

**MEMBERS PRESENT** – Craig Hannafin (CH) Chair, Bert O'Donnell (BO) Vice Chair, Susan Caron (SC), Rick Carberry (PC), Art Lage (AL), Joe Ring (JR), 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 December 21 meeting were presented for approval. No comments or suggested changes were made on the floor.
- CH motions to accept the December 21, 2021 minutes as edited. JR second. Approved 5-0-1, SC having abstained.

### **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.
- CH advises that EF will be leaving the Conservation Office to take a new job outside the area. CH thanks EF for his efforts. BG thanks EF for clearly establishing the role of Conservation Agent, which is a new position in the Town, and for his involvement in multiple projects. EF thanks BG and the Commissioners for working with him; he has learned a lot in his tenure with the Town.
- CH advises she would like to move Business items 4 through 6 to the end of the meeting so Building Commissioner Andrew Stewart can participate.

### **BUSINESS**

#### **B1 *de minimis* activity Roll/Review/Ratification – Eric Flint**

##### **a. 53 Ice House Lane, Guimond – Hazard tree removal in BZ**

- The proposed activity is removal of downed and standing portions of a pine tree damaged in the October windstorm as well as an oak tree leaning towards the house. 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 a *de minimis* activity. PC second. Approved 6-0-0.

##### **b. 315 Oak Street, Milkowski – Eversource Gas Line in BZ**

- The proposed activity is installation of an Eversource gas connection in existing driveway outside the 75' buffer to a BVW. 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 a *de minimis* activity. SC second. Approved 6-0-0.

#### **B2 SE42-2913, Green Harbor Golf Course – propane UST / *de minimis* activity vs. Request for Amended Order of Conditions – Commissioners**

- The Building and Fire Departments have advised the Conservation Office of a proposal to install a 320-gallon underground propane storage tank and connection to outdoor fire pit. The tank location is inside the 100 foot buffer zone and the fire pit is just within the 50' buffer; the area is currently a putting green. This activity was not mentioned as part of the work approved under SE42-2913.
- EF notes that Section 505-305.1 prohibits underground storage tanks of hazardous materials in resource areas, but BG and he have confirmed with Assistant Fire Chief Tom Corbo that propane is not considered to be a hazardous material for purposes of the Bylaw. BG adds that, as a gas, any leaked propane would be dissipated

over time through the interstitial space and would not harm the soil or groundwater. The Commissioners agree that the activity can be approved as a *de minimis* activity.

- CH moves to approve the proposed activity as a *de minimis* activity. AL second. Approved 6-0-0.

**B3 SE42-2793, 176 Beach St Sullivan / replace shed: *de minimis* activity vs. Request For Amended Order of Conditions – Commissioners**

- An OOC was issued in 2019 for installation of a pool and accessory structures including a shed, as well as coastal beach and dune mitigation. Applicants will be tearing down an existing shed and removing hardscape from the lot, and would like to construct a larger, elevated shed. BG notes that applicant had originally proposed a much larger structure for changing and equipment storage, and the removal of additional hardscape will be beneficial. He has reviewed the request with Building Commissioner Andrew Stewart (AS) and recommends that the activity be approved as De Minimis. CH adds that AS is okay with the request as proposed.
- CH moves to approve the proposed activity as De Minimis. JR second. Approved 6-0-0.

