

**MINUTES – CONSERVATION COMMISSION  
TUESDAY, JULY 7, 2015 7:00 p.m.  
TOWN HALL, HEARING ROOM 2, 2<sup>ND</sup> FLOOR  
870 MORaine ST., MARSHFIELD, MA**

**Approved 12/22/15 5-0-0**

Members present: Robert Conlon, Chairman (RC), William Levin (WL), Frank Woodfall (FW), Chad Haitsma (CH), Alison Cochrane (AC), Bert O'Donnell (BO'D), Jay Wennemer, Conservation Agent (JW).  
RC motioned to open the meeting, WL second, motion passed 6-0-0.

**MINUTES**

**BUSINESS**

- Vote & sign Orders of Conditions for closed hearings (if projects are voted closed and/or the Commission is prepared to vote on Conditions): (none)
- Scheduled Meetings: The Commissioners set Tuesday, July 21<sup>st</sup> and Tuesday, August 11<sup>th</sup> for the next two meetings.
- Horseshoe Farms

**ENFORCEMENT ORDERS**

20 Wilson Road - filed Notice of Intent

**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. REQCC-1925, Cushing Construction (Parsonage St.) Garden Gate
6. 2381 NSTAR, Pine Street

**Current:**

REQCC-2279 - Double Eagle Nominee Trust, Marshhawk Way – JW recommends certificate  
REQCC-2297 - McMahon, 134 Wellington Ave. – JW recommends certificate  
RC motioned to issue both Certificates of Compliance, WL second, motion passed 4-0-2, with FW and BO'D abstaining.

**REQUESTS FOR DEVIATION**

**REQUESTS FOR EXTENSION**

**NEW BUSINESS**

This time is reserved for topics that the chair did not reasonably anticipate would be discussed.

**PUBLIC HEARINGS**

**7:00 2561 Grady, 74 Keene Rd.** RC read notice of public hearing. CH hearing officer. Bob Crawford, E.E.T., present.  
Proposing to repair failed cess pool and replace with Presby Enviro-Septic, entire leaching area within 200' concrete walls. Very small lot of 2800 sq. ft., part of the system will be under the house. Entire lot is in an AE Flood zone, elev. 9; going up to elevation 15. Board of Health has approved. Entire lot is within 100' buffer of marsh. Top of foundation is 14'. JW said this is a pre-existing lot near the marsh; would not be allowed to be built today, but the proposed septic system is about the best that can be done there, and is an improvement over existing conditions. CH motion to close and approve, WL second, motion passed 5-0-1, with FW abstaining.

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**7:05 2554 Our Place RT 221 Ocean St.** - Dick Rockwood of Rockwood Design and Mr. Kaufman present. Received letter from Building Inspector – Commissioners read letter. Rockwood said he asked Jerry O'Neill to clarify his viewpoint on what the wording of the building code was and break it out in various sections. On Page 2 Mr. O'Neill stated in the first subsection – 'General: "After reviewing the elevation certificate, it would be possible for the existing foundation to comply with this section if the basement is filled in, flood vents are installed, and electrical and mechanical systems are relocated above the base flood elevation, as designed by an engineer.'

JW stated that applies if no work is done to the foundation; Rockwood said Jerry is saying *foundation repair*. Rockwood said it's not a foundation falling in; adding on to it is not necessarily a repair. Rockwood said he will probably appeal the Building Inspector's opinion to the State. Board of Building Regulations and Standards, takes from 2 to 3 weeks. CH asked if the BR&S issue very distinct opinions. RC said they do. Building Inspector here in Town wants pilings. RC motion to continue to 8/11/15 at 7 p.m., FW second, passed 5-0-1 with FW abstaining.

**7:10 2560 Welch, 1 Jackson St.** – The Commission has received a letter from Rod Procaccino, the Town Engineer in DPW, stating they had reviewed Ms. Welch's request to extend the stone revetment in front of the concrete wall at 1 Jackson Street and will allow the revetment in a similar manner as the existing stone currently protecting the seawall toe. This work is subject to receiving an Order of Conditions from the Conservation Commission. RC motion to close, WL second, passed 5-0-1 with FW abstaining.

**7:15 TBL 15-01 Oliva, Highland Street** - FW hearing officer, read notice. Jack O'Leary of Sitec Engineering, Dr. Oliva, Atty. Watsky, Lenore White present. JW passed out the two large sets of plans. Atty. Watsky said those plans just show what was discussed at the last meeting. LW said there have been a couple of developments since the last meeting. She said she, Bob Gray of Sabatia and JW were requested to look at the eastern end of the property by Cove Creek to see if there were any wetlands coming onto the property. Identified some at the bottom of the slope – the closest was 167' to the property line, the other was 190' - well beyond property line, she said. Other development – JW, BG, LW looked at isolated wetlands, made some changes. Ms. White said she observed no hydric soils. JW noted previous wetland delineations – LEC did one in 2005 or 2006, shown on plan. ConCom hired Brad Holmes, who submitted a report delineating the wetlands and showing hydric soils. At least one auger hole that showed hydric soils there with LW, BG, & JW. One of the original plans in this file showed isolated wetlands by wetland specialist Michelle Grenier. JW – would state there is no question that there are wetlands large enough to be protected under the Bylaw. LW said, despite that, we have requested a Variance, to locate these alleged wetlands. Atty. Watsky said these wetlands, assuming that they are wetlands, are not furthering the interests of the Bylaw. FW asked if, in the variance, is there typically a distance – we need a 75' setback to structures. 26' – grading is about 10' to the graded area Jack O'Leary said. Mr. O'Leary also stated they are proposing erosion barriers. FW stated the plan would have to be updated; Atty. Watsky asked why. JW said because the wetlands are jurisdictional. LW said she can't agree that this is wetlands. Atty. Watsky stated it seems like (the Commission) is asserting jurisdiction over something that's not functioning. He is asking that the Commission grant whatever variance is necessary.

