

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

**MEMBERS NOT PRESENT** – None

**CALL TO ORDER** – JK motions to open the meeting at 6:30 PM. CH second. Approved 7-0-0 by Roll Call Vote: AL-yes, CH-yes, JR-yes, PC-yes, SC-yes, BO-yes, JK-yes.

### **MINUTES**

- Tabled.

### **CHAIRMAN'S ADDRESS**

- 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.
- 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.
- The procedure for hearings is that applicants or their representative(s) will have 5 minutes uninterrupted to present their project. This will be followed by BG's comments (1 minute), Commissioner comments/questions (10 minutes, with extensions by motion and vote), public comment, and vote. Public comments are to be addressed to the Chair or Hearing Officer. The Chair or hearing officer may poll the Commissioners to get their views on a particular question.
- The Commission recently voted to modify the hearings procedure to allow applicant/representative to speak after start of Commissioner deliberations to (1) offer new and not previously known information, or (2) correct statements the Commission has misunderstood. Applicants should not rehash their presentation at such times. Since in most cases the Commissioners have already visited the property and reviewed the submission at length in advance of the hearing, and have listened to applicant or their representative's presentation prior to the start of deliberations, JK feels that the need for applicants to interrupt should be infrequent.

### **BUSINESS**

#### **B1 Ocean Shores hunting comments/ Commission & Joan Tozzi**

- Resident Joan Tozzi (JT), 1209 Ocean Street, is concerned about ongoing hunting in the conservation area in back of her house and recent disturbances she says are caused by hunters. She would like to see signage prohibiting hunting in the area.
- JK notes that the land in the area is owned by a variety of entities, in addition to the Commission. Existing rules prohibit discharge of a firearm within 500 ft of a dwelling, but hunting is allowable in areas beyond the 500 ft zone. JK recommends that JT contact the Massachusetts Environmental Police if out of season hunting is going on. With respect to the upcoming turkey season in the Spring, JK suggests that the Commission could ask MEP to pay extra attention to the Ocean Shores area to ensure the regulations

are being followed. JT notes that she has called MEP in the past, but it is difficult to get things coordinated between the agencies.

- PC asks JT whether a firearm discharge incident she observed was within 500 ft of her house? JT believes the hunter was within 500 ft, as she could see his face. JT is unsure if the people hunting in the area are aware of the regulations and prohibited areas. JK is additionally willing to reach out to hunters in town to encourage self-policing.
- JK is not sure whether the land in question belongs to Conservation or whether additional signage will have any effect on hunters that break the rules. BO asks whether a Town-owned parcel in the area is under Conservation control? BG thinks the parcel may be under BOS control with Mass. Audubon oversight. He has discussed the issue with Nick Rossi, of Mass Audubon, but their manpower is limited. BG thinks signage is a good idea, but properly posting an area requires resources that are limited. An alternative may be for JT to provide photos of violations in the area to MEP and Marshfield Police.
- AL would like to confirm whether or not hunting is allowed on the property in question? BG indicates that the lot is recorded as a "BOS vacant lot" under control of the Board of Selectmen, and suggests that JT follow up with the Board of Selectmen.

### **B2 Ongoing comments regarding salt marsh property (K11-01-54A)-end of Field Street/ Clark Dorman**

- Dorman Clark (DC) present to discuss a complaint he submitted regarding individuals using the end of Field Street to access the South River for canoeing/kayaking. A path has been blazed from the end of the road, through the marsh to the edge of the river, and DC has removed significant trash from the area. The Town has posted a No Parking sign, but people tend to ignore it. DC would like to know if the Commission could post some additional signage to deter trespassers.
- BG thinks posting the area with signage is a good idea but notes that the marshland in question is private property whose owners live in Florida. BG has provided DC with the property card, so he can reach out to the owners. However, the owners may be okay with the footpath, as it appears from aerials to have been there for many years. DC believes that the path was created this year by multiple kids trespassing on the property.
- JK sympathizes with DC's concerns but agrees with BG that the Commission's authority is limited given the marsh is private property and no work activity is proposed for it, and suggests that DC try to work cooperatively with the owners to address the issue. DC notes that the area extending from the end of the street, over an embankment into the marsh is actually town property, but BG indicates that this land is not under Conservation control.
- DC notes he has tried to reach out to the marshland owner without success so far, and asks if the Commission would accept a donation of this land from the owner. BG indicates the property would be desirable as Conservation land, but donations must be initiated by property owners. BO is uncomfortable discussing this scenario without the property owner being present. BG reiterates that DC's best course of action is to establish communication with the property owner.

