

MEMBERS PRESENT – Craig Hannafin (CH) Chair, Bert O'Donnell (BO) Vice Chair, John O'Donnell (JO), Jesse Platt (JP), Mike Seele, Conservation Administrator (MS), Liz Anoja, Conservation Agent (LA)

MEMBERS NOT PRESENT - Susan Caron (SC)

CALL TO ORDER – CH motions to open the meeting at 6:30 PM. BO second. Approved 4-0-0.

CHAIRMAN'S ADDRESS

- Recently passed legislation allows for the continuation of remote or hybrid municipal meetings through March 31, 2025. 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.

MINUTES – 7/19/2023, 8/2/2023, 8/16/2023, 9/6/2023

NEW BUSINESS

B1 Bylaw Changes – Commission Discussion

- CH reads into the record the following proposed changes to the bylaw definition of “wetland delineation,” which were sent to the Commissioners in advance of the meeting.
 - An edit to the initial phrase from “**Wetland Delineation** means the line connecting wetland delineation flags and/or applicable test plot...” to “**Wetland Delineation** means the **procedures used to establish** a line connecting wetland delineation flags and/or applicable test plot...”
 - The addition of the following to the end of paragraph 1: **In addition to vegetation a delineation methodology shall include an evaluation of hydrology and soils using MassDEP’s Massachusetts Handbook for Delineation of Bordering Vegetated Wetlands (Second Edition, September 2022) or the latest edition of said Handbook when the delineation was accomplished. Wetlands shall be delineated by the applicant’s Qualified Consultant using this Handbook.**
 - Additions to the final two sