

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

MEMBERS NOT PRESENT – None

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

MINUTES

- The minutes of the September 7 and September 21 meetings were presented for approval. Comments provided by Commissioners have been incorporated. No comments or suggested changes were made on the floor.
- CH motions to accept the 7, 2021 minutes as edited. SC second. Approved 6-0-0.
- CH motions to accept the 21, 2021 minutes as edited. AL second. Approved 6-0-0.

CHAIRMAN'S ADDRESS

- Pursuant to Chapter 20 of the Acts of 2021 date June 16, 2021, An Act Relative to Extending Certain COVID 19 Measures Adopted During the State of Emergency regarding suspending certain provisions of the Open Meeting Law, G. L. c. 30A §18, Commission meetings will be conducted both in-person and via remote participation. Members of the public may attend in-person or may participate remotely. While an option for remote attendance and/or participation is being provided as a courtesy to the public, the meeting/hearing will not be suspended or terminated if technological problems interrupt the virtual broadcast, unless required by law.
- 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 and are to be new information only, not repeating what was previously said. Pre-vote polls may be conducted to gain the perspective of the Commission.

BUSINESS

B1 *de minimis* Activity Roll/Review/Ratification – Eric Flint

a. 12 Idaho Street, Nestor – Swim Spa

- The proposed activity is a swim spa installation on existing lawn. Property is entirely outside the 50' buffer and the work qualifies for the exemption under 10.02(2)(b)(2)(e) for conversion of lawn to uses accessory to residential structures.
- EF recommends approval with the condition that applicant seek all pertinent permits prior to the start of work.
- CH motions to approve the proposed activity as *de minimis* Activity. SC second. Approved 6-0-0.

b. 57 Salt Meadow Way, Whalen Hazard tree removal

- The proposed activity is removal of one hazard tree on existing lawn that has been determined by an arborist as a threat to the house.
- EF recommends approval with the condition that applicant seek all pertinent permits prior to the start of work, and leave the tree's root system in the ground.
- CH motions to approve the proposed activity as *de minimis* Activity. PC second. Approved 6-0-0.

c. 41 Partridge Brook Circle – replacement of existing decking/stairs

- The proposed activity is replacement of an existing decking and stairs inside the existing footprint, outside the 50' buffer.
- EF recommends approval with the condition that applicant seek all pertinent permits prior to the start of work.

- CH motions to approve the proposed activity as *de minimis* Activity. SC second. Approved 6-0-0.

B2 SE42-2919, 31 Branch Street, *de minimis* Activity vs. Amended OOCs – Commissioners

- Applicant received an order of conditions for construction of a deck and addition, plus raze/rebuild of a garage, then received approval to increase the size of the garage as a De Minimis activity. Upon Building permit sign-off, it was found that the work now includes elevation of the house. Applicant's representative has been contacted and will file for an Amended Order of Conditions.
- The Commission tables this discussion due to plans to submit a Request for Amended Order of Conditions (RAOOC).

B3 Discussion about mitigation, restoration and replication expectations and deadlines – Commissioners

- At the August 17 meeting, the Commission tasked the Conservation Administrator and Agent to draft updated procedures for monitoring and closing out mitigation, restoration, and replication planting plans. BG and EF have prepared draft special conditions that clarify the expected timelines as follows:
 - Planting plan is to be implemented in the first planting season following issuance of the Orders of Conditions.
 - Implementation report due by June 1st if the planting occurs in the Spring planting window and December 1st if planting occurs in the Fall planting window.
 - The two annual monitoring reports are due by December 1st starting after the first growing season.
 - Failure to comply with the deadlines or requirement for 75% successive growth shall lead to subsequent year(s) of monitoring or enforcement.
- The special conditions will specify a spring or fall planting and will include an ongoing condition allowing for periodic maintenance. EF notes the goal was to create a straightforward expectation for the implementation of planting plans in the hopes of ensuring successful mitigation which was required by the Commission as part of the approval. BG adds that the "ongoing periodic maintenance" condition can be made a requirement or optional.
- JR notes that the objective of the conditions is to achieve 75% survival after two growing seasons, but believes there is room for some discretion as to survival after three or more seasons. In response to a query from PC, BG believes these conditions will make it easier for Conservation Staff to monitor the plantings as the deadlines and expectations will be standardized.
- CH motions that the Commission adopt the proposed special conditions as the standard for Orders of Conditions of all types, Enforcement Orders, and Certificates of Compliance issued which include planting plans. JR second. Approved 6-0-0.

