a NOI. The Commission issued an Order of Conditions, which itself was appealed to MassDEP. MassDEP issued a determination that the new fence location set forth in the NOI would be acceptable, and this determination in turn has been appealed.
- During the site visit with the MassDEP appeals officer during the appeal of the Commission DOA, all parties were advised to take no action until the appeals process was complete. However, KK contends that the existing fence has no authority to be where it is and, regardless of the outcome of the appeal, needs to be taken down and requests that the Commission issue an enforcement order requiring removal of the fence.
- JK is concerned about jurisdictional overreach, noting that impacts on resource areas are its primary concerns as opposed to legal ownership or public access issues. However, Town Counsel (TC) agreed that the fence should be removed. Thus, JK feels the Commission should issue an EO requiring the fence to be removed within the next 45 days;
- No further comments received from the Commissioners or public.
- JK moves that the Commission issue an enforcement order requiring removal of the fence at Waterman Ave within 45 days, with the manner of removal to be specified in the order. AL second. Approved 6-0-0 by Roll Call Vote: JR-yes, AL-yes, BO-yes, PC-yes, CH-yes, JK-yes.
- John Cusick (JC), 12 Waterman Ave, requests an opportunity to speak about the alleged removal of vegetation from the dune witnessed by two residents, Jeanne Rufo and Phil Antoine and reported to BG on July 8. JC has also provided photographs of the area where the vegetation, mostly Japanese knotweed, was removed; this has been placed on empty lot, 54 Waterman, where the knotweed, an invasive, has taken root. JK notes JC's comments but states that the Commission is not addressing any other issues pending conclusion of the MassDEP appeal process.

B5 90 Old Colony Lane/Discussion and Vote on MOU with Marshfield Airport Commission on Wildlife Management Fence / Commissioners

- The Commission discussed a draft Memorandum of Understanding (MOU) with the Marshfield Airport Commission (MAC) regarding a wildlife management fence that the MAC would like to install on conservation land so as to prevent wildlife from straying onto the airport. The MOU was originally presented at the June 16 meeting, but discussion was tabled to allow the Commissioners time to review the support documents.
- JK spoke with TC, who indicated that the MOU does not encumber the Commission in any way; it only allows the Airport Commission to start the grant application process for the fence, and he recommends that the Commission vote to accept the MOU.

- In response to a query from AL, JK reiterates that the Commission retains its full rights and abilities to enforce the WPA, Chapter 294 and applicable regulations that may impact the fence installation, and acceptance of the MOU does not by itself imply approval of the fence.
- JK moves that the Commission accept the MOU with the Marshfield Airport Commission concerning the proposed wildlife management fence. JR second. Approved 6-0-0 by Roll Call Vote: JR-yes, AL-yes, BO-yes, PC-yes, CH-yes, JK-yes.

PUBLIC HEARINGS

- Prior to the start of the public hearings, JK announces that the hearings for 104 Hartford (2869), 22 Ninth Road (2872), 4 Newport Road (2871), 1213 Ferry (2860), and 34 Marginal (2857) have been continued. BG suggests that JR recuse from voting on the continuations, as he is required to recuse on some of them.
- JR notes that he had to take time from work to review paperwork for the hearings that were continued and, after a brief review by the Commissioners of the circumstances surrounding each continuance, proposes to charge all applicants above, as well as 88 Meeting house (2873) with a continuance under the reinstated “three continuance” policy.
- JK polls the Commissioners as to whether to count all continuations towards the “three continuances” rule. PC charge all, JR all, AL all, CH all, BO all, JK all.
- JK moves that the Commission count the continuances requested for filings SE42-2857, 2860, 2869, 2871, 2872, and 2873 towards the “three continuances” rule adopted by the Commission. JR second. Approved 6-0-0 by Roll Call Vote: JR-yes, AL-yes, BO-yes, PC-yes, CH-yes, JK-yes.