### **B3 Deprossino, 556 Holly Road (Lot 8) DeMinimis Activity vs. Amended NOI / Frank Gallagher**

- Frank Gallagher notes that activity on the lot had been permitted through OOC SE42-2847; since the permitting, the land owner's architects made changes to the site plan by adding retaining walls to eliminate the need for grading in the 100 ft buffer; these changes were permitted as a DeMinimis Activity on September 1, 2020. Now, due to the expense of the retaining walls, land owner would like to replace the retaining walls with a revetment-style wall. The top of the revetment would end at the 100 ft buffer, but the wall would extend into the buffer up to about 14 feet. FG notes that the amount of disturbance in the buffer, 1395 sq ft, would still be less than what was originally proposed and permitted, which involved 3570 sq ft of disturbance, and the limit of work will be further away from the wetland as well.

He would like the Commission to approve the activity as a DeMinimis Activity that can be captured in the As-Built Plans.

- CH asks if the modifications will have any impact on the septic system. FG notes that there will be an impervious barrier surrounding the leaching field. The modified plan has been approved by the Board of Health. PC notes that the proposes changes still move disturbance further away from the resource areas than what was originally permitted; JK concurs.
- JK motions that the proposed modifications be accepted as a DeMinimis Activity to be captured under the As-Built Plans for SE42-2847. BO second. Approved 7-0-0 by Roll Call Vote: AL-yes, CH-yes, JR-yes, PC-yes, SC-yes, BO-yes, JK-yes.

#### **B4 20 Shady Lane- New Addition same footprint- DeMinimis Activity vs. Conservation Permit / Mark Kemp**

- An Order of Conditions for a septic upgrade was recently issued for the property under filing SE42-2861 and SE42-2861 Amended. Mark Kemp (MK), representing applicant, notes that in order to get the excavator into the backyard, they either have to take down several cedar trees or a three-season porch on back of the house. As the porch is in disrepair, applicant would like to take down the porch and rebuild it in the same footprint. He would also like to remove a concrete patio to the right of the porch and replace it with a deck in the same footprint.
- BO considers the activity to be a DeMinimis Activity and notes it will save several trees on the lot; PC and JK concur. BG suggests that the As-Built reference the additional activity being approved as a DeMinimis Activity at this meeting.
- JK motions to that the proposed modifications be accepted as a DeMinimis Activity to be captured under the As-Built Plans for SE42-2861 and SE42-2861 Amended. AL second. Approved 7-0-0 by Roll Call Vote: AL-yes, CH-yes, JR-yes, PC-yes, SC-yes, BO-yes, JK-yes.

#### **B5 John Sherman Estates/Main Street (Abner Way & Wrights Way) Progress Report Review / Paul Driscoll**

- Paul Driscoll (PD) present along with representative Greg Morse (GM), Morse Engineering. PD indicates that 9 of the 13 lots in the subdivision have been conveyed, and a tenth lot is expected to be conveyed by mid-January. All roads and utilities are in, the base coat of the road is done, and shoulders have been planted. PD is confident the remaining three lots will be sold sometime this year.
- GM indicates that to date, the subdivision is substantially complete, including roadway and all supporting infrastructure including water, electrical, and drainage. Binder coat for road has been placed. Six of the lots are currently occupied. Remaining work includes final pavement coat over the binder, sidewalk construction, and planting of a rain garden in the central cul-de-sac. All work inside the 100 ft buffer has been completed; this was construction of drainage system. All areas inside the buffer are vegetated.
- SC notes that she worked with BG and AL in reviewing the progress report, and they identified areas of concern regarding erosion control, drainage, plantings and proposed split-rail fencing. BG notes that both the original 2010 OOC and amended 2013 OOC remain in effect, and thus all special conditions in both carry. With respect to conditions D1 and D2, BG indicates there are ongoing ponding issues at the two storm drains despite erosion control on all lots upgradient of the cul-de-sac, and suggests that a site visit be made to review the storm drain system and erosion control locations. Regular street sweeping will relieve pressure on the drains.
- BG adds there is no evidence that the native and street plantings referenced in conditions E1 and E2 have been planted; in particular, he suggests that the plants around lots 9 and 11 should be planted in the Spring, before Lot 10 is sold. Plantings should also be observed in a future site walk. PD notes that lot 9 was actually sold two years ago, and the owner has yet to put in his landscaping; this may be the source of much of the downhill erosion.
- With respect to conditions F1 and F2, BG comments there is no evidence the storm drains are functioning as intended, and feels there is significant erosion coming from lots 9, 11, 1, and 2. This should be

addressed with erosion control and plant covering measures. BG additionally would like a copy of the Operations and Maintenance plan for the storm drain system. The Commission should additionally think about what is necessary in terms of a street sweeping schedule.