B4 Suggested Qualified Wetland Scientist List potential addition Weston & Sampson – Commissioners

- Weston & Sampson has requested that they be added to the Commission's list of Suggested Qualified Wetland Scientists. They are currently handling the restoration project at the DPW site on Parsonage Street.
- BG and CH notes that the restoration at Parsonage is going well.
- CH motions that Weston & Sampson be added to the Marshfield Conservation Commission list of suggested wetland consultants. AL second. Approved 6-0-0.

B5 Conservation Land Valuation Metrics & Decision Making Grid, discussion item – Commissioners

- The Commission reviewed a draft list of Conservation Values for ranking land protection plus decision-making grid prepared by BG, EF, and Commissioner Lage (AL) in response to AL's request for metrics to evaluate land protection options for different properties. The grid denotes what kinds of protections, Chapter 97 or Conservation Restriction with third-party monitoring, are required or optional for different kinds of transfers. AL notes that the list and grid represent a first attempt to put together some objective values to be considered; they did not undertake to rank the different values.
- Discussion includes whether the Commissioners should rank the values in discussion, suggestions for additional factors including time spent by Conservation Staff to monitor. PC notes that budgetary considerations are also a factor given the cost to establish a CR with third-party monitoring. BO notes that most Conservation land will be

acquired through the CPA, which requires a CR with monitoring; smaller parcels the Commission receives through donations, etc., rarely require a CR, so in those cases the decision grid won't be needed. SC adds that in the case of land acquired through the CPA, the Town Meeting articles generally include the cost of establishing the CR and monitoring.

- BG suggests that the purpose of the decision-making grid is to eliminate ambiguity and confusion where possible. The criteria are to guide Commission decision-making in those situations where the Commission has multiple options as to the format of land protection.

B6 FTM Article/Housekeeping Transfer of Old Mount Skirgo Parcel from DPW to Conservation – Commissioners

- The Commission continued discussion regarding approval of the transfer of DPW Parcel ID E08-01-1A, consisting of 25 acres off Old Mt. Skirgo Road, to Commission care and custody, as approved by the National Heritage Endangered Species Program for priority habitat mitigation associated with the Couch Cemetery, Boys and Girls Club, and Rockwood Road ballfield development projects. The matter was tabled at the September 21 meeting to allow for further research regarding protection options (Chapter 97 or Conservation Restriction) and decision-making grid and conservation land valuation metrics (See B5).
- Commissioner discussions. JR recalls that the last meeting that the Town Administrator and Town Counsel were present. He suggested that a better process is needed and that the events leading to this decision have gone wrong. AL indicates support for Article 97 on this decision. SC states that NHESP mitigation raises interest in the land and discusses merits of Conservation Restriction. BO states that the CPC will be reviewing an application on the CR question and then Town Meeting will decide. AL queries if the Town is looking for any feedback? CH states that this is an opportunity to discuss and provide feedback. PC asks what is the probability of getting the CPC application passed? SC believes it could pass as they have funded many CRs in the past for land purchased with CPC funds but acknowledges that this situation is different so she cannot say with certainty it would be approved. CH states that CPC Article includes the Wildlands Trust which has been working on a Conservation Restriction on this land in the past.
- Dave Carrier, 34 Outlook and Vice Chair of the Board of Public Works, notes that the land is currently under the care and custody of the Water Department, as the main concern is protection of water supply. Most of the land is vegetated wetland, and there are remains of an old wellfield on the site. DC states that the FTM Article is not an item where typically there has been any need for a restriction. He believes the provisions of Article 97 are sufficient to protect the land, and would prefer that the funds that would have to pay for a CR go to other purposes.
- BO states that the Commission vote supports Fall Town Meeting Article 30 leaving open the option to request a Conservation Restriction as well.
- CH motions to the Commission authorization to transfer land of Old Mount Skirgo from DPW to the care and custody of the Commission under Article 97. JR second. Approved 6-0-0.

PUBLIC HEARING

21-32 Marshfield Recreation Department, 900 Ferry Street (Playground).....NEW (Bert)

- CH reads the legal ad. Hearing Officer BO confirms administrative requirements are complete.
- Recreation Director Craig Jameson presents. The proposed activity is the CPA-funded installation of a playground fixture and safety surface in fenced-in, existing lawn area. The play surface will be comprised of mostly wood chips plus a permeable rubber safety surface in use at several playgrounds around town.
- EF notes that the 25' setback applies to this lot, and there are other structures closer to the wetland. Based on a 2006 delineation, the limit of work would be about 35' from the wetland at its closest point.
- BO has no issues but would like a cut sheet to confirm the rubber material is permeable; Tim Pesko of Childscapes Playgrounds, which will be doing the installation, will provide the cut sheet for the file.
- BO asks for comments from the public; none.
- The standard conditions of approval will apply plus a special condition requiring the use of erosion control at between the limit of work and the wetland.
- BO motions to close the hearing and issue a pos 5, neg 3 Determination of Applicability with special conditions drafted by EF. PC second. Approved 6-0-0.

