

**MEMBERS PRESENT** – Craig Hannafin (CH) Chair, Bert O'Donnell (BO) Vice Chair, Arthur Lage (AL), Joe Ring (JR), Susan Caron (SC), Eric Flint, Conservation Agent (EF); and Bill Grafton, Conservation Administrator (BG)

**MEMBERS NOT PRESENT** – Rick Carberry (PC)

**CALL TO ORDER** – CH motions to open the meeting at 6:30 PM. JR second. Approved 5-0-0.

**MINUTES**

- The minutes of the June 1 meeting were presented for approval. No comments or suggested changes were made on the floor.
- CH motions to accept the June 1, 2021 minutes as edited. AL second. Approved 5-0-0.

**CHAIRMAN'S ADDRESS**

- The COVID State of Emergency ended today, and all future public meetings will be held in person. CH has not received further guidance regarding online participation by residents, but it will likely remain an option until September.
- CH notes that all Commissioners are volunteers who put in many hours work for no compensation. The Commission strives to work with applicants to move their projects forward, but the Commission's ultimate charge is to protect the wetland resource areas, so CH asks for respect and patience on the part of applicants and residents.

**BUSINESS**

**B1 77 & 98 Cherry St / Enforcement order review and ratification – unpermitted vegetative management and fill – Bill Grafton & Craig Hannafin**

- BG advises that multiple complaints were received about cutting in the wetlands off Cherry Street in the area of the two properties. The cutting has taken out high tide bush, eastern red cedars and phragmites. BG also observed green waste dumping on adjacent conservation land, which a neighbor inaccurately advised property owners they could do.
- BG and CH met with Mr. Gibbs on 5/12 and issued a cease and desist on cutting in the buffer zones. Last week, BG received another call regarding additional cutting on 77 Cherry, visited the property with AL, and discussed the matter further with Gibbs, including the possibility of an Enforcement Order. There are valid Orders of Conditions for both 98 Cherry (SE42-2736) and 77 Cherry (SE42-2914). Both Orders included the posting of conservation markers and mitigation planting as part of their conditions of approval. 77 Cherry Street is currently up for sale. Mr. and Mrs. Gibbs have indicated to BG that they are willing to cooperate.
- BO asks if both properties have the same owner; that is BG's understanding but he hasn't verified actual title. Arthur Gibbs, 98 Cherry Street is present and confirms. AL notes that the posting of additional conservation markers may be in order to avoid future confusion. BO asks whether any of the markers required under the two Orders of Conditions have been installed; AL saw none when he visited the property. BG suggests that the Commission consider whether additional mitigation plantings are in order to replace the high tide bush and cedars that were cut in the buffer zone.
- Sara Gibbs (SG), 98 Cherry, states she is unaware of any liens on the properties. The Order of Conditions issued to previous owner Bottoms was to raze and move the existing structure, and they have no intention of doing that. SG states that they were informed by Mr. Bottoms that the yard of 98 Cherry has been maintained in the manner they were doing for many years before they purchased the property. They were unaware that a permit was needed for the cutting activity on 77 Cherry. The phragmites on the property are very aggressive, and the property hasn't been maintained in many years. Once they received OOC SE42-2914, they began clearing in preparation for putting the property on the market, but then stopped such activity when told to. SG also states that dumping

on the adjacent town-owned land comes from a number of sources. They are only looking to improve their property and are willing to obtain the needed approvals.