2850 Jan M. Tedeschi Trust, 100 Marginal St (Pier, Ramp & Float).....cont from 1/21/20 (Rick)

- JK notes that Commissioner JR was asked for and gave a vote on the above-referenced matter in error during the July 7th MCC Public Meeting, as he is required to recuse.
- JK motions to close the hearing and issue Orders of Conditions with special conditions to be drafted by BG. PC second. Approved 5-0-0 by Roll Call Vote: BO-yes, PC-yes, AL yes, CH-yes, JK-yes, JR having recused.

20-11 Tetrault, 47 Homeland Drive (ATF Grading, Loam & Seeding).....NEW (Craig)

- JK reads the legal ad. Hearing Officer CH confirms administrative requirements are complete.
- CH notes that the filing is for fill to establish a lawn being planted in LSCSF. Applicant Bill Tetrault (BT) notes he was unaware that he needed a conservation permit for the activity, which involved the grading, loaming, and seeding of an existing lawn.
- BG notes that applicant has been cooperative, and was unaware that the property was in LSCSF although he was aware of the buffer zone in the back. The matter came to BG’s attention through a complaint to the Conservation Office.
- BO asks whether this would qualify as a DeMinimis Activity, as LSCSF has no performance standards. BG feels this could be a possibility down the road if the regulations were modified, but not the way the regulations are currently written. PC agrees with BO but thinks the best choice is to handle the matter as an RDA. In response to a query from applicant, BG explains what an RDA is and the application process.
- CH asks for comments from the public; none. The standard conditions of approval will apply.
- CH motions to close the hearing and issue Determination of Applicability, pos 5, neg 3, with special conditions as drafted by BG. PC second. Approved 6-0-0 by Roll Call Vote: JR-yes, AL-yes, BO-yes, PC-yes, CH-yes, JK-yes.
- BT comments that he is also looking to put a 3 ft fence between the paper road and his house before the end of the summer. JK suggests that BT consult with BG as to what filing(s) may be required.

2873 Fithian, 88 Meetinghouse Lane (Septic Repair).....NEW (Craig)

- JK reads the legal ad. Hearing Officer CH confirms administrative requirements are complete.
- CH notes that the filing is for an emergency septic repair which has already taken place. Board of Health provided a letter to the Conservation Office confirming this was an emergency matter.
- John Zimmer (JZ), South River Environmental, presents for applicant. The septic system at the property had failed and sewage was backing up into the house. JZ talked with BOH and BG, and all parties agreed the matter constituted an emergency situation, and work was completed late June/early July. JZ has since re-visited the property to place new wetland flags, and noted that the area disturbed to put in the new leaching field is already revegetated and stabilized; he observed no adverse effects on the resource areas.
- BG agrees that the matter was an emergency, and while visiting the property requested that JZ re-flag the site, which was done.
- JK would like to know why the Commission did not hear about this matter until after the work was done; and also notes it was set for a hearing without a MassDEP WPA File Number or revised site plan by the filing deadline. JK feels the matter should be continued as the 12 noon, Tuesday, July 28th deadline for submitting additional requested information has lapsed. BO agrees with JK on the need for timely filings but notes that this was an emergency project with extenuating circumstances.
- With respect to the original site plan showing the old wetland line, BG comments that JZ was under the impression that there was a note on the plan stating he reviewed the line in 2020; however, the note was not actually added to the plan. JZ subsequently re-flagged the property and then updated the site plan.
- CH asks when the work was actually performed? JZ indicates the work took place around July 4, and the filing was submitted by the 9th. CH polls the Commission on whether to vote to continue or issue Orders of Conditions: AL continue, important that deadlines are met unless very unusual circumstance; BO close tonight; PC continue, emergency situation but need to treat every project the same with regard to deadlines; JR continue, follow the rules; JK continue; CH continue. The continuation is the first of three continuations allowed to applicant before the application is denied without prejudice.
- CH motions to continue the hearing to August 4, 2020. AL second. Approved 5-1-0 by Roll Call Vote: JR-yes, AL-yes, BO-no, PC-yes, CH-yes, JK-yes.

2871 Bellino, 4 Newport Road (Revetment Repair).....cont from 7/7/2020 (Bert)

- The hearing is continued until the next public meeting of the Marshfield Conservation Commission on August 4, 2020. NHESP comments are still outstanding. The continuation is the first of three continuations allowed to applicant before the application is denied without prejudice.
- JK motions to continue the hearing to August 4, 2020. AL second. Approved 5-0-0 by Roll Call Vote: AL-yes, BO-yes, PC-yes, CH-yes, JK-yes, JR having recused.