- BG also would like applicant to provide a revised plan sheet showing the location of erosion controls so their locations can be verified in a site visit and its removal verified when the time comes. He would also like to know whether the required Conservation Restriction, to protect the open space within the subdivision, has been set up. There is conflicting language in the two OOCs regarding the location of conservation markers on fence posts that should also be cleared up. BG suggests that applicant be required to complete the fencing and conservation marker placement before any more lots requiring a NOI are approved.
- SC notes that property owners of lots 2-6 have already put up their own fencing which they think negates the need for split rail fencing at the buffer, and would like the Commissioners to inspect the existing fencing at any upcoming site visit. JK notes that he has visited the property several times and observed the storm drain around Lot 9 to be full, with erosion running down the street. Additional attention to storm drains and erosion control would go a long way towards addressing these issues.
- With respect to NHESP jurisdiction, PD indicates they had received a “no take” letter, whereby they concluded the property was not in their jurisdiction, which he provided to the Conservation Office. PD also states that the condition referencing conservation markers on split rail fencing only applied to the area around the vegetated wetland near lots 10 and 11. Fencing behind properties was also referenced as an option by the Planning Board, with the other option being markers on posts; BG feels the Commission is open to either option with regard to posts versus fencing within the area behind the lots; JK concurs. BG also clarifies that the NHESP originally required special conditions for the project to proceed but later sent a no-take letter and delisted the area. However, the Commission may still require the submittal of all, some or none of the original NHESP special conditions.
- All parties indicate they will work together to address all remaining issues. GM asks that all issues be provided to him in writing. BG suggests that a site visit open to all parties be set up in the near future.

#### **B6 119 South River/Pump Chamber DeMinimis Activity vs. Amended Order of Conditions / Terry McGovern**

- Terry McGovern (TM), Stenbeck & Taylor representing the applicant advises that the septic system plans approved under OOC SE42-2812 had to be altered, as the plumbing outlet from the house is lower than originally planned; this requires the tank to be lowered several feet as well as the addition of a pump chamber next to the tank, just outside the 75 ft setback. This will likely mean less grading in the area, as the tank is deeper in the ground. Board of Health has approved the modification.
- BO notes he was hearing officer for this filing; he does not believe this modification would have changed the Commission decision and is fine with approving as a DeMinimis Activity.
- JK motions to that the proposed modifications be accepted as a DeMinimis Activity to be captured under the As-Built Plans for SE42-2812. JR second. Approved 7-0-0 by Roll Call Vote: AL-yes, CH-yes, JR-yes, PC-yes, SC-yes, BO-yes, JK-yes.

#### **PUBLIC HEARING**

Prior to the start of the public hearings, JK advises that the hearings for 75 Riverside, 56 Foster (SE42-2832), 44 Jayna (SE42-2894), 1354 Union (SE42-2709), and 0 Brewster (SE42-2887) are being continued.

#### **20-38 Aikens, 72 Landing Road (concrete pad, mitigation and plantings).....NEW (Susan)**

- JK reads the legal ad. Hearing Officer SC confirms administrative requirements are complete.
- BG and several Commissioners observed the concrete pad for a future pergola during a visit to a nearby site, and BG advised that an after-the-fact filing would be necessary. At a business session during the 12/15 meeting, the Commission voted to require the filing of an After-The-Fact RDA for the completed

and proposed work. SC notes that applicant proposed to remove an equal amount of impervious surface from an asphalt driveway and make plantings as mitigation for the concrete pad. However, the plan submitted doesn't contain all the mitigation promised, as the pad is 345 square ft and the driveway section removed is 264 sq ft. BG asked for an revised plan, which applicant's engineer was unable to provide. Thus, a continuation will be needed.

- SC asks for comments from the public; none.
- BG receives a communication from applicant Frank Aikens (FA) indicating that the updated plans will be ready for the next meeting.
- SC motions to continue the hearing to January 19, 2021 and assign a DWOP count 1. JR second. Approved 7-0-0 by Roll Call Vote: JR-yes, AL-yes, SC-yes, BO-yes, PC-yes, CH-yes, JK-yes.

**20-39 Maass, 8 Cherry Street (replace pole for Seatow communications tower).....NEW (Susan)**

- JK reads the legal ad. Hearing Officer SC confirms administrative requirements are complete.
- SC indicates that the work area is in buffer zone to salt marsh and coastal bank and in land subject to coastal storm flowage; it is a commercial area and is previously disturbed. Applicant Ethan Maas (EM) indicates that the proposed work is the replacement of a wooden utility pole supporting a Seatow marine radio with a more durable, metal communications tower.
- SC asks for comments from the public; none.
- SC motions to close and issue a Determination of Applicability, Pos #5 and Neg #3, with special conditions drafted by BG. BO second. Approved 7-0-0 by Roll Call Vote: JR-yes, AL-yes, SC-yes, BO-yes, PC-yes, CH-yes, JK-yes.