RC asked what a 'use easement' is. Mr. O'Leary said it's when you have a large area to be protected and never be developed. JW stated the roadway and associated grading is at 0 feet; FW said it looks like the associated grading will be within 1'. JW – took the grading to be 0 to 1' away from the wetland; listed on the plan as 17.

Charles Case, 540 Highland Street, said he vehemently disagrees with Atty. Watsky's statements, and stated this property used to be a wet, muddy field. It is drier this year, cannot call it a test pit.

Atty. Steve Guard, representing Mr. Case and Mr. Lonergan, stated there are a couple comments in the applicant's application that he questions – there is evidence before the Board that states the wetlands contain hydric soils. Second thing, original flagging of wetland # 2 doubled after JW & Bob Gray's meeting. Also, Atty. Guard said he disagrees that the May 15<sup>th</sup> letter is an application for a variance – must be in writing. Not a component part of the filing and is not appropriate to be considered. The substance of the variance would be granted if this Commission would find that there'd be no disturbance to the wetland by the proposed roadway. This Commission needs to apply the By-law as written. Have clear, concise report from Bob Gray.

Chris Pryor, an abutter to the proposal and employee of NE Forestry, stated his concerns about the potential impacts of this project. There will be additional drainage off the road and it is already wet. Stormwater basin – outflow of that would head down to Cove Creek and cross his property.

Mr. O'Leary said the general grade on the area is to the north or east, runoff will go along the roadway or onto the applicant's site, and that the development is down-gradient. There will be a small swale to guide the water. Detention pond is being reviewed by the Planning Board. Catch basins have a large forebay. Natural Heritage is also paying close attention to this project.

Susan Wolfe, 375 Union Street, is not an abutter to this project but stated her hope that the Commission not issue a variance and dilute the existing Bylaws. She encourages the Commission not to grant a waiver, stating we need to stick to the Bylaws

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we have. Michael Wolfe, 375 Union Street, asked if Natural Heritage has made any indication that there's endangered species on the property. Mr. O'Leary said there are not any endangered species, but there is a 'species of concern' - the Eastern Box Turtle.

Mr. Case asked what happened to the applicant's first wetlands specialist; JW asked how far back did he want to go. In 2005 LEC had been hired. More recently Michelle Grenier, Wetlands Specialist, was hired, and now Lenore White.

Robert Carr, who lived on Union Street for many years until recently, stated he spearheaded saving Phillips Farm – that land is a regional asset. Put CR's on the land. He is very much in favor of protecting the wetlands. He also brought a letter from abutter Carolyn Housman, 540 Union Street, who could not attend tonight's meeting. Mrs. Housman spoke in favor of supporting the Bylaw seeking to protect our environmental resources, and urged the Commission to enforce these By-laws.

Charles Case gave the Commission a letter from Anna & Jonathan Baker, 1009 Union Street, stating their concern for the wetlands in this area and the negative effect the proposed development would have. They stated Nelson Forest should be protected, and urged the Commission to protect the three wetlands in that area.

Susan Caron, High Beacon Way, asked if Natural Heritage has delineated the site. Mr. O'Leary said Natural Heritage has maps that show the limits, but that this area of Highland Street is not a natural habitat.

Crystal Gould, 995 Union Street, asked that the Commission uphold the Regulations and By-laws for this pristine spot. She stated she has seen box turtles there and that they and the land should be protected.

Dr. Anthony Oliva, owner of the property, spoke. He purchased the 18 acre parcel in 2002 and had originally thought of building a home here for his family. He said this parcel is surrounded by 100 acres of conservation land and he doesn't understand why his proposal is so disturbing to the other residents. As far as turtles go, Dr. Oliva said he has seen more squashed turtles on the roadway and hasn't seen any on his property.

Charles Case stated for the record that he never said his children played with box turtles, as Dr. Oliva stated. Mr. Case noted this is the fifth time this project has come before the Town for development.

Carol Meyer, although not an abutter to the property, said she often walks through the forestry, and has found arrowheads there. Also, the area is very, very wet.

Jim Doherty, summer resident on Meadow Lane, stated the main focus should be to determine if these wetlands are the only ones on the property.