**B4 Review and ratify Marshfield Forms 6 Notice of Non-Significance – Commissioners**

- Commission consultant William Finn (WF) present to continue the discussion of the possible use of WPA Form 6, Notification of Non-significance, to allow interior work on structures in Barrier Beach/Coastal Dune deemed a “substantial improvement” by the Building Department to proceed without requiring the structure’s elevation on piles. BG notes that this form hasn’t been used in Marshfield since the 80s; it is not clear to him why its use stopped. The form indicates that the Commission finds that a given activity to not be significant to the resource areas or performance standards. WF suggests that the form can be used in situations where an Order of Conditions cannot be issued due to no jurisdictional work taking place, such as in the case of interior improvements; the form would be issued in place of the OOC.
- AL asks how the Commission would decide to issue a Form 6 instead of an OOC? WF believes the Commission would ultimately vote to do so after a public hearing. Applicant may request issuance of the form but this would be up to the Commission. AL also asks whether it is necessary to ratify usage of the form if it has been used in the past? BG states that although the states provides the form, the Town has not adopted its use in the Chapter 505 regulations so this form would need to be adopted.
- SC asks how issuing a Form 6 would be different from an RDA, as to her understanding, the purpose of an RDA is to determine whether or not there is an impact on the resource area? EF reads an excerpt from the MACC handbook noting the form “can be issued in response to a NOI filing in cases where, in some cases, the work proposed will not affect the interests of the Wetlands Protection Act. This is very rare, and most often occurs when work is proposed in locations that do not meet the regulatory definition of a resource area, an applicant files by mistake, or a project is modified in a way that removes it from Commission jurisdiction.”
- BO asks why it is necessary for applicants performing non-jurisdictional work to file a NOI with the Commission? WF indicates that the NOI filing would be needed in order for the Commission to use the Form 6, as the form is essentially a response to a NOI.
- BO suggests it is up to the Commission to decide under what circumstances the Form 6 should be used. WF agrees but notes that first the Commission should vote to establish that the form can be used. BG notes that updates will be needed to the Ch 505 Regulations and the forms inventory. BO feels the Commission should continue the discussion about when it is appropriate to actually use the form.
- CH moves that the Commission ratify WPA Form 6, Notification of Non-significance, to be used by the Municipality of Marshfield. AL second. Approved 6-0-0.
- Before proceeding to items B5 and B6, WF and JR suggest that the Commission first discuss how interior or minor exterior projects triggering the “open pile” requirement under Ch 505 should be handled; BG concurs.
- With respect to interior work on structures in Barrier Beach/Coastal Dune deemed a “substantial improvement” by the Building Department. CH notes two possible approaches are requiring a NOI: (1) issuing a Form 6 in response; or (2) issuing findings citing the lack of impact to the resource area as well as the detrimental impact of the disturbance involved with raising the structure on open piers with no footing.
- Building Commissioner Andrew Stewart (AS) provides some background regarding the Building regulations, noting that a finding of “substantial improvement,” defined as work whose cost is >50% the value of the structure, triggers the requirement to bring the structure into full compliance with local, state, and FEMA requirements for the flood zone/resource area the structure is in. For structures on coastal dune, currently any

substantial improvements, including interior improvements having no impact on the resource area, trigger the requirement to raise the structure on open piles, which itself causes significant disturbance to the area. AS feels that in most of these cases, putting in flood vents and bringing the site to grade provide the greatest net benefit, and would like the Commission to find a way to “permit” substantial interior improvements without requiring the structures to be raised on open files.

- JR asks AS if he think it would be more reasonable to raise a structure up to the flood elevation on an existing foundation, rather than on open piles, as this arguably would also have less impact on the resource area? AS agrees, and notes he has seen applicants scale back their project to avoid the open pile requirement. BG notes that whether a structure is located in barrier beach/coastal dune is an important factor, and would like to be notified of “substantial improvement” findings by the Building Department as early in the process as possible, as this will impact recommendations and help in developing procedures for the different scenarios that are likely to come up. AS believes that the new flood plain permitting process will result in earlier “substantial” determinations and referrals to Conservation.
- EF asks AS whether he prefers that the Commission use the Form 6 or conditioning in an OOC for findings that the open-pile requirement should not apply? AS thinks conditions in the OOC would be preferable given the importance of barrier beach/coastal dune functions but thinks the Form 6 will also be valuable, in certain situations, to allow him to issue a building permit.
- WF suggests that findings and procedures in this subject area be memorialized in writing, with regulatory references as appropriate, so Commission decisions can be justified. JR notes there have been several projects where the regulations seem to have caused worse impacts to the resource areas in addition to costing applicants more, and the Commission needs procedures that minimize such scenarios. WF agrees and believes written procedures will help the Commission make better-informed decisions that will stand up better under appeal.
- All parties discuss how to proceed with respect to B5 and B6. BO noted that during the 505 revision discussion Town Counsel mentioned using Variances in some situations like this and that Mr. Finn could look at that possibility. EF reads an excerpt from the Chapter 505 regulations suggesting that a variance can be issued if applicant makes a clear and convincing showing that any proposed work or its impacts “will not have any significant adverse or cumulative adverse impact on any of the wetland values and interests protected in the Bylaw.” However, BG states CZM has conveyed to him and AS essentially that any variances in barrier beach/coastal dune would have to be approved by Mass DEP; he would prefer that variances continue to be rare and unusual occurrences as per Ch 505, and suggests that the use of Forms 2, 5, and 6 and other non-form options may be more appropriate.