- CH asks SG about the cutting reported last week; SG states they resumed the cutting because they never heard back from anyone about a promised meeting. CH notes that she and BG issued a cease and desist when they visited the property on May 12, and this had no expiration date. SG acknowledges they resumed the cutting because they had not heard back from Conservation and they needed to get the property ready to put on the market. If they had realized a permit was needed, they would have applied but they were never told to apply for a permit. The only trees they cut were older and dying.
- CH states that the green waste needs to be removed from the dumping area by the road; SG points out that the piles are 8-10 feet tall, of which they only added a few branches and phragmites. BG suggests that they take out what they dumped plus a certain percentage of the green waste that is there; adding a fence with conservation markers may prevent future dumping in the area.
- CH also understand that 98 Cherry may have been mowed, but this mowing was done in error, as the land mowed is conservation jurisdictional resource area, and needs to stop. CH suggests that additional markers be posted on the property and high tide bush be planted to replace those removed. BG agrees that the high tide bush should be prioritized for replanting, as the phragmites will likely return on their own, and suggests that a restoration plan be required. AL suggests it may be beneficial to clarify with the Gibbs the distinction between resource areas and buffers, of their property is part, and the adjacent land which is actually Town-owned conservation land and under Commission control and custody. BG agrees and suggests that better education as to the regulations can help prevent situations like this from arising.
- SG states she doesn't think they were doing anything wrong and it feels like the Commission is seeking to punish them. CH states the intent is not to punish but the Commission does want to rectify the situation. SG is willing to comply with Commission requests within reason. BG notes for the record that the cease and desist issued in May remains in effect, so no more cutting should occur. Once a restoration plan is submitted and approved, a separate conservation permit can be obtained for appropriate vegetative management.
- CH suggest that property owners be given a 30-day window to prepare a restoration planting plan, and that the conservation markers required under the current Orders of Conditions be posted as soon as possible. JR notes that normally he would seek fines in this kind of situation but isn't interested in doing so here in the interest of promoting a cooperative work effort; however, he suggests that fines be considered if the work isn't completed by a certain date; CH concurs. BG suggests that the Commission track the days the property remains in violation but not necessarily assigning the fees unless the desired outcomes are left unsatisfied. CH suggests that the Commission discuss fines on a "business day" basis if, at the end of 30 days, the conservation markers are not posted and a restoration plan is not underway.
- CH motions to the Commission to approve an enforcement order for 77 and 98 Cherry Street, with 30 day window for placement of conservation markers and start of mitigation/restoration plan, and fines to be a possible consideration if the Commission is not satisfied with progress and outcomes after 30 days. JR second. Approved 5-0-0.

## **B2 MCC Public Meeting schedule and deadline July–December, 2021 – Commissioners**

- The Commission discussed and approved meeting dates and submission deadlines for July through December, 2021. Meetings are generally scheduled for the first and third Tuesdays of the month.
- CH motions to approve the public meeting schedule and submission deadlines for July through December of 2021 as prepared. SC second. Approved 5-0-0.

## **B3 72 Bay Avenue/ Request to Modify Valid Orders by adding concrete to BB/CD – Debbie Hanlan**

- The subject property was recently rebuilt on pilings under orders of conditions SE42-2752; part of the conditions of approval required that the subsurface remain pervious, and as a result, the previously existing concrete pad under the house was removed. Property owner Debbie Hanlan wants to restore the concrete, as she is concerned that the backing to the seawall is angled into her property, causing seawater to erode the subsurface.
- BO remembers the hearing for the permit, at which time the Commission discussed extensively about converting the subsurface to pervious surface; BO sees no reason to back away from this condition. CH feels there is no possibility to mitigate any addition of concrete to the subsurface.

- BG states that JR & he has discussed with Jim Folkard, Marshfield Woodworkers, the use of riprap to mitigate any potential water impacts while keeping the subsurface pervious. BG had a follow-up discussion with Ms. Hanlan during which he made the same suggestion. BG notes that allowing concrete pads in flood zones such as this has the effect of displacing wave/water energy onto neighboring properties. JR, who lives in the area, agrees that the water energy during storm events can be intense, but agrees that adding a concrete subsurface simply displaces the water energy elsewhere.
- Attorney Paul Flavin (PF) 59 Bay Avenue, representing Ms. Hanlan, understands the Commission's position in favor of pervious surfaces, but states the floodwater is so fast moving in the area that the pervious surface does not matter, as the water simply makes its way across the street towards the saltmarsh in back. PF states the issue at this property is that water coming over the seawall is landing at the start of the beach end of the footprint, undermining the area around the pilings. PF also opines that any riprap under the subsurface will be dispersed throughout the neighborhood. PF notes he is not an engineer, but feels that extending the concrete pad under half the subsurface could potentially resolve the issue.
- CH suggests that the Commission's options are to advise that no changes are allowed given there is no room for mitigation on the property, or it can request the filing of a Request to Amend the Order of Conditions, whereby the Commission could hear a professional engineer's analysis and opinion on the issue. PF notes that the currently approved site plan reduced the amount of impervious surface by some 300 sq ft, but BG points out that it was this reduction in impervious surface that allowed the Commission to approve the project. BG suggests that an interlocking rock design of various sizes may reduce the erosion impacts while keeping the subsurface pervious.
- BO notes that ultimately a solution needs to be found that dissipates the wave/water energy so it doesn't undermine the house or disperse the energy towards other properties. JR states the need is to mitigate the velocity of floodwater. CH believes that an engineer's input is needed.
- CH motions to require the filing of a Request for Amended Order of Conditions. JR second. Approved 5-0-0.