Atty. Watsky noted the application was presented to the Commission believing there were no jurisdictional wetlands on the property; therefore, there is no formal Variance request. One isolated area identified initially, more than 50' from the road. If the Commission wishes to proceed tonight, do you believe there are jurisdictional wetlands? If you vote as a majority that these should be jurisdictional, we will submit a Variance request. Our position is the wetlands should not be considered jurisdictional. RC & FW agree with Bob Gray's position. WL says it's jurisdictional and the project should be denied. Atty. Watsky requested a continuance and will file a Variance request. JW said this would need to be received the Friday before the July 21<sup>st</sup> meeting.

Atty. Guard stated this is insufficient notice for abutters for a Variance if you go with July 21<sup>st</sup>. Should be properly set up to withstand an appeal. Atty. Watsky said the Bylaw doesn't have Variance request guidelines – seems permissible to request a continuance, and he will submit the Variance request the Friday before the 21<sup>st</sup>. FW motioned to continue to 7/21 at 7:15, RC second, passed 5-0-1 with FW abstaining.

**7:30 2562 Quintiliani, 14 Meadow Lane** - RC read notice of public hearing. CH hearing officer. Paul Seaberg, Grady Consulting presented. Existing single family house, wetland across the street, requesting to upgrade existing septic system, located outside 100' buffer, substantial improvement over existing arrangement. Silt sack, erosion control. FW asked about the shed shown on the property; Paul said it'll be removed. JW – this type of proposed system is the typical fix for this neighborhood; there's just nowhere else to put it. Would be a raised system. Jim Doherty, lives to the left of this property, stated he has no problem with proposal. His only complaint is about the raised system across the street, the weeds on top are 6' – looks awful. He requested that the grade come directly across to his property. JW said we need to be careful not to create a dam and pond water. FW said the Commission cannot put that request in the orders. Paul said he would discuss this with the homeowner. CH motion to close, WL second, passed 5-0-1, with FW abstaining.

As a 'Point of Information', Mr. Doherty asked if the Commission just voted on the conditions. CH said *no*, the Commission voted to close the hearing. JW will draft Orders which will be reviewed by the Commission at the next meeting.

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**7:40 2563 LoConte, 16 E Street** - RC read notice of public hearing. FW hearing officer. Julie Johnson, Custom Home Designs, representing. Existing house is wood structure on cinder block foundation, drive under garage, slab floor. AE flood zone elevation 9'. Proposed dwelling will be lifted to top of piling at 18'. Whole area is Barrier Beach. Timber pile foundation. She has existing slab on grade, would like to contain some stable area around it, and would like something pervious but more surface space than cobble – 2 x 2, etc. Would like to encompass parking area and garage. All the concrete is coming out. FW asked JW if there should be a silt fence. Julie said all staging could be done on gravel area. JW agrees with Julie – can be made as one of the conditions. Plenty of access in the front. JW asked if the proposed building is twice as large as the existing and if pavers would be under the entire length of the house. CH asked about protecting the dunes with plantings. Julie stated beach grass could be planted. JW noted that E Street extends past the front of this project – dunes across the way – and asked if the dune area that ends with the roadway could possibly be restored.

Arthur Lage, 14 E Street, stated his concern about the dunes and asked about the construction and demolition phase, and how that would affect the dunes in the back. FW said the vehicles would access through the front of the property and work from front to back; no access from behind. FW motion to close, RC second, passed 5-0-1 with FW abstaining.

**7:50 2564 McKenzie, 375 Church Street** - RC read notice of public hearing and was hearing officer. Ms. McKenzie presented. Above ground pool, 24' diameter, 54", proposed, cartridge system instead of chlorine; reduces the chlorine by about 50%. Distance to wetlands is about 65', 30' away from leaching field, 60' from the front of the property, 40' on either side from neighbor's lots. JW said the pool is proposed in an existing lawn area, flat, minimal leveling, no problem with wetland impacts. CH asked if the delineation dated 7-17-09 is acceptable; JW said it is. RC motion to close and issue orders, WL second, passed 4-0-2, FW and BO'D abstaining.

### **NEW BUSINESS**

This time is reserved for topics that the chair did not reasonably anticipate would be discussed.

Two people present to discuss a fence that is being installed on the dune at the end of Kent Ave. JW went down to check it out – did not consider the fence in a resource area – near the end of the road in shrubby brush. Not sure if it's a wetland issue yet – need to find out where road layout is, don't know where lot line is. Conservation's only consideration is wetland – is there an impact to wetland because of this. Need to do a lot more research.

### **EXECUTIVE SESSION**

RC motioned to go into Executive Session, not to return to open session, to discuss pending litigation issues and land acquisition. Roll call vote:

RC – yes  
WL – yes  
FW – abstain  
CH – yes  
AC – yes  
BO'D – yes

Motion passed 5-0-1, FW abstaining.

RC motioned to leave Executive Session at 10:00 p.m., WL second, motion passed 5-0-1, with FW abstaining.

RC motioned to adjourn at 10:00 p.m., WL second, motion passed 5-0-1, with FW abstaining.

Respectfully submitted,  
Lois Keenlside  
Marshfield Conservation Commission

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