#### **B5 52 Jackson Street / Gill / Review minor non-significant activities – Commissioners**

- On 11/30/21, Building Commissioner Andrew Stewart made a determination that interior work at 52 Jackson Street was a “substantial improvement”. The property is located within a Flood Zone and mapped on Mass GIS as within Barrier Beach and Coastal Dune, and the Ch. 505-307.2 regulations and Building Code hold that a substantial Improvement typically requires the elevation of the house on open pilings without footings. However, this interior work did not require any Conservation permitting. After a discussion of using WPA Form 6, Notification of Non-significance, to allow the work to proceed without requiring the structure’s elevation on piles, the Commissioners polled in favor of reopening the public hearing for SE42-2924 and issuing a WPA Form 6, conditioned upon receipt of written requests from applicant and AS.
- WF suggests that the Commission request a NOI from applicant so the Form 6 can be issued. JR would like a written recommendation from WF so the ultimate finding by the Commission is less likely to get challenged. CH and the Commissioners concur.
- CH moves to table further discussion to the January 18 meeting. AL second. Approved 6-0-0.

#### **B6 226 Bay Avenue / Sullivan / Review minor non-significant activities – Commissioners**

- An Order of Conditions was issued on May 18, 2021 for the conversion of a wraparound porch on the property to enclosed livable space. The proposed work was to be built on open pikes which the Commission approved. The Building Department subsequently determined the work to be a “substantial improvement” and as a result is requiring that a concrete slab beneath the house be removed and the void be filled and brought up to at least the nearest outside finished ground level. At the 11/16/21 meeting, the Commission voted to consider the

garage fill addition as a *de minimis* activity, but also found Chapter 505-307.2 to be applicable to the case unless applicant could prove, by soil survey, that the soil around the footings was non-erodible and not suitable for an open pile foundation without footings.

- EF thinks this project could be looked upon as a potential RDA, for which the Commission would issue a negative 2 finding, indicating the proposed work would not cause any alteration to the resource area; BG suggests this option seems to fit this situation, as in this case the interior work triggered secondary work (filling of the basement to grade). EF notes that applicant has requested this hearing to reopen on February 1. WF states the second February hearing would give him and the Commission more time to put the documentation together, as he will be seeking input from multiple sources, but BG notes applicant has been waiting to get started. After further discussion, BG suggests that this project doesn't appear to fit the criteria for issuance of a Form 6, and applicant should file a Request for Amended Order of Conditions.
- Attorney Kevin Sullivan (KS) acting on behalf of applicant, notes he is willing to fill the basement to grade but is still seeking relief from Building and the Commission from the requirement to raise the house on open pilings. KS states he did not know his project was being discussed at the December 21 meeting, nor that he was being asked to submit a request to reopen the public hearing until this afternoon around four o'clock. KS appreciates the efforts being made to move the process forward but would like to be notified in advance when his project is being discussed. He was hoping to hear tonight that there would be specific steps he could take so he could get his building permit in a timely fashion and, given the work was planned to start on October 1, is discouraged at the prospect of further delay. KS also notes that at this point, due to the delays in permitting, he will have to scale back the project simply due to a lack of time, and asks that the Commission and the Building Department figure out a way forward with all possible dispatch.
- BG thanks KS for his comments and agrees the process of deliberation and notification could have worked better; he will try to communicate better going forward and will continue to seek a resolution to this matter as quickly as possible, hopefully by February 1.
- CH acknowledges KS's frustration, agrees his project has been caught up in the gears of a changing process, and states the Commission will move as quickly as it can to resolve the issues.
- KS asks if there is anything, at this point, that he needs to submit in advance of the next hearing or anything he can do to help the Building Department and the Commission resolve the matter. BG asks that KS file a Request for Amended Order of Conditions without a surveyed plan, and indicates that Conservation staff will be available to assist. KS would like the Commission to note in its ultimate findings that the proposed work (1) improves conditions on the lot and (2) requiring a raised pile foundation would result in significantly greater disturbance to the resource area. BG notes that the findings will also have to stand up to Mass DEP review.
- AS asks if the Building Department should submit any documentation for the hearing at the next meeting. BG asks for a letter explaining the conditions that trigger the Building Code and flood requirements for the filling to grade, as well as how the proposed work triggered a "substantial improvement" finding and provide new information to the Commission not previously presented.
- CH moves to accept the request for amended Order of Conditions for 226 Bay Avenue, SE42-2924, to reopen and re-evaluate the Orders of Conditions. JR second. Approved 6-0-0.

