

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

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

### **MINUTES**

- The minutes of the January 18 meeting were presented for approval. No comments or suggested changes were made on the floor. All comments submitted by Commissioners prior to the meeting were incorporated.
- CH motions to accept the January 18, 2022 minutes as edited. BO 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.

### **BUSINESS**

#### **B1 *de minimis* activity Roll/Review/Ratification**

##### **a. 11 Trouants Island, Niozolek – Remove two junipers in buffer zone**

- The proposed activity is the removal of a Juniper and Cherry tree in the 75-100 ft buffer. CH is not opposed to the request but would prefer that the trees remain, as the remaining trees in front of them are in the flood zone and are subject to increasing salt infiltration that is killing trees in the marshes. BG suggests approval with the following conditions:
  - up to one year to perform the activity before the *de minimis* activity permit expires
  - obtain permission from homeowner at 10 Trouants before performing any work on that property
  - root balls to remain in the ground
- CH motions to approve the proposed activity as a *de minimis* activity. PC second. Approved 6-0-0.

##### **b. 60A Marginal Road, Reale – Generator stand in buffer zone and flood plain/LSCSF**

- The proposed activity is construction of a generator stand on wood blocks over gravel. As the stand is not on diamond piers, conservation permitting is required, and BG feels a *de minimis* activity is appropriate. BG 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. JR second. Approved 6-0-0.

#### **B2 Substantial Determination/Conservation Permitting Overlap Process Discussion – Commissioners**

- Commission Consultant William Finn (WF) present to discuss the memorandum dated January 5, 2022 that he prepared, with input from himself, Building Commissioner Andrew Stewart (AS), former Conservation Agent Flint (EF), and Conservation Administrator Bill Grafton (BG) regarding conservation permitting for interior-only projects that receive a "substantial improvement" determination from the Building Department. CH advises that all parties have determined that the best path forward will be to require filing of an RDA or NOI depending on what additional work is required as a result of the substantial improvement determination. The pertinent Chapter 505 regulations may also need to be updated.
- BG feels that the ongoing discussions have been helpful and will lead to creation of a process that is acceptable to all parties. AS has reached out to CZM and DCR for their feedback, and Rebecca Haney at CZM has indicated that there is a building code that does not require a house to be raised on open piles as a result of an "interior only" project. Some additional work is needed, but BG believes there is a way to allow pending projects at 52 Jackson and 226 Bay Avenue to go forward.

- CH moves to use the Notice of Intent/WPA Form 3 and Request for Determination of Applicability/WPA Form 1 for the majority of the designated building requirements associated with substantial improvement determination and create cross departmental lists of joint special conditions and activities assigned to each form. BO second. Approved 6-0-0.

### **B3 Discuss 505 307.2 Open Pile Foundation regulation**

- WF has recommended language changes to this section of the regulations based in part on issues set forth in B2. CH notes that when the Chapter 505 regulations were first adopted last spring, it was expected that such edits would be required. A task force comprised of CH, BG, BO, and WF will look through this and other sections of the new regulations and recommend edits.
- PC suggests that a similar review be conducted for the piers and docks regulations given issues with recent permits. The new pier permitting procedures have been beneficial but additional fine-tuning is needed. CH indicates this is on the short list for subsequent review. BG will start looking into the issue with PC.
- CH moves to establish a task force composed of Mr. Flynn and Commissioners Hannafin and O'Donnell to work with the Conservation Administrator and develop feedback for the Commission's review. SC second. Approved 6-0-0.

### **B4 52 Jackson Street-Substantial Determination/Conservation Permitting Overlap – Gill & Commissioners**

- On 11/30/21, Building Commissioner Andrew Stewart (AS) made a determination that interior work at 52 Jackson Street, which did not require any Conservation permitting, was a "substantial improvement". As the property is located within a Flood Zone and mapped on Mass GIS as within Barrier Beach and Coastal Dune, 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. Subsequent research and follow-up with CZM indicated that the structure can be brought into compliance with the current FEMA regulations by (1) filling the crawlspace to grade with clean fill compatible with existing soils and (2) adding flood vents to the existing foundation.
- CH suggests the homeowners file a RDA referencing both activities so all work can be permitted by Conservation and Building. BG and Conservation Staff will assist. BG requests that the filing deadline be extended so the RDA can be heard at the February 15 meeting; the Commissioners agree to extend the deadline.
- CH moves to require the submittal of a Request for Determination of Applicability for the crawl space to be filled with clean, compatible fill as per Ch 505-306.4, and waive the filing deadline so the matter can be heard on February 15. PC second. Approved 6-0-0.