2867 Brait Point LLC, 113 Union Street (Subdivision Drainage).....cont from 6/2/2020 (Bert)

- Continued Hearing. Hearing Officer BO confirms administrative requirements are complete.
- Terry McGovern TM, Stenbeck & Taylor presents for applicant. The scenic road aspect of the project has been closed by the Planning Board (PB), and they are before the PB on Monday regarding the remaining open aspects. Based on feedback from Town Planner Greg Guimond and Pat Brennan, peer reviewer for the PB, they have moved a drainage outfall away from an intermittent stream, from the 25 ft buffer line to the outer 100 ft, and away from an abutting owner's property. This allowed them to eliminate the outfall pipe.
- BO asks if the change to the outfall location caused any other changes to the rest of the plan? TM indicates that the only other change was to slightly taper in the stonewalls at the subdivision entrance;

this is outside the Commission jurisdiction. In response to a follow-up from BO, TM indicates that the tree clearing limit has been pulled up to the edge of the grading for the basin.

- BG advises he met with Brad Holmes (BH), ECR, on the site to discuss wetlands on the site under the Chapter 505-16 definition/wetland delineation. There is an Isolated Vegetated Wetland (IVW) under review, as well as flags 2-5, which might be moved up gradient with limited impact to the project. TM notes that the area of the IVW mainly consists of one species, sweet pepperbush, and may have been previously disturbed; BG concurs with these observations.
- CH notes that she accompanied BG on the site visit and concurs that the area is predominantly clethra (sweet pepperbush), along with several red maples and one high bush blueberry, and feels the question before the Commission is whether to go by the Bylaw criteria of vegetation or the state criteria of hydric soils, hydric plants and hydrology. JK notes that delineating based on the Town definition of wetland would push the line closer to the stormwater structures, but these are exempt, so there would not be much impact on the project. As such, he feels the Commission could either request a site plan including the IVW and new wetland lines, or approve the project based on its understanding that the project will not change either way.
- BO would like to see the shape or size of the IVW.
- BG notes that the IVW has a low probability of meeting the Bylaw IVW definition in his opinion, due to the lack of diverse wetland plants, but did want the Commission to account for it in its deliberations.
- BO polls the Commissioners as to whether to capture the IVW in a new site plan, or close tonight. AL capture; PC capture, this is a big project; JR capture; CH capture, clethra is a “facultative-plus” plant with regard to wetlands; JK capture.
- TM will add the IVW to the site plan, but wants to make sure doing so doesn’t impact the rest of the project, as it is located off-site, on the other side of a ridge. BO suggests that the IVW be delineated, and then all parties can consider what, if any impacts, there are. After a brief discussion, the Commission agrees that a third party should be brought in to do the delineation.
- BO motions to continue the hearing to August 21, 2020 subject to third-party review of the IVW. CH second. Approved 6-0-0 by Roll Call Vote: JR-yes, AL-yes, BO-yes, PC-yes, CH-yes, JK-yes.

2863 SHM Green Harbor LLC, 239 Dyke Rd (Replace storage/bait shop & parking/drainage Improvement).....cont from 3/17/2020 (Art)

- Continued Hearing. Hearing Officer AL confirms administrative requirements are complete.
- BG suggests that the matter be continued after a brief update from Terry McGovern (TM), Stenbeck and Taylor and Attorney Steve Guard, representing applicants. JK states the matter should either be continued or heard tonight. AL notes that the third-party peer review from Goldman Environmental is still pending, and feels it would make more sense to wait until that is in hand before proceeding. JK does not want to hear updates of continued hearings during the hearings, and notes he was expecting a continuance of this matter tonight; PC concurs, and notes he hasn’t looked at the file.
- Attorney Steve Guard comments that Goldman has done a good job moving things along, but feels the “three continuances” rule the Commission reinstated puts applicants like his client in fear they will be charged for continuances that are beyond their control. Since the timing of Goldman completing their review is beyond their control, he would like his client not to be charged with a continuance tonight. JK states they will not be charged with a continuance, given all parties are waiting on Goldman’s report. BG briefly comments that Messrs. Donahue and McGovern are working effectively together so far; AL concurs, and feels in particular that the weekly updates have been valuable.
- All parties briefly discuss the fair implementation of the three-continuances policy; JK notes that charging an applicant with a continuance is at Commission discretion, considering the circumstances. If applicant asks for a continuance before their matter is placed on an agenda, they won’t be charged.