**TBL 20-01 Borchert, 97 Wrights Way (driveway and utilities).....NEW (Art)**

- JK reads the legal ad. Hearing Officer AL confirms administrative requirements are complete.
- The subject property is part of the John Sherman Estates, a subdivision that was approved with a variance under filing SE42-2217 Amended, allowing the Jordan Borchert (JB) Lot (#11) to have a driveway within 35 feet of the wetland. BG notes that this filing concerns the Town Bylaw only, as the associated resource area is an isolated vegetated wetland as defined by the Bylaw. BG walked the property with JB on 12/23 and was able to re-establish the wetland line on the lot to his satisfaction. There is some conflict, with regard to limits of disturbance, between the approved subdivision plans under SE42-2217 Amended and the subdivision special conditions. BG feels there is not much room for mitigation other than the conservation markers applicant is offering, but native plantings by the front entrance to the property may be an option.
- AL thinks mitigation plantings would be a good idea but notes this may require a continuation so a plan could be created by a wetland scientist and then reviewed by the Commission; alternatively, the Commission could delegate to BG the ability to approve a plan. JK notes that applicant is placing conservation markers in some places along the 100 ft buffer as opposed to the 50, and is not sure why mitigation is needed. BO notes that the driveway is inside the 50; a variance allowing for this was granted in the subdivision orders of conditions, but he thinks the Commission can require mitigation nonetheless. BG notes that JB cleared all the vegetation except the mature trees in an area between the 100 ft buffer and the end of fencing, but this activity does not necessarily require mitigation in and of itself but that depends on the Commission's determination. Mitigation plantings along the two sides of the driveway may be advisable as the area is in the buffer zone to the IVW.
- AL would like to know why the Commission would ask for the mitigation plantings? BG notes that applicant encroached slightly on an area where fencing was required, but this area was outside the 100 ft buffer and the Commission may reasonably decide that further mitigation is not needed. AL indicates that he is not sure further mitigation is needed in this case. BO again notes that the driveway passes through the 50 ft buffer, but the posting of markers at the 100 ft buffer in other parts of the lot at least

partially mitigate for that; BG agrees and indicates that further mitigation is an option that the Commission can request or not at its discretion.

- JB notes that he placed the markers at the 100 ft buffer based on conflicting information he saw between the subdivision plans and special conditions, as well as because he did not care to maintain the area between the 50 and the 100. The filing itself is for construction of the driveway and utility connections, with the associated clearing inside the 50 ft buffer to IVW.
- AL would like to see planting mitigation by the entrance but feels a continuation would then be needed to review the plan; PC agrees that mitigation plantings are a reasonable ask; CH concurs. JK feels that applicant's placing the conservation markers along the 100 ft buffer is more than sufficient mitigation, and the matter can be closed out tonight. AL feels that requiring the planting mitigation would maximize protection on the site, but JK feels the mitigation value of the additional buffer provided far outweighs that of a few plants at the entrance to the driveway; BG concurs with JK on this point.
- AL asks JB if he would agree to make some plantings at the entrance to the driveway; JB doesn't personally think the plantings are necessary given the heavy growth in the area; he has no issue with placing the markers along the 100 ft buffer. BG thinks at the end of the day, having markers at the 100 ft buffer is sufficient mitigation for all activity on the lot, but suggested the plantings in the interest of providing all options. PC changes position and agrees with BG and JK that all activity is sufficiently mitigated; CH concurs.
- AL asks for comments from the public; none.
- BG indicates that the standard conditions of approval will apply along with a special condition requiring the posting of conservation markers at 50 feet intervals, as set forth on the site plan.
- AL motions to close the hearing and issue Orders of Conditions with special conditions drafted by BG. SC second. Approved 7-0-0 by Roll Call Vote: JR=yes, AL=yes, SC=yes, BO=yes, PC=yes, CH=yes, JK=yes.

#### **2832 Amended Kessler, 56 Foster Ave (permeable patio, plantings & gravel drive/parking area.....NEW (Bert)**

- JK reads the legal ad. The hearing is continued until the next public meeting of the Marshfield Conservation Commission on January 19, 2020. Applicant requested continuation in writing earlier in the day due to lack of abutter notification. As the request came in after the filing deadline, BG recommends that a denial without prejudice (DWOP) Count 1 be assigned.
- JK motions to continue the hearing to January 19, 2021 and assign a DWOP Count 1. PC second. Approved 7-0-0 by Roll Call Vote: JR=yes, AL=yes, SC=yes, BO=yes, PC=yes, CH=yes, JK=yes.