2948 Bertone, 85 Rockport Street (Septic, walkway, patio & repave driveway).....NEW (Art)

- CH reads the legal ad. Hearing Officer AL confirms administrative requirements are complete.
- Terry McGovern (TM), Stenbeck & Taylor presents for applicant. The proposed activity is a septic repair plus construction of a bluestone walkway, 12' by 12' pervious paver patio, and resurfacing of the existing driveway with crushed stone.
- TM notes that the existing failed cesspool is very close to the wetland; most of the new system will be located in the northeast corner of the property, as far from the wetland as possible. The system will utilize a pump, to be located near the cesspool, that will direct all sewage to a 1500-gallon, two-compartment septic tank; this will reduce the amount of disturbance inside the 50' buffer. The cesspool will be pumped out and backfilled with clean sand. The system has been approved by the Board of Health. The bluestone walkway will go around the house and the patio will be located off the southeast corner of the house. No impervious area will be added to the site. They would also like to remove about 6 trees plus some vegetation clustered in the area of the existing garage.
- EF has no issues with the location of the septic system or gravel driveway, as it is mostly located outside the 50' buffer and 100' riparian area. However, he points out that the proposed walkway will be within the 25' buffer and patio would be just outside the 25' and within the 50' buffer; the Commission should verify that the patio will be permeable as designed and consider requiring a permeable option, such as gravel, for the walkway. EF also notes there are two structures that encroach onto the adjacent parcel: a small shed which partially encroaches into the wetland, and a garage/shed located between the 25' and 75' setbacks; the owner of this parcel is unknown. Additionally, there are two propane tanks located about 10' from the wetland, which he suggests be secured or moved out of the buffer. The Commission should also consider whether to require mitigation for the trees removed, particularly if they do not present an immediate hazard.
- BG notes that the cross-section for the paver patio references the use of crusher run, which has fines that tends to close up the interstitial space between the larger stones, rendering the subsurface impervious. BG also questions whether concrete sand is actually permeable. BG notes that the updated filing references bordering land subject to flooding (BLSF) in addition to LSCSF; BG believes the site is in LSCSF only, and suggests the addition of a d(0) special condition specifying that BLSF is not applicable to the approved work.
- Richard Bertone (RB), applicant's father, indicates they are looking to remove four trees, two to the right of the property, 4" and 10" in diameter and very close to the house; the other two trees, one 20" in diameter and one 4" in diameter, are dead. EF has no concerns with the work as proposed.
- AL asks if the propane tanks can be moved? RB points out they are attached to a locking mechanism that renders them immobile. AL suggests that applicant ask AmeriGas, the company that supplied the tanks, to move them.
- CH asks if the floodplain manager in the Building Department has looked at the plans? EF has not heard from Building Department regarding this property at this time.
- In response to a query from BO, TM indicates that the walkway would be comprised of crushed pea stone, which is acceptable to the Commissioners. EF also advises AL that the feedback he received from Building was that patio as proposed would not be pervious but applicants indicated to him they were willing to consider other materials. AL requests that TM come back with a paver cross-section that would be pervious. TM notes he has presented similar designs to the Commission before that have been approved as pervious; JR later states that the Commission has received feedback from the State suggesting more stringent performance standards for "impervious surface". BO feels that the changes requested are minimal and would prefer to close the matter tonight; TM indicates he will provide an updated site plan by noon Friday if the matter is closed tonight.
- BO asks about the disposition of the two sheds? They are remaining as is for the time being. BG suggests a special condition requiring applicant to reappear before the Commission to remove the structures if it is determined that the adjacent parcel is Town-owned.
- SC asks where the propane tanks can be moved? All agree that they be moved by the house. Janice Bertone (JB) notes that the propane tanks have likely been there a long time, and is unsure who could move them or how much it would cost. CH indicates the company that placed the tanks can move them.
- Special conditions of approval include a notation that BLSF is not applicable to the site, applicant must reappear before the Commission if it is determined that the adjacent parcel belongs to the Town, posting of three conservation markers along the 25 ft buffer, submission of a revised site plan with patio cross-section to the Conservation Office by noon Friday, and removal of the propane tanks 25' or greater from the wetland.
- AL motions to close the hearing and issue Orders of Conditions with special conditions drafted by BG. JR second. Approved 6-0-0.