#### **B7 Discussion of work at 326 Careswell Street – Maria Bonzagni**

- Marie Bonzagni, 3 Chilmark Lane, present to discuss possible work at 326 Careswell, a parcel behind her house she was in the process of purchasing. EF noted that the prior owner did some clearing for purposes of creating a T-shaped pathway to survey the lot; the vegetation removed included brush, vines, as well as some small trees, and most likely occurred within the buffer zone to a wetland that starts just beyond the rear property line. MB proactively reached out to Conservation, and would like to know what might be buildable on the lot, as well as what the Commissioners would want as mitigation for the cutting. EF has suggested placing three (3) conservation markers 50 ft. up-gradient of the rock wall, as well as removing the cut vegetation from the buffer.
- MB notes that the back of the lot has been left undisturbed for years. She is willing to remove the green waste, place the markers, and let the area revegetate for privacy. BO believes that the lot is surrounded by Conservation land, which EF confirms. BO asks MB if she intends to do any building on the lot? No activity is contemplated beyond the proposed cleanup. PC thinks EF's suggestion to post markers and remove the cut vegetation is appropriate. CH indicates that MB could put native plantings in the cut areas if she preferred; BG

notes that proactively planting native wetland species could prevent the area from being overrun with invasive and opportunistic vines.

- CH moves to allow MB to remove the cut vegetation piles in the buffer zone at 326 Careswell Street, place three conservation markers 50 feet up-gradient of the property line, plant native plants downgradient of the markers or allow the area to naturally revegetate, and plant ornamentals or trees up-gradient of the markers. AL second. Approved 6-0-0.

## **PUBLIC HEARING**

### **2754A Hanlan, 72 Bay Avenue (Expand Concrete Slab).....cont. from 11/16/2021 (Bert)**

- The hearing is continued until the public meeting of the Marshfield Conservation Commission on January 18, 2022. Applicant's representative requested continuation in writing.
- CH motions to continue hearing until January 18, 2022. JR second. Approved 5-0-0.

## **Scheduled Continued Hearings:**

### **2951 Trocki, 12 Branch Street (Raze & Rebuild SFH).....cont. from 10/5/2021 (Joe)**

- The hearing is continued until the public meeting of the Marshfield Conservation Commission on January 18, 2022. Applicant's representative requested continuation in writing.
- CH motions to continue the hearing until January 18, 2022. AL second. Approved 6-0-0.

### **2958 Speakman, 274 Foster Avenue (Elevate Single Family Home).....cont. from 11/2/2021 (Susan)**

- The hearing is continued until the public meeting of the Marshfield Conservation Commission on January 18, 2022. Applicant's representative requested continuation in writing.
- CH motions to continue hearing until January 18, 2022. BO second. Approved 6-0-0.

### **2950 Gomes, 76 Carolyn Circle (Pier, Dock & Float).....cont. from 10/5/2021 (Rick)**

- The hearing is continued until the public meeting of the Marshfield Conservation Commission on January 18, 2022. Applicant's representative requested continuation in writing.
- CH motions to continue hearing until January 18, 2022. JR second. Approved 6-0-0.