### **B5 88 Nantasket Street-Ciancio Discussion about Request for COC requirements – Ciancio**

- The property has an outstanding Order of Conditions SE42-528, dating back to 1988, for construction of a single-family home. Current homeowner Steve Ciancio (SC) has sold the house knowing the outstanding OOC exists on the deed, and BG advised that an As Built site plan and posting of conservation marker on the vegetated line are required for the COC to issue. SC's attorney, Louis Sorgi (LS) has sent a Request for Certificate of Compliance (RCOC)/WPA Form 8A with no filing fee but did include an As-Built plan, dated December 12, 1988, for a subsequent septic installation. LS who was not present would like to know whether the Commission (1) will accept the provided As Built and (2) waive the requirement for conservation markers and wetland delineation. According to SC, there is a fence at the vegetated line but no markers, currently. The house has been sold but the old OOC remains on the deed. SC states it would take 4-6 weeks for their engineer to prepare an updated As Built and the cost is in the thousands of dollars. The original file from 1988 is currently missing.
- JR notes that the plan provided does not show the location of the wetland line or the conservation markers. BG agrees that the plan provided does not meet the current standards but may have been acceptable at the time it was prepared for the septic system to the Board of Health.
- All parties discuss whether to require an updated As Built plan given the associated delay and cost. PC is inclined to treat all applicants the same, but requiring a new As Built in this case feels punitive. CH suggests that the Commission require a current delineation and posting of conservation markers. BG notes that not having the location of the markers on an As Built will put the Commission at a disadvantage if the markers are later removed, but the Commission has the discretion to issue a COC without one, as the markers could be referenced

as an ongoing condition of the COC. BG suggests that three markers be posted, two at the property lines and one in the middle.

- CM moves to require an updated wetland delineation and posting of three conservation markers, waiving submission of updated As Built, for issuance of the Certificate of Compliance for SE42-528. JR second. Approved 6-0-0.

#### **B6 Annual Town Meeting / CPC Funding CR Couch Beach & Old Mount Skirgo properties – Commissioners**

- The Commission continued its discussion of the Open Space Committee's (OSC) Town Meeting article to approve the use of CPC funds for the cost of Conservation Restrictions (CRs) on two parcels of land providing NHESP-designated Eastern Box Turtle habitat as mitigation for construction of Ball Fields, Boys and Girls Club, and Couch Cemetery expansion. OSC would like to be able to tell the Select Board, Advisory Board, and Town Meeting that the article received a unanimous Commission vote. The matter was continued from the previous hearing to allow all Commissioners their input.
- SC distributed the text of her comments at the previous meeting to all Commissioners and notes that this is a somewhat unique situation in that the previous OSC chair was asked by DPW to work with Wildlands Trust to begin the process of drafting the CRs in 2013, but these were never finalized due to an apparent oversight. They have obtained CPC approval funding to pay for the CRs based on cost concerns expressed in earlier discussions. This approval will be advanced to Annual Town Meeting for a Town Vote. SC also notes that all non-commercial passive recreational activities currently going on at these properties, including trail and meadow maintenance, will continue; the only difference with the CR is that these uses cannot be expanded further. The use of Couch Beach for camping by Scouts and other groups is specifically referenced as an activity that can continue.
- PC asks about the water protection values at the Old Mt. Skirgo parcel? This property is almost entirely located in a Water Resource Protection District and also contains NHESP priority habitat. This parcel abuts the Modera II apartment complex at its upper corner as well as two partially developed residential lots.
- JR notes that the Couch Beach CR specified no tents or trail maintenance, seemingly without provisions for current uses, and he would not be able to support a CR thus written; PC indicates he saw that section as well. SC will double-check the text of the CR, as it is supposed to specify that camping and maintenance of existing trails is allowed. JR wants to ensure the residents don't lose the opportunity to use the property as is currently allowed. BO notes that the CRs are mitigation in part for other land set aside for recreational uses, but believes existing uses can be accommodated. SC's understanding of the CR is it allows for "non-commercial, passive recreational use of the property which includes 3.42 acres designated for overnight camping, allows maintenance of existing footpath and wood roads," and mowing of "existing cleared areas to the dimensions of existing conditions" provided Wildlands Trust is notified in advance. CH suggests that perhaps the CR doesn't apply to the 3.42 acres.
- OSC member Karen O'Donnell (KO), 90 Summer Street, states she has worked with Wildlands Trust to draft the CRs, and the section referenced by JR is a template from the state, but the second section of the CR, as read by SC, specifies that the existing recreational uses will continue in the 3.42 area around Couch Beach. PC suggests that the property may better be protected by offering improved parking and camping facilities. BO states that the camping area is carved out from the rest of the CR, and is not part of the mitigation land, but BG points out that Wildlands Trust will maintain oversight over the entire property, and certain activities will require their permission; there is a procurement process, so it is also possible that the CR will be managed by a different organization.
- Speaking as a resident, William Finn (WF), 96 Dog Lane, notes that (1) what Massachusetts refers to as CRs every other state refers to as "conservation easements," and (2) it is common for conservation easements to carve out portions of a property so they are not subject to the restrictions or permission requirements governing the rest of the property. WF used to monitor properties with conservation easements, and in his experience, the restrictions did not apply to any carved out areas. WF feels it is important to protect these properties now and monitor the CRs properly due to additional development pressures coming from the state level and other sources. PC agrees, and would like to see a vetting process to evaluate properties for the appropriate level of protection.
- After some further discussion, CH suggests that the matter be tabled pending further information regarding permitted uses in the carve-out area of Couch; SC concurs and is willing to contact Wildlands Trust with any questions. SC notes she has been working in land preservation for nearly 20 years and strongly believes the