- AL motions to continue the hearing to August 4, 2020. JR second. Approved 6-0-0 by Roll Call Vote: JR-yes, AL-yes, BO-yes, PC-yes, CH-yes, JK-yes.

2860 Murphy, 1213 Ferry Street (Extend Pier, Ramp & Float).....cont from 3/17/20 (Jim)

- The hearing is continued until the next public meeting of the Marshfield Conservation Commission on August 4, 2020. Applicant has not provided requested information. The continuation is the first of three continuations allowed to applicant before the application is denied without prejudice.
- JK motions to continue the hearing to August 4, 2020. AL second. Approved 5-0-0 by Roll Call Vote: AL-yes, BO-yes, PC-yes, CH-yes, JK-yes, JR having recused.

2857 Sailors Valentine Trust, 34 Marginal St. Rear (Pier, Dock & Float).....cont from 3/3/20 (Rick)

- The hearing is continued until the next public meeting of the Marshfield Conservation Commission on August 4, 2020. Applicant requested continuation. Shellfish mitigation figures are still pending, as well as information on how the proposed boat lift will be powered and its location. The continuation is the first of three continuations allowed to applicant before the application is denied without prejudice.
- JK motions to continue the hearing to August 4, 2020. AL second. Approved 5-0-0 by Roll Call Vote: JR-yes, AL-yes, BO-yes, PC-yes, CH-yes, JK-yes, JR having recused.

2869 Gavin, 104 Hartford Road (Addition).....cont from 7/7/2020 (Bert)

- The hearing is continued until the next public meeting of the Marshfield Conservation Commission on August 4, 2020; additional information requested still outstanding. The continuation is the first of three continuations allowed to applicant before the application is denied without prejudice.
- JK motions to continue the hearing to August 4, 2020. AL second. Approved 5-0-0 by Roll Call Vote: AL-yes, BO-yes, PC-yes, CH-yes, JK-yes, JR having recused.

2872 Horan, 22 Ninth Road (2nd Story Addition & Gravel Drive)..... cont from 7/7/2020 (Art)

- The hearing is continued until the next public meeting of the Marshfield Conservation Commission on August 4, 2020. Applicant requested continuation; questions still unresolved. The continuation is the first of three continuations allowed to applicant before the application is denied without prejudice.
- JK motions to continue the hearing to August 4, 2020. AL second. Approved 5-0-0 by Roll Call Vote: AL-yes, BO-yes, PC-yes, CH-yes, JK-yes, JR having recused.

REQUESTS FOR CERTIFICATES OF COMPLIANCE & EXTENSIONS

2402 Biviano, 2160 Ocean Street [EXT]

- BG advises that he observed incomplete evidence of prior recorded extensions, updated the applicant and recommended that the request be tabled. No evidence on file that the 2015 & 2017 EXTs were filed at the Plymouth County Registry of Deeds.
- JK motions to table the request pending receipt of proof of recording. CH second. Approved 6-0-0 by Roll Call Vote: JR-yes, AL-yes, BO-yes, PC-yes, CH-yes, JK-yes.

2513 DPW, Damons Point Road Revetment Restoration [COC]

- BG recommended issuance of the COC. Town Engineer provided a detailed review of the As-Built and approved site plan explaining DeMinimis Deviations. BG has no issues.
- JK motions to issue a COC with ongoing conditions allowing for DeMinimis Periodic Maintenance as per the original Orders. JR second. Approved 6-0-0 by Roll Call Vote: JR-yes, AL-yes, BO-yes, PC-yes, CH-yes, JK-yes.