#### **B4 *de minimis* Activity Roll/Review/Ratification – Eric Flint**

##### **a. Eversource Tree Removal off Bridle Path on Conservation Land and within BZ**

- Eversource wishes to remove trees that threaten the South River substation and nearby lines. BG and EF visited the site and had no issues.

##### **b. Knies, 35 Mayflower Vegetative Management in BZ**

- Homeowner wishes to do vegetative management including two trees just outside the 75' buffer and some brush in the 50-100 ft buffer. A site plan depicting the proposed cutting has been provided; a NOI for additional work is forthcoming.

- CH motions to approve the aforementioned *de minimis* activities. SC second. Approved 5-0-0.

#### **PUBLIC HEARINGS**

##### **21-15 Griffith, 8 Water Street (Fence).....NEW (Art)**

- CH reads the legal ad. Hearing Officer AL confirms administrative requirements are complete.
- Property owners Angela Griffith (AG) and Matt Griffith (MG) present. The proposed activity is the installation of a Nantucket-style 4' by 8' L-shaped fence around the side and back of the property, which is located in barrier beach/coastal dune and LSCSF. AL has no issues but would like there to be a 6-inch gap at the bottom to allow for wildlife movement. BG notes the gap will also allow for the movement of floodwater.
- AL asks for comments from the Commissioners and public; none.
- The standard conditions of approval will apply plus a special condition requiring a 6-inch gap at the bottom of the fence.
- AL motions to close the hearing and issue a Determination of Applicability, pos 5, neg 3, with special conditions drafted by BG. SC second. Approved 5-0-0.

##### **21-16 Murray, 256 Ocean Street (Replace Deck).....NEW (Joe)**

- CH reads the legal ad. Hearing Officer JR confirms administrative requirements are complete.

- Tom Greland (TG), 44 Carolyn Circle present for applicant. The proposed activity is the replacement of an existing 10' by 12' deck with a new 16' by 20' composite deck on four diamond pier footings in previously disturbed lawn in barrier beach/coastal dune and LSCSF. No heavy machinery will be used and no fill will be brought in or removed. No disturbance to any vegetation is anticipated.
- BG comments favorably on the use of diamond piers, as they will reduce impacts on the resource area. BO visited the property and has no issues; CH concurs.
- JR asks for comments from the public; none.
- The standard conditions of approval will apply.
- JR motions to close the hearing and issue a Determination of Applicability, pos 5, neg 3, with special conditions to be drafted by BG. SC second. Approved 5-0-0.

**21-17 Doyle, 88 Marginal Street (Extend Existing Deck).....NEW (Susan)**

- CH reads the legal ad. Hearing Officer SC confirms administrative requirements are complete.
- EF presents on behalf of applicant. The proposed activity is the extension of an existing deck along the back side of the house, located in riverfront area and buffer zone to salt marsh. The deck is not moving closer to the wetland and is outside the 50' setback to the salt marsh. The work area is in a previously disturbed lawn. The staircase is being moved to the street side of the deck. EF visited the site and has no issues with the proposed work.
- SC asks for comments from the public; none.
- The standard conditions of approval will apply.
- SC motions to close the hearing and issue a Determination of Applicability, pos 5, neg 5, neg 3, with special conditions drafted by BG. AL second. Approved 5-0-0.

**21-18 McGrath, 1215 South River Street (Replace Driveway).....NEW (Susan)**

- CH reads the legal ad. Hearing Officer SC confirms administrative requirements are complete.
- EF presents on behalf of applicant. The proposed activity is the replacement of an existing driveway, expansion of the turnout area at the end of the driveway from 1.5-3 car widths, and addition of a new turnout for boat storage, which may require removal of a tree in the 75'-100' buffer. EF and SC visited the site and spoke with the homeowner, who indicated he is making the repair for safety reasons.
- EF states that based on the site plan from the Order of Conditions permitting construction of the home, the boat turnout appears to be just outside the 75' buffer; the other turnout may be in the 50' buffer, but this can't be concluded from the old delineation. The replacement of an existing driveway is exempted under the state WPA but the areas of expansion are not. However, since the lot was developed prior to 2002, it appears that the expansions would be allowable without a variance or mitigation permit. SC feels that the safety concerns with the existing driveway outweigh the small increase in impervious surface. BG notes that public safety is part of the wetland values that can be considered under the Chapter 505 regulations.
- SC asks for comments from the public; none.
- The standard conditions of approval will apply.
- SC motions to close the hearing and issue a Determination of Applicability, pos 5, neg 3, with special conditions drafted by BG. JR second. Approved 5-0-0.