Couch Beach property warrants the protection of a CR; the cumulative impacts of small encroachments over time are of particular concern.

- Paul Vercollone (PV), 1277 Union St., notes that he used to camp at the Couch Beach property years ago, and would like to see the facilities there improved with a real fire pit and made more accommodating for camping. He loves the idea of improving it. CH notes that she and BG have had some preliminary discussions about improvements; this is an area where the Commission could work on with other Town committees.
- CH motions to table the matter to the February 15 meeting. JR second. Approved 6-0-0.

## **PUBLIC HEARING**

Prior to the start of the hearings, CH announces the hearings scheduled to be continued.

### **22-02 Shea, 11 Plymouth Avenue (deck and After-The-Fact pool).....NEW (Joe)**

- CH reads the legal ad. Hearing Officer JR confirms administrative requirements are complete.
- The proposed activity is extension of a deck and after-the-fact pool construction within the 100 ft buffer. The pool had previously been permitted by the Building Department without a referral to Conservation, and thus no Conservation permit was sought. Applicant John Shea (JS) indicates he would now like to extend the deck to attach the house to the pool.
- JR notes that the property is heavily built out. BG adds that the wetlands are located close to the property edge and there is little room for additional activity or modifications. He believes the Commission would have approved the pool had an application been submitted, and has no issues.
- JR asks for comments from the public; none.
- The standard conditions of approval will apply.
- JR motions to close and issue a DOA, Pos. #5, Neg. # 3, with special conditions drafted by BG. AL second. Approved 6-0-0.

**CH recuses from the next meeting and vote.**

### **22-03 Verc Enterprises (Briteway Autowash), 535 Plain Street (Automated Payment Kiosks).....NEW (Joe)**

- BO reads the legal ad. Hearing Officer JR confirms administrative requirements are complete.
- The proposed activity is the installation of two automated pay stations in an existing parking lot within the buffer zone to wetland. Applicant Nick Vercollone (NV), 1277 Union Street, notes that the pay stations will reduce the number of idling cars in the lot, waiting to go through the wash. Dave Crispin (DC), BSC Group, notes there will be no change in impervious coverage and no intensification of use. Erosion controls will be placed between the limit of work and wetland. BG agrees that the work itself is in a previously disturbed environment with minimal impacts, but suggests conservation markers to be posted on the split rail fence by the wetlands to protect against future encroachment in the event that the property is sold.
- JR asks for comments from the public; none.
- The standard conditions of approval will apply plus a condition that applicant post conservation markers on the existing split rail fence.
- JR motions to close and issue a DOA, Pos. #5, Neg. # 3, with special conditions drafted by BG. SC second. Approved 5-0-0.

**CH rejoins the meeting.**

### **2964 Lucchetti, 773 Summer Street (Septic Upgrade).....NEW (Bert)**

- CH reads the legal ad. Hearing Officer BO confirms administrative requirements are complete.
- Rick Grady (RG), Grady Consulting, present for applicant. The proposed activity is a septic upgrade and removal of three hazard trees. The new system will be an AdvanTex AX20 treatment system with bottomless sand filter, which reduces the footprint of the system, reduce setbacks, and provide better treatment. The filter has been located as far from the resource area as possible, and the system was approved by the Board of Health last night. Erosion control will be utilized during construction and six conservation markers will be posted as depicted on the

site plan. RG states that the revised plan dated January 29, 2022 incorporates BG's request for additional information including conservation markers and relocation of WF4 up-gradient from the original location.