#### **28 DPW, Dyke Road (Green Harbor Sluiceway Temporary Support).....NEW (Rick)**

- JK reads the legal ad. Hearing Officer PC confirms administrative requirements are complete.
- PC indicates that the subject filing is a NOI for repair of a sluiceway and tide gates under Route 139 at Dyke Road, connecting the Green Harbor River with the basin. The structure was last repaired in the 1960s, and the repair is considered urgent. PC reviewed the project with Town Engineer Rod Procaccino (RP).
- Ziad Kary (ZK), Environmental Partners, presents on behalf of DPW. The proposed activity is a temporary repair of the sluiceway, the inner wall of which is corroded. They would like to thicken the interior concrete wall, adding a rebar mat and additional concrete. They will use anchored screw jacks to support the upper deck beneath the roadway, and will isolate and repair one compartment at a time. There is no dredging or excavation involved. The permanent repair will involve a separate filing and permitting with other agencies.
- BG notes that DEP comments indicate a Chapter 91 permit may be required; ZK believes a Ch 91 permit ultimately will not be required at this stage due to the lack of dredging, but may be required for the permanent repair. They are discussing the project with Army Corps of Engineers tomorrow. In response to a query from PC, ZK believes the temporary repair should last at least 1-2 years. RP believes the repair

will likely last longer, but they will seek funding for the permanent repair as soon as possible. RP gives the Commission a brief background concerning the evaluation of the sluiceway and repair options to date. Sea level rise will be a factor. They have sufficient documentation to proceed with the permanent repairs once funds are available.

- BO asks how long the work will likely take and whether water levels will be changed to complete the work; ZK estimates 6 weeks total, to repair both compartments. The existing stop logs will be used with local pumping to lower water levels on the upstream side and allow workers to install the screw jacks inside the compartments. He does not anticipate the upstream level of the Green Harbor river will change; however, RP would like to get the level down by 2-3 feet, as has been done several times in the past, as this would help address leakage issues and equalize levels between the river and basin.
- PC asks for comments from the public; none.
- The standard conditions of approval will apply plus special conditions requiring use of turbidity barriers as needed, and documentation of any permits required by Mass DEP or Army Corps of Engineers.
- PC motions to close the hearing and issue Orders of Conditions with special conditions drafted by BG. AL second. Approved 7-0-0 by Roll Call Vote: JR=yes, AL=yes, SC=yes, BO=yes, PC=yes, CH=yes, JK=yes.

#### **2895 Spectrum Homes Inc., 16, 18, 20 & 22 (Lots 10-13) Adelaide Way (grading & retain wall)**

.....cont from 12/15/2020 (Art)

- Continued Hearing. Hearing Officer PC confirms administrative requirements are complete. Terry McGovern (TM), Stenbeck & Taylor, presents for applicant.
- The proposed activity is the construction of a retaining wall, grading and stabilization in anticipation of further developing lots 10-13; individual NOIs will be required for the construction of homes on these lots. AL notes that multiple progress reports have been received and reviewed with respect to the subdivision and retaining wall in particular. AL believes that all parties should meet in the field once a punch list of necessary activities is assembled.
- AL then asks BG to comment on the progress report submitted by TM with respect to implementation of the subdivision order of conditions SE42-2650. BG feels that TM's recurring comment "This condition is still in effect with no changes" lacks sufficient detail, and the report should specify which aspects of a condition have been implemented/completed or not.
  - With regard to Special Condition E regarding plantings, BG feels the condition could be implemented without any issues in relation to the slope stabilization proposed in this filing, and suggests its implementation be part of the conditions of approval for this filing.
  - Special Condition G requires submission of an Operations and Maintenance Manual to the Conservation Office, which has not been done. BG feels this condition could be implemented without any issues in relation to this filing, and suggests its implementation be part of the conditions of approval for this filing.
  - BG suggests that Special Condition I, prohibiting the use of certain chemicals, pesticides, and herbicides be linked to the respective NOIs for the remaining lots to be developed.
  - Special Condition J concerns a NHESP turtle habitat; BG would like additional information on the amount of turtle monuments required and confirmation of NHESP jurisdiction generally.
  - Special Condition K concerns placement of conservation markers along the 50 ft setback throughout the subdivision property; BG suggests that submission of an updated subdivision site plan, showing the location of the markers, be required as part of the special conditions for SE42-2893 (Lot 9).
  - With regard to Special Condition O concerning a cart path, BG would like the cart path location to be depicted on an updated site plan and written confirmation as to its location.
  - Special Condition R requires documentation of subsequent permits to be provided to the Conservation Office, which has not been done. BG feels this condition could be implemented without any issues in

relation to this filing, and suggests its implementation be part of the conditions of approval for this filing.