**2935 Kiefer, 747 Ocean Street (Addition).....NEW (Bert)**

- CH reads the legal ad. Hearing Officer BO confirms administrative requirements are complete.
- John Zimmer (JZ), South River Environmental, presents for applicant. The proposed activity is the construction of a 25' by 28' three-season addition to the existing residence, on concrete footings; the property is located in barrier beach, coastal dune, and LSCSF. The addition is not intended to be habitable space. The project has been reviewed and approved by ZBA. JZ has delineated the BVW around the perimeter of the property. Applicant is going to relocate the existing fence in back of the house, which encroaches slightly onto Town land, so it is entirely on her property.
- BO asks about a proposed patio depicted on the site plan. JZ acknowledges there is a proposed pervious patio, which would be accessed off the addition. He will submit the requested paver cross-section. BO asks if anything is removed that would reduce the impervious area. JZ states there is an existing concrete walkway in the area of the addition that will be removed so the subsurface remains pervious.

- EF visited the site and had no issues with the delineation. He recommends that the fence in back be moved back to the property line and conservation markers be added to the fence. As applicant mentioned an issue with invasive vines growing in her yard, EF recommends a condition authorizing ongoing vegetative management by hand. EF noted that some of the lawn and gravel appears to extend past the paper street and onto an existing property; he recommends a special condition specifying that the permitted work is limited to applicant's property.
- BO asks for comments from the public; none.
- The standard conditions of approval will apply plus special conditions requiring moving of the fence to the property line, the posting of four conservation markers along the fence, authorizing the hand-maintenance of invasive vines by hand, and specifying that the permitted work is limited to applicant's property alone.
- BO motions to close the hearing and issue Orders of Conditions with special conditions drafted by BG. SC second. Approved 5-0-0.

**2934 Hevey (Estate of Elaine Hevey), 224 School Street (Septic).....NEW (Bert)**

- CH reads the legal ad. Hearing Officer BO confirms administrative requirements are complete.
- Bob Crawford (BC), EET, presents for applicant. The proposed activity is the installation of a new septic system on the property to replace two existing failed cesspools. The tank is just outside the 75' buffer and the remaining system is outside the 100' buffer. Part of the system is inside the 100' riverfront area. The new system consists of a 1500-gallon septic tank, about 77 feet from the bank to a perennial stream, which was flagged by John Zimmer (JZ) South River Environmental on April 27. The leaching system is outside the 100' buffer but is within the outer riparian zone. Some fill and grading will be required over the septic tank, and the pipe between the tank and the house. Erosion control is proposed along the limit of work where necessary.
- EF notes that MassDEP commented that the proposed work, as a septic upgrade in riverfront area, is exempt from their regulations 310 CME 10.00. He visited the site on June 8. His plans to move have changed, so he is not necessarily going to proceed with this work right away but does want the approval.
- BO asks if the system has been approved by the Board of Health; BC indicates it has. BO visited the site and has no issues with the work proposed. If they do perform any other work on the property, another filing will be needed.
- BO asks for comments from the public; none.
- The standard conditions of approval will apply.
- BO motions to close the hearing and issue Orders of Conditions with special conditions drafted by BG. AL second. Approved 5-0-0.

**2927 Resource Way LLC, 208 Enterprise Dr. / 795 Plain St. (access road/sw basins).....cont from 5/18/2021 (Art)**

- Continued hearing; AL Hearing Officer.
- Terry McGovern (TM), Stenbeck & Taylor, present for applicant along with Michael McDougal (MM) and Mike Verrochi (MV) present.
- AL inquires of BG as to whether the Commission has all the documentation needed to close tonight, including comment/feedback from all applicable entities. BG notes he has received comments from Town Engineer Rod Procaccino (RP), DEP, Pembroke Herring Commission, and NHESP with nothing requiring a continuance or additional information request. PHC has asked that the Commission to provide as much protection to Huldah Brook as possible so as to avoid downgradient impacts. BG reached out to NHESP and they responded that the property had been delisted, and no review on their part is needed. BG suggests that the project can potentially close tonight, but would like to see some corrections to some of the site plan submissions, which will help the Planning Board (PB) with its review on the collective properties, and help the PB and Commission work together in overseeing the project implementation.
- AL also asks BG about pending restoration plans and mitigation plantings; BG notes that MM will be making additional filings with the Commission and is aware of their restoration/mitigation plan obligations. However, BG suggests that this be addressed in the conditions of approval. AL notes that any approval issued tonight will be solely for the activities described in this filing; BG adds that in future filings concerning the property, the Commission should consider cumulative impacts to Huldah Brook associated with future filings.
- BG notes that maintenance of the drainage basin, and an access easement for maintenance will be vital. The revised site plan now lists Huldah Brook as actually an intermittent stream and not a perennial stream, so riverfront area

constraints are not applicable. BG would also like to see the proposed limit of clearing added to the site plan, as well as the wetland flags from Brad Holmes, to assist the Planning Board and Construction.