2951 Trocki, 12 Branch Street (Raze & Rebuild SFH).....NEW (Joe)

- CH reads the legal ad. Hearing Officer JR confirms administrative requirements are complete.
- Tom Trocki (TT), applicant's grandfather, states that applicant purchased intending to rehabilitate the property and discovered sufficient issues to qualify the work as a major renovation, making it more economical to raze and rebuild. Thus, the proposed activity is the raze and rebuild of the existing SFH in the same footprint, with the new structure proposed to be on a block foundation with flood vents. The existing garage structure will remain unchanged except for cosmetic repairs; five conservation markers are proposed behind the garage. As part of the raze and rebuild, they wish to remove a tree in front of the existing house.
- BG notes that Town online Assessor parcels with respect to the boundary to the adjacent conservation property in the back are not correct, and the line shown on applicant's site plan is correct. EF notes there is a variance request to construct the house on a block foundation with flood vents, as opposed to the open pilings called for under the Chapter 505-307.2 regulations for structures inside the 100' buffer to salt marsh; however, applicants are proposing to set aside about 1000 sq ft of mitigation. The new house would result in about a 64 sq. ft. increase of impervious coverage. The site plan includes an alternative on piers or piles "If required by Conservation or Building."
- JR is inclined to require piers or piles based on what the regulations say and because it would reduce the risk of damage to the new house. BG notes that the lot is loaded with peat since it adjoins a salt marsh, which could cause sections of the new house to sag unevenly if built on a concrete foundation. Open piles would be driven deep beneath the peat and avoid this issue.
- PC asks why applicant prefers a concrete foundation with vents? TT notes that the existing house already has a concrete foundation and has been there for many years; he is willing to add more vents, but would prefer not to have to re-engineer the plans. BG notes that the changes to the site plan would be relatively minor, but the architectural plans would require significant change. BO notes that a variance is only supposed to be granted in rare and unusual circumstances, and he doesn't see a case for one here. Since the existing house is coming down, there is plenty of room to put in piles as required by the bylaw. AL concurs.
- PC asks if a house on piles would have to be built higher than a house on concrete? It would be have to be the same height above the flood elevation. TT argues that the elevation of the new house above the ground does not require or justify piles, but CH agrees with the Commissioners that the standard to grant a variance has not been met. JR explains further that a variance can only be granted when there is no feasible alternative to a proposed design. PC asks whether concrete helical piles would be an option; BG indicates that concrete piers or helical piles would both be options since the site is not in barrier beach. After further discussion, TT assents to a continuance to allow for receipt of updated plans showing an open pile foundation. BG suggests that applicant also add gas line locations to the plan so they don't have to request a *de minimis* Activity permit later.
- JR motions to continue hearing until October 19, 2021. AL second. Approved 6-0-0.

2952 Carlo, 89 Constitution Road (Removal of 3 to 4 hazard trees).....NEW (Bert)

- CH reads the legal ad. Hearing Officer BO confirms administrative requirements are complete.
- John Zimmer (JZ), South River Environmental, present for applicant. The proposed activity is the removal of 3–5 hazard trees per the recommendation of applicant's arborist. One tree is within the 25 ft buffer. JZ delineated the property and found a BVW extending across the property behind the house. The trees will be removed by hand if possible, crane if necessary; the root systems will remain in place to minimize disturbance, and erosion control will be deployed around the limit of work.
- EF visited the property on 9/27 and observed two sheds in back and a fence just up-gradient of the wetland, none of which appear to have been permitted by the Commission. EF suggests the placement of five conservation markers along the back fence and tree line on the side as mitigation and as a deterrent to further encroachment.
- BO asks which trees are proposed to be removed, and requests that JZ tag the trees on site plans moving forward to aid Commissioner field observations. One tree is close to one of the sheds in the 25' buffer and two others are at or just outside the 25, to the west of the house. BG believes that this type of NOI should not require a surveyed site plan, but requests that JZ file an updated site plan showing the location of the trees to be removed, as well as the five conservation markers, by noon on Friday; JZ assents.
- BO asks for comments from the public; none.
- Special conditions will include the posting of (5) five conservation markers and submission of an updated site plan showing the location of the trees to be removed, as well as the (5) five conservation markers, by noon on Friday.

- BO motions to close the hearing and issue Orders of Conditions with special conditions drafted by EF. JR second. Approved 6-0-0.