- BG notes that the wetland delineation of the subdivision property expired on September 23, 2017, suggests that the full wetland delineation be refreshed, and also recommends that a request for relief from the requirement to file individual NOIs for the development of lots 10-13 not be granted.
- With regard to TM's comments about a structural engineer being engaged later in the process, BG recommends that a special condition requiring structural engineer involvement in design of the wall be part of the conditions of approval for this filing and for the lot 9 filing.
- JK thanks TM for putting together his comprehensive summary and looks forward to all parties getting out in the field to resolve all issues. TM agrees that a site visit with all parties would be helpful and confirms the wall will be designed by a structural engineer, as this will be required by the Building Department.
- TM notes that the Commission has prioritized site stabilization going back to 2017, so the grading scheme for Lots 9-14 is such that the slopes above the wall are 5:1, with the slopes below the wall at 3:1. The wall height will not exceed 6 ft in any one location; in many locations it will be 4 ft. TM stopped all grading at the 50 ft buffer, but the Commission may wish to allow some grading into the 50 if it has concerns about stabilization of the lower slope, as the area in question is already disturbed.
- With respect to Special Condition N regarding individual filings for lots 10-13, TM asks that the Commission consider allowing those filings to be an RDA, given that all structures and septic systems will be outside the 100 ft buffer; this would avoid these houses having three outstanding open orders of conditions.
- Greg Gibbs (GG), Spectrum Homes, would like assurance that the Commission will approve a retaining wall prior to his engaging a structural engineer. He also feels the Commission has sufficient leeway to enforce on the subdivision special conditions without tying their fulfillment to approving individual filings within the subdivision. With respect to the structural engineer, AL notes that the concern with the wall is that it may not be designed properly, and failure would adversely impact the downgradient wetlands. The Commission is also concerned that simply planting grass downward from the wall will not be sufficient to absorb all runoff from the subdivision.
- AL adds that the Commission's erosion concerns associated with the project are partly a result of the entire property being clear cut initially. GG states that at the kickoff meeting, at which previous agent Jay Wennemer (JW) was present, Town Planner Greg Guimond commented that he didn't see a way to build the project without clearcutting the lot. GG states that JW never raised any issue with respect to the clear cut; he further believes the only areas of the property that could have been left uncleared were lots 10-12. He further states that the clearcutting matter was addressed and closed off through an after-the-fact filing, and objects to the fees associated with that filing. All markers are in throughout the property except for areas beyond the silt fence area where he can't work yet per NHESP's conditions.
- With regard to GG's comments, BG replies that his sense is that the Commissioners want the project to go forward provided steady progress is made on the special conditions and the wall is properly designed so it doesn't fail and impact the wetlands. The Commission has discretionary authority to grant regulatory relief where progress is made and Commission interests are protected.
- AL motions to continue the hearing to February 2, 2021. PC second. Approved 7-0-0 by Roll Call Vote: JR-yes, AL-yes, SC-yes, BO-yes, PC-yes, CH-yes, JK-yes.

**2893 Spectrum Homes Inc., 14 (Lot 9) Adelaide Way (New SFH).....cont from 12/15/2020 (Art)**

- Continued Hearing. Hearing Officer AL notes that most issues associated with this lot were addressed in the previous hearing. The matter is continued pending a site walk with all parties.
- TM suggests that the Commission consider approving this NOI at the January 19 meeting, with a special condition requiring that the retaining wall be completed by a structural engineer. JK agrees that



concerns regarding the retaining wall for this lot can be addressed through proper conditioning. After further discussion, the site walk is set for Friday, January 14th.

- AL motions to continue the hearing to January 19, 2021. CH second. Approved 7-0-0 by Roll Call Vote: JR-yes, AL-yes, SC-yes, BO-yes, PC-yes, CH-yes, JK-yes.