- TM notes for the record that he and his client are unaware of any plans for the forward part of 795 Plain Street. TM also states that the limits of the clearing and that all wetland flags are shown on the existing site plan. Based on feedback from the first hearing, comments from Town Engineer, Rod Proaccino (RP), and notes he solicited comments from MassDMF regarding their classification of Huldah Brook, they have pulled their stormwater infrastructure farther away from the BVW, and have added trap rock to the culvert to reduce water flow through it. They are willing to establish an easement for stormwater structure maintenance.
- BG notes that the Commission will need to know who will ultimately be responsible for maintenance; MM and MV indicate that they will maintain the storm water structures and swale; BG suggests that this be formalized in writing, including succession if they sell the property.
- JR notes that a "page 15" seems to be missing from TM's documentation; TM indicates this is the Planning Board decision page, which has not been rendered yet. JR comments he is assuming in good faith that this will be provided in due course; AL feels BG and EF can follow up on the matter as needed. BG suggests that submission of this sheet be added to the d(3) post-construction conditions so work can proceed in the meantime. TM adds that the Planning Board's Certificate of Action will be filed at the Plymouth Registry of Deeds. BO asks whether the project as proposed and updated provides sufficient protection to the coldwater fishery; BG believes it meets the necessary standards for the activity specifically set forth in this filing; AL concurs and notes that impacts from additional activity on other lots upstream will be addressed in future filings.
- MM asks what is meant when the Commission refers to the "other lots." BG explains this refers to lots upstream from Drainage Lot B and Lot 2 that could add additional stormwater impacts when they are developed. MM states he knows nothing about plans for any other lots. AL notes the Commission is calling out the issue now so it will be addressed if/when the other lots are developed.
- BG will work with TM regarding the updated submissions required as a condition of approval.
- AL motions to close the hearing and issue Orders of Conditions with special conditions drafted by BG. JR second. Approved 5-0-0.

**2916 Lawson 62 Marginal Street (dock, pier, ramp & float system).....cont from 4/6/2021 (Rick)**

- Continued hearing; CH acts as Hearing Officer in PC's absence. A written request for continuation was received today at the Conservation Office, after the filing deadline for this meeting. BG notes that additional information and updated site plans requested by the Commission, particularly with respect to Harbormaster DiMeo's comments regarding navigation, have not been provided and suggests that continuing and charging applicant a second count towards denial without prejudice, per Commission policy, may be a way to get a proper response.
- CH motions to continue the hearing to July 6, 2021 and charge applicant with a second count towards denial without prejudice due to lack of response regarding requests for modifications. SC second. Approved 5-0-0.

**REQUESTS FOR CERTIFICATES OF COMPLIANCE & EXTENSIONS**

**1579 Lynch, 25 Billings Road [COC]**

- BG advises that the special condition requiring a deed restriction remains unfulfilled, and recommended that the request be tabled.
- CH motions to table the matter until July 6, 2021. BO second. Approved 5-0-0.

**2910 Farrell, 41 Prince Circle [COC]**

- Property owners have decided not to proceed with the approved addition, walk, and driveway; the septic work on this property can proceed without a conservation permit as it meets the Project Specific Performance Standards in the revised Ch. 505 regulations. The work completed included relocation of a doghouse and the posting of conservation markers. BG recommend the issuance of an invalid COC to close out SE42-2910.
- CH motions to issue an invalid COC for SE42-2910, as a portion of the work will be performed under the Orders, while the rest will not be performed. JR second. Approved 5-0-0.

**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** – CH makes a motion to close the hearing at 8:30 PM. SC second. Approved 5-0-0.

Respectfully submitted,  
Bill Grafton, Conservation Administrator  
Liz Anoja, Conservation Administrative Clerk  
Eric Flint, Conservation Agent

Marshfield Conservation Commission	
Craig Hannafin, Chair	Bert O'Donnell, Vice Chair
Arthur Lage	Joe Ring
Rick Carberry	Susan Caron