2949 McCarthy, 14 Damon's Point Road (Deck & Patio).....NEW (Art)

- CH reads the legal ad. Hearing Officer AL confirms administrative requirements are complete.
- James Garfield (JG), Morse Engineering, present for applicant. The proposed activity is construction of a raised deck off the back of the existing house, replacement of the existing impervious patio with pervious paver patio, and construction of a pervious paver walkway to the driveway. All work lies outside the 75' salt marsh buffer and 100' riparian zone to Macomber's Creek, except for a corner of the proposed walkway. They are also proposing to install (4) four conservation markers in back of the property.
- EF has no issues with the proposed work but noted the presence of a dilapidated dock on the marsh behind the property for which no Town, North River Commission, or Mass DEP permitting was found. NRC indicated that they would be unlikely to approve the existing dock in its present condition, and EF recommends its removal as a condition of approval, as was done at 84 Cedar Acres.
- BG suggests posting additional conservation markers along both edges of the property at the 25 ft setback; AL and EF note that doing so on both edges would sacrifice a chunk of lawn that has been existing for decades; EF suggests leaving the lawn area as is and posting markers at lawn edge in back and along the tree line. BG then suggests that the (4) four markers proposed by applicant be removed, as they imply applicant has permission to disturb the 0 to 25 ft buffer. BO comments that clearing or structures that were legal at the time they were done is allowed to remain and suggests that the (4) four markers be spread out along the tree line; BG agrees. EF will work with JG as to the exact placement of the markers.
- AL agrees that the dock removal should be a condition of approval and has no other issues with the proposed work other than the removal of a non-functioning grill in back.
- AL asks for comments from the public; none.
- Conditions of approval will include the posting of (4) four conservation markers as discussed with Conservation staff, removal of the dock prior to the start of work unless evidence of its permitting can be provided, and submission of an updated site plan showing the location of the markers by noon on Friday.
- CH motions to close the hearing and issue Orders of Conditions with special conditions drafted by EF. SC second. Approved 6-0-0.

Scheduled Continued Hearings:

2950 Gomes, 76 Carolyn Circle (Pier, Dock & Float).....NEW (Rick)

- The hearing is continued until the public meeting of the Marshfield Conservation Commission on November 16, 2021.
- CH motions to continue hearing until November 16, 2021. JR second. Approved 6-0-0.

2916 Lawson, 62 Marginal Street (Dock).....cont. from 7/6/2021 (Rick)

- The hearing is continued until the next public meeting of the Marshfield Conservation Commission on October 19, 2021
- CH motions to continue hearing until October 19, 2021. JR second. Approved 6-0-0.

REQUESTS FOR CERTIFICATES OF COMPLIANCE & EXTENSIONS

1579 Lynch, 25 Billings Road [COC]

- BG advised that evidence of the deed restriction's recording has been provided to the Conservation Office, and recommended issuance of the COC.
- CH motions to issue a complete COC for SE42-1579, with Ongoing Conditions as follows: The deck/porch is to remain non-habitable space in perpetuity as per the deed restriction recorded at the Plymouth County Registry of Deeds, Book 55733, Page 210 on September 27, 2021. SC second. Approved 6-0-0.

2731 & 2731 Amended Sheehan, 193 South River Street [COC]

- A COC for SE42-2731 was initially denied by the Commission during the 7/20/21 Public Meeting and then required the submittal of a Request for Amended Orders of Conditions, which was received and approved by the Commission during the 9/7/21 Public Meeting. Applicant has provided proof of recording for the Amended OOC.
- CH motions to issue a Complete COC for SE42-2731 & SE42-2731 Amended, with Ongoing Conditions as follows: There shall be no disturbance downgradient of the conservation markers depicted on the As-Built dated June 30, 2021 and the footprint of the property shall remain pervious as per the referenced As-Built Plan. AL second. Approved 6-0-0.

2899 Donnelly, 25 Meadow Lane [COC]

- As-Built Site Plan, RPE letter, and elevation certificate were received from applicant's representative. EF visited the property and recommended issuance of the COC.
- CH motions to issue a COC for SE42-2899 with ongoing condition as follows: There shall be no disturbance downgradient of the conservation markers depicted on the As-Built dated September 23, 2021 and the footprint of the property shall remain pervious as per the referenced As-Built Plan. JR second. Approved 6-0-0.

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 8:37 PM. PC second. Approved 6-0-0.

Respectfully submitted,
Liz Anoja, Conservation Administrative Clerk

Marshfield Conservation Commission
Bill Grafton, Conservation Administrator
Eric Flint, Conservation Agent

Craig Hannafin, Chair

Art Lage

Susan Caron

Bert O'Donnell, Vice Chair

Joe Ring

Rick Carberry