- BG agrees that the proposed system minimizes impacts to the brook, and notes that RG has indicated that the footprint of the house will not be expanding. BG also recommends an ongoing condition prohibiting the use of chemical additives such as herbicides, pesticides, fungicides, salt, or deicers on the property to protect the perennial stream. BO asks if any further Conservation permitting will be required if the footprint is not expanding? BG believes not if the house is only being expanded upwards.
- BO asks for comments from the public; none.
- The standard conditions of approval will apply in addition to ongoing conditions concerning placement of six conservation markers as noted on the site plan and no use of chemical additives such as herbicides, pesticides, fungicides, salt, or deicers on the property
- BO motions to close the hearing and issue Orders of Conditions with special conditions drafted by BG. JR second. Approved 6-0-0.

**2965 Meconiates, 12 Bailey Terrace (Deck, Patio & Driveway).....NEW (Bert)**

- CH reads the legal ad. Hearing Officer BO confirms administrative requirements are complete.
- Rick Servant (RS), Stenbeck & Taylor, presents for applicant. The proposed activity is expansion of an existing deck, construction of a second story deck, metal catwalk and patio, and replacement of existing paved driveway with pervious pavers. The house was constructed partially within the 25 ft buffer, but is on top of a steep slope quickly dropping down to salt marsh. The catwalk is also partly within the 25 but will not require disturbance at the ground level; the front and rear decks will be supported on wood posts. The 536 sq ft paved driveway will be replaced with an 806 sq ft pervious paver driveway; the patio will also be constructed with pervious pavers.
- BG notes that the catwalk, as coverage only, gets closer to the wetlands than the existing structures; also, the driveway and patio cross-sections indicate the use of crusher run, which is not pervious, or crushed gravel, which may be depending on how fine it is, and the accuracy of the pervious table depends on what is actually used as substrate for the driveway and patio. BG also advises he observed trees being cut and dropped in place in the buffer zone and wetlands, and recommends the posting of six conservation markers along the existing lawn line.
- RS states their intention is to have the driveway and patio be completely pervious and will adjust the substrate materials as needed on the cross section to be depicted on a revised site plan. BO notes that only a small area of the catwalk moves closer to the wetlands, and this is balanced out by the pervious driveway/patio and conservation markers; the sumac that was cut is likely to grow back in the Spring.
- BO asks for comments from the public; none.
- Conditions of approval will include receipt of a revised site plan with updated driveway/patio cross-sections by 12 noon Friday, February 4<sup>th</sup> including six conservation markers along the edge of lawn to be posted in the field.
- BO motions to close the hearing and issue Orders of Conditions with special conditions drafted by BG. PC second. Approved 6-0-0.

**2924 A Sullivan, 226 Bay Avenue (Fill below grade & break up concrete slab).....NEW (Art)**

- CH reads the legal ad. Hearing Officer AL confirms administrative requirements are complete.
- An Order of Conditions (OOC) was issued on May 18, 2021 for the conversion of a wraparound porch on the property to enclosed livable space. The Building Department subsequently determined the project to be a "substantial improvement" and required that a concrete slab beneath the house be removed and the undersurface be filled and brought up to at least the nearest outside finished ground level; this was initially approved as a De Minimis activity, but the matter was held up pending a determination as to whether Section 505-307.2 of the bylaw, requiring conversion of the foundation to open pilings without footings, applies. Rebecca Haney at CZM has since advised that there is a building code that does not require a house to be raised on open piles if an "interior only" project is deemed to be substantial. Applicant Kevin Sullivan requests confirmation that the Commission will not require any additional changes or modifications to the existing foundation of the house provided they remove the slab and fill the undersurface to grade.
- BG states that the filing of a requested for amended OOC was the appropriate way to handle this situation, where the original work required a Conservation filing, and a "substantial improvement" finding by Building necessitated additional work. Building is aware of the code providing relief from the "open pile" requirement in the case of

interior work. The Commission should also grant a variance from the foundation requirements set forth in Chapter 505, Section 307.2, as the bylaw language needs updates, and notes this can be incorporated into the conditions of approval; the Commissioners agree to grant the variance.

- AL asks for comments from the public; none.
- Conditions of approval will include a statement approving a variance to Chapter 505-307.2; use of clean, compatible fill required; siding must be 50% or more open.
- AL motions to close the hearing and issue amended Orders of Conditions with special conditions drafted by BG. JR second. Approved 6-0-0.

#### **SCHEDULED CONTINUED HEARINGS:**

##### **2950 Gomes, 76 Carolyn Circle (Pier, Dock & Float).....cont. from 10/5/2021 to 2/15/2022 (Rick)**

- The hearing is continued until the public meeting of the Marshfield Conservation Commission on February 15, 2022. Applicant's representative requested continuation in writing.
- CH motions to continue the hearing until February 15, 2022. JR second. Approved 6-0-0.