**20-33 Harrington, 52 Carolyn Circle (Confirm No Wetlands on Property).....cont 12/1/2020 (Joe)**

- Continued Hearing. Hearing Officer JR notes that the purpose of the filing is to determine whether any areas of the subject property, a 0.5 acre lot, are within Commission jurisdiction under the state WPA or the Town Bylaw.
- Attorney Adam Brodsky (AB); Brad Holmes (BH), ECR; and Art Allen (AA), Ecotec, present for applicant. AB states that they are seeking a negative determination on grounds that there are no regulatory wetlands on the site. There is no project proposed on this undeveloped lot at this time. AB states that although hydric soils exist on the site, there is no wetlands hydrology and therefore no regulatory wetlands under either the state or local Bylaw definition.
- BH notes that all parties met on the site recently, at which he pointed out areas where he performed vegetation analysis and determined that the vegetation within the plots does not contain a predominance of wetland vegetation. Based on what he observed in the field he feels there is not a dominance of wetland vegetation or characteristics at the site. He has submitted supplemental information to the Commission regarding state regulations and criteria for evaluating wetlands.
- AA notes he has performed two visits at the site and classified the soils on the site as gravelly, sandy loams, moderately well drained and hydric, plus surface soils consisting of silty clays derived from marine sediments that exhibit similar characteristics to hydric soils, which he termed “anomalous hydric characteristics”.
- BG notes that he is not a wetland scientist or soil expert, but feels there are inconsistencies and unaddressed questions with both evaluations. BG feels there is an IVW, as defined under the Town Bylaw, to the rear of the property behind a stone wall. This area has numerous red maples as well as yellow birch and high-bush blueberry. BG also cites duplications in two of BH’s Test Plots, 1 and 2, that he suggests that the Commission not accept as the result of Test Plot 1 would become 50/50 (wetland/upland) making Test Plot 1 wetland plant dominant.
- BG would also like to know why Test Pit E2, revealing hydric soils, standing water table, and hydric plants, was not chosen as the location for Test Plot 2? The selected Test Plot 2 was within a highly disturbed environment while only 30 feet away a stand of soft rush, a Wetland-obligate/FACW plant species was found and Test Pit E2 taken through the center of this soft rush stand revealed hydric soils, standing water that progressively filled the test pit and hydric plant species.
- BG also asked for an updated site plan showing all (6) six test pits from the December 11, 2020 soil survey site with data sheets. The submitted report contained (5) five test pits despite the request for all (6) six locations. Notably, the missing sixth test pit was located in the disturbed area close to Test Pit E4 which was located in an undisturbed area. The difference in the soil layers was not seen by the Commission. Additionally, BG requested a site plan showing the locations of the auger and test pits used by AA for the October 29, 2020 soil report letter visit. This was not submitted.
- BG also cites a report from an abutter that a truck was seen on the property in 2013, and a test pit dug then. BG feels that a NOI filing will be needed in order for the Commission to have sufficient information to make its ultimate determination, and recommends that the Commission issue a DOA Pos. #1 & Pos. #5.
- Abutter Frank Trocki (FT), 64 Carolyn Cir, states he has lived at the property since 1986; water runs off from the subject property onto his property and driveway, and a ZBA decision in 1989 held the lot to be unbuildable. FT also claims that in 2012 or 2013, a grader came in and stripped the original topsoil from

the lot and re-graded it with other topsoil. He continues to have issues with water running off into his property.

- AB replies that an RDA is the correct filing for determining Commission jurisdiction over the site, as no project is currently being proposed. AB contends that for purposes of Zoning, the Town determined that the lot as a lot of record, and buildable for purposes of zoning. Some perc testing has been done at the site over the years, but no grading or clearing. AB also contends that the Trocki property is at a higher elevation than 52 Carolyn, and thus any runoff comes from a different source.
- BH replies that his testing procedure and the vegetation data sheets he submitted are in keeping with MassDEP's methodology for BVW delineations. AA notes that in October he did a number of test borings and shovel pits across the site, all of which showed the same soil characteristics. AA does not feel that additional test pits would add any useful data to the discussion.
- PC appreciates BH's and AA's expertise and professional qualifications, but is struggling with the conflicting information presented. BO notes it is established that the site was disturbed by lawn mowing, perc holes, etc., so plants may not be the best criteria to look at for the lot; this leaves soils which come up hydric; he can't speak to AA's finding that the soils are "anomalously hydric." BO also notes there is a possible offsite wetland, whose buffer would encroach into the property, that he did not hear commentary on. BH states that he did review beyond the property line in back, and did not encounter any IVWs or evidence of wetland conditions/wetland vegetation dominance >50%. He evaluated the area beyond the line as best he could without trespassing onto the other property.
- During Commissioner deliberation, a second abutter indicates they wish to speak. JK makes a point of order to allow for additional abutter comment; a majority of Commissioners agree. Tom Greland (TG), 44 Carolyn Circle, abuts the lot. He has lived there for 16 years, has observed various machines on the property, and states that wetland vegetation was removed and fill brought in. TG also states there was a previous plan for a four-bedroom house on the lot that he believes will be resurrected. Candace Greland (CG), also 44 Carolyn Circle, states she observed phragmites, purple loosestrife and other wetland species growing on the property at one time, but they have been cleared out. CG would like to know if soils samples were taken before the lot was disturbed, or if there was any permitting for the previous activity on the site.
- JR notes that he is not a soil scientist or wetland scientist, but is somewhat taken aback by the conflicting information provided. The lot is clearly not in its original condition and has been altered over time. AB re-states for the record that no project is being proposed as a part of this filing. With regard to BO's comment regarding hydric soils, AB states that under the DEP delineation methodology, if there is evidence of an existing wetland, but the location is altered such that one cannot rely on vegetation, it is appropriate then to look at hydric soils, among other factors, in order to re-create the wetland line. They don't dispute that there is wetlands vegetation on the site, and that test pits have been dug at various times, but there is no evidence of a predominance of wetlands vegetation, and feels that the scientific evidence from AA and BH is being countered with anecdotal evidence from non-professionals.
- CH notes that she also lacks clarification given the claim there are hydric soils and wetland plants but not wetland. The current data is beyond her ability to parse, and she needs better information; JR concurs. PC is uncertain how to reconcile the study findings with abutter claims of previous activity that may have altered the characteristics of the lot. AL has visited the site, agrees it has been altered, and thinks it was probably wet before. JK notes that (1) the lot doesn't function as a wetland presently, but (2) there seems to be credible testimony that the lot has been altered to not function as a wetland.
- JR polls the Commission as to whether to issue a Pos 1 finding, requiring the filing of a NOI: AL yes; SC yes; BO yes but would defer to TC's opinion; PC yes; JK yes, third party opinion may ultimately be needed; CH yes; JR yes.
- JR motions to close and issue a Determination of Applicability, Pos #1 and Pos #5. AL second. Approved 7-0-0 by Roll Call Vote: JR=yes, AL=yes, SC=yes, BO=yes, PC=yes, CH=yes, JK=yes.