2663 Gaffney, 164 King Philip's Pathe [COC]

- BG visited the site, plantings are thriving, new shed located outside 100-foot buffer zone and recommended issuance of the COC.
- JK motions to issue a COC for the property. PC second. Approved 6-0-0 by Roll Call Vote: JR-yes, AL-yes, BO-yes, PC-yes, CH-yes, JK-yes.

2739 Oronte, 170 Carolyn Circle [COC]

- BG visited the site and recommended issuance of the COC with ongoing condition that there shall be no disturbance downgradient of the conservation markers depicted on the as-built plan dated July 8, 2020 prepared by Grady Consulting and signed and stamped by Richard Grady, RPE.
- JK motions to issue a COC for the property with ongoing condition as noted. AL second. Approved 6-0-0 by Roll Call Vote: JR-yes, AL-yes, BO-yes, PC-yes, CH-yes, JK-yes.

2817 Alberts, 1147 Union Street [COC]

- BG advises that he observed the As-Built lacked the conservation marker locations and recommended that the request be tabled pending receipt of as-built plan depicting the 10 conservation markers on the property.
- JK motions to table the request pending receipt of a revised As-Built plan. CH second. Approved 6-0-0 by Roll Call Vote: JR-yes, AL-yes, BO-yes, PC-yes, CH-yes, JK-yes.

ENFORCEMENT ORDERS

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

BUSINESS CONTINUED**B6 938 Summer Street/unpermitted cutting in buffer zone – Commissioners/Dickinson**

- BG advised that he received a complaint at the Conservation Office regarding ongoing cutting in the buffer zone. He contacted Commissioners JK and CH to provide field reconnaissance, determined the activity was going on at 938 Summer Street, contacted property owner Reed Dickinson (RD), and issued a cease and desist. A delineation for the property from about 2015 sets the wetland line along the stone wall. At the site visit, all parties discussed placement of conservation markers along the 50 ft buffer based on the prior approved wetland delineation and allowing rejuvenation from 0-50 feet of the native vegetation and conservation markers would be placed along the 50-foot setback to the wetlands.
- John Zimmer (JZ), South River Environment, present for RD; Grady Engineering and Paradigm Landscape are also involved. JZ has re-delineated the wetland area based on the Town Bylaw definition (vegetation only), and observed primary clethra with some highbush blueberry; he did not look at soils but feels doing so would place the wetland line further downgradient from where it is delineated.
- JZ will prepare a plan within the next week or so to revegetate the portions of the 50 ft buffer that were disturbed and install markers along the 50 ft line. RD would like to extend the lawn within the 50 to 100 in the future, and will come in with a NOI, setting forth his proposal in detail, after the restoration work is completed.
- JK asks JZ about why their considering options up to the 25 ft setback? JZ's understanding was that properties with an existing structure had a 25 ft no-disturb zone as opposed to 50 ft; he was unaware of the Commission's position that this particular lot had a 50 ft no-disturb zone based on the location of the

building in the property. BG asks JZ to ask Grady to add the 75 ft buffer to the site plan, and would like to walk the property with JZ to firm up the new wetland line.

- JK also asks JZ whether the 200 ft riparian zone is involved? JZ believes all areas in question are outside the zone. BO notes that the zone is already depicted on the site plan reduced locus portion of the site plan, and is downgradient of where the wetland flags are.
- BO asks what vegetation was cleared in the buffer? RD indicates that no trees were taken down, but a tree in the area had fallen in a 2015 storm; he believes most of what was cleared was poison ivy. JK didn't see any trees taken down on the property, and some of the clearing appeared to broaden out existing pathways.
- JK moves that the Commission approve and issue an enforcement order / WPA Form 9 for 938 Summer Street so the Commission can direct the restoration. CH second. CH second. Approved 6-0-0 by Roll Call
Vote: JR-yes, AL-yes, BO-yes, PC-yes, CH-yes, JK-yes.

ADJOURNMENT – JK makes a motion to close the meeting at 8:21 PM. AL second. Approved 6-0-0 by Roll Call
Vote: JR-yes, AL-yes, BO-yes, PC-yes, CH-yes, JK-yes.

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

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