##### **2951 Trocki, 12 Branch Street (Raze & Rebuild SFH).....cont. from 10/5/2021 to 4/5/2022 (Joe)**

- The hearing is continued until the public meeting of the Marshfield Conservation Commission on April 5, 2022. Applicant's representative requested continuation in writing.
- CH motions to continue the hearing until April 5, 2022. SC second. Approved 6-0-0.

##### **2958 Speakman, 274 Foster Avenue (Elevate Single Family Home).....cont. from 11/2/2021 to 3/1/2022 (Susan)**

- The hearing is continued until the public meeting of the Marshfield Conservation Commission on March 1, 2022. Applicant's representative requested continuation in writing.
- CH motions to continue the hearing until March 1, 2022. JR second. Approved 6-0-0.

##### **2960 Sealund Corp, 202 Moraine Street (Roadway w/ Utilities).....cont. from 12/7/2021 to 2/15/2022 (Joe)**

- The hearing is continued until the public meeting of the Marshfield Conservation Commission on February 15, 2022. Applicant's representative requested continuation in writing.
- CH motions to continue the hearing until February 15, 2022. AL second. Approved 6-0-0.

##### **2966 Six Birch Realty Trust, Little's Lane (Ext. Pier, Ramp & Float).....NEW (Rick)**

- The hearing is continued until the public meeting of the Marshfield Conservation Commission on March 1, 2022. Applicant's representative requested continuation in writing.
- CH motions to continue the hearing until March 1, 2022. AL second. Approved 6-0-0.

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

##### **0811 Volpe, 5 Bryants Lane [COC]**

- BG has verified that what appeared to be an unpermitted patio on the site was actually approved when a COC was issued for a seawall project involving the eminent domain taking of all patios in the work area to allow for monitoring of the landward side of the seawall by DPW. As such, BG recommends issuance of the COC.
- CH motions to issue a complete COC for the SE42-0811. AL second. Approved 6-0-0.

##### **2666 Howley, 225 Bay Avenue [EXT]**

- The Order of Conditions and ZBA Special Permit were appealed to Superior Court, and the matter is still pending. BG recommended issuance of the EXT.
- CH motions to issue an extension of the SE42-2666, Town Order of Condition only to 9/27/2025, taking into account the Complaint remand to the Superior Court dated 9/27/2019 that expires on 9/27/2022 not including tolling. JR second. Approved 6-0-0.

##### **2776 Murphy, Brewster Road / Chilton Street [EXT]**

- Applicant's attorney, Jay Creed, requested an extension to 6/8/24 so it coincides with the expiration date of SE42-2887, which deals with the associated road and drainage upgrades. BG recommended issuance of the EXT.

- CH motions to issue an extension of the SE42-2776 Order of Condition to 6/8/2024 to coincide with the expiration date of SE42-2887, which is linked to this project. SC second. Approved 6-0-0.

**2803 Barrett (Now Good), 203 Bay Avenue [EXT]**

- Applicant is requesting extension to their OOC due to difficult site conditions. BG recommended issuance of the EXT.
- CH motions to issue an extension of the SE42-2803 Order of Condition to 5/28/2025. AL 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)

**B7 Enforcement Order/46 Preston Terrace (Mahaney) unpermitted fill & coastal bank destabilization – Commissioners**

- BG prepared an enforcement order, dated December 8, 2021, and sent it to residents by certified mail, but delivery was unsuccessful after two attempts. The enforcement order certified mail package was returned to the Conservation Department on January 28, 2022. An attempt to hand-deliver the EO today failed. Since the EO has not been delivered, the January 7, 2022 deadline for restoration plan has elapsed and instructions to appear before the Commission were never received.
- The matter involves unpermitted fill of an unimproved road in Commission jurisdiction dating back to 2014. There is a long history of non-responsiveness from homeowner. BG suggests that the matter be tabled to allow him to consult with Town Counsel.
- CH motions to table the matter until the February 15, 2022 public meeting. JR second. Approved 6-0-0.

**ADJOURNMENT** – CH makes a motion to close the hearing at 8:39 PM.

Respectfully submitted,  
Liz Anoja, Conservation Administrative Clerk

Marshfield Conservation Commission  
Bill Grafton, Conservation Administrator

Craig Hannafin, Chair  
Arthur Lage  
Susan Caron

Bert O'Donnell, Vice Chair  
Joe Ring  
Rick Carberry