## **CONTINUED HEARINGS**

### **2709 Amended Lohe, 1354 Union Street (Amend dock float).....cont 11/17/2020 (Rick)**

- JK reads the legal ad. The hearing is continued until the next public meeting of the Marshfield Conservation Commission on January 19, 2021 as per the written request.
- JK motions to continue the hearing to January 19, 2021. CH second. Approved 7-0-0 by Roll Call Vote: JR=yes, AL=yes, SC=yes, BO=yes, PC=yes, CH=yes, JK=yes.

### **2894 Manning, 44 Jayna Way(addition, deck, porch, replace shed, grading, retaining wall, and vegetation removal & replanting).....cont from 12/15/2020 (Art)**

- The hearing is continued until the next public meeting of the Marshfield Conservation Commission on January 19, 2021. Applicant requested continuation during the December 15, 2020 MCC Public Meeting.
- JK motions to continue the hearing to January 19, 2020. AL second. Approved 7-0-0 by Roll Call Vote: JR=yes, AL=yes, SC=yes, BO=yes, PC=yes, CH=yes, JK=yes.

### **2887 Murphy, Brewster Rd (Road impvts. & storm water mgmt facilities).....cont from 10/20/2020 (Bert)**

- The hearing is continued until the next public meeting of the Marshfield Conservation Commission on February 2, 2021. Applicant requested continuation in writing dated December 30, 2020.
- JK motions to continue the hearing to January 19, 2021. CH second. Approved 7-0-0 by Roll Call Vote: JR=yes, AL=yes, SC=yes, BO=yes, PC=yes, CH=yes, JK=yes.

### **TBL 20-02 O'Connell, 75 Riverside Circle (raze & rebuild SFH).....NEW (Bert)**

- Commissioner Caron recuses.
- JK reads the legal ad. The hearing is continued until the next public meeting of the Marshfield Conservation Commission on January 19, 2021. Applicant requested continuation in writing. JK motions to continue the hearing to January 19, 2021. CH second. Approved 6-0-0 by Roll Call Vote: JR=yes, AL=yes, BO=yes, PC=yes, CH=yes, JK=yes.

Commissioner Caron returns to the public meeting.

## **REQUESTS FOR CERTIFICATES OF COMPLIANCE & EXTENSIONS**

### **0185 C.H. Marsh (now Newcomb), 2036 Ocean Street [COC]**

- BG visited the site and recommended issuance of the COC.
- JK motions to issue a COC for the property. JR second. Approved 7-0-0 by Roll Call Vote: JR=yes, AL=yes, SC=yes, BO=yes, PC=yes, CH=yes, JK=yes.

### **0787 Crawford & Brennan, 62 Kearsarge Road [COC]**

- BG visited the site and recommended issuance of the COC.
- JK motions to issue a COC for the property. JR second. Approved 7-0-0 by Roll Call Vote: JR=yes, AL=yes, SC=yes, BO=yes, PC=yes, CH=yes, JK=yes.

### **2598 Luccheti, 132 Oak Street [COC]**

- BG visited the site and recommended issuance of the COC.
- JK motions to issue a COC for the property. JR second. Approved 7-0-0 by Roll Call Vote: JR=yes, AL=yes, SC=yes, BO=yes, PC=yes, CH=yes, JK=yes.

### **2837 Herlihy, 675 Ocean Street [COC]**

- BG visited the site and recommended issuance of the COC.

- JK motions to issue a COC for the property. JR second. Approved 7-0-0 by Roll Call Vote: JR-yes, AL-yes, SC-yes, BO-yes, PC-yes, CH-yes, JK-yes.

**2862 Hewitt (Duxbury Construction), 37 Duck Hill Lane [COC]**

- BG visited the site and recommended issuance of the COC.
- JK motions to issue a COC for the property. JR second. Approved 7-0-0 by Roll Call Vote: JR-yes, AL-yes, SC-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)

**ADJOURNMENT** – JK makes a motion to close the hearing at 10:05 PM. SC second. Approved 7-0-0 by Roll Call Vote: JR-yes, AL-yes, BO-yes, SC-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
Susan Caron	