### **2960 Sealund Corp, 202 Moraine Street (Roadway w/ Utilities).....cont. from 12/7/2021 (Joe)**

- The hearing is continued until the public meeting of the Marshfield Conservation Commission on January 18, 2022. Applicant's representative requested continuation in writing.
- CH motions to continue hearing until January 18, 2022. BO second. Approved 6-0-0.

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

### **2888 Hassett (Now Cuddahy), 67 Norwell Road [COC]**

- The original OOC was issued for construction of a single-family home. Applicant's representative has provided an As-Built site plan and letter stating that the project in "substantial compliance" with the OOC. EF visited the site on 12/27/21 and noted several unfulfilled special conditions. EF had a follow-up conversation with project engineer, Jeff Hassett (JH) yesterday regarding the following:
  - Only one of the three (3) required green and white conservation markers were visible in the field; JH has located the other two markers and provided an updated site plan.
  - The sweet fern and sweet pepperbush to be planted along the 50' setback were not visible; these were not mentioned in the conditions but were referenced on the site plan. JH maintains this was proposed as an optional planting and not required as a condition of approval. The final approved minutes from 11/17/20 noted that these plantings were not for mitigation.
  - Large areas of exposed soil remain; the d(2) special conditions require that the groundcover be stabilized as soon as practicable. EF feels this presents an erosion risk given the steepness of the slope running down into the wetland, but notes the erosion control barriers remain in place although partially breached.
- JH has asked the Commission to consider issuing a partial COC if it does not wish to issue a complete COC given the soil stabilization issue.

- The Commissioners review EF's photos from the site visit. CH notes that silt seems to be escaping from the silt fencing in one photo. In response to a question from PC, EF notes there is a closing pending for the property. BG notes that the markers seem to be posted low to the ground and suggests that the Commission consider requiring markers to be posted at a height of 30-40 inches above ground surface moving forward.
- PC asks if the Commission can issue a partial COC. BG frowns on them in general, as Conservation staff often have to follow up with applicants to close out the filing, but the Commission has issued one under certain circumstances such as single family homes within subdivisions or regional seawall projects. If the Commission were to issue one here, BG would recommend stern language regarding fulfillment of the remaining conditions of approval. AL thinks issuing a partial COC in this case would be a bad idea. JR notes this is the second time in recent memory that a representative has inaccurately passed off a project as being in "substantial compliance" and questions whether other problems are being hidden; CH and AL agree.
- CH asks whether the pad under a propane tank was captured on the As-Built plans; EF indicates it was not, but notes the tank is outside the 100 ft buffer. BO notes that the tanks are sitting on gravel rather than impervious concrete. CH does not wish to issue any kind of certificate when a site is not actually in compliance. BO agrees that additional time for plantings is needed to bring the site into compliance regardless of the builder's wish to close out the file now. Given the lot's location on steep grades near multiple wetlands, BG suggests that the Commission vote to deny the COC until all remaining issues with the plantings, erosion control, and site stabilization have been addressed.
- CH motions to deny the COC request for SE42-2999. JR second. Approved 6-0-0.

#### **ENFORCEMENT ORDERS**

Smith, 38 Liberty Street (11/19/18 KS will set early Dec visit); White, Bednarz/ Nouza, 65 Ireland Road (Unpermitted Cutting <= 50 ft); Tamara Macuch, 237 Webster Avenue; Stifter, 102 Bartlett's Island (unpermitted revetment wall)

B8 Enforcement Order-Gibbs / 77 & 98 Cherry Street Dissolution– Bill Grafton/Craig Hannafin

B9 Enforcement Order-Brait / 53 Kent Avenue Discuss – Robert Brait/Brad Holmes

B10 Enforcement Order-Homsy / 987 Ocean Street Restoration Plan Review – Chris Homsy/Bob Rego

B11 Enforcement Order-Digan / 1327 Union Street 2<sup>nd</sup> Annual Monitoring Report – Bill Grafton/Rick Carberry

**ADJOURNMENT** – CH makes a motion to close the hearing at 8:26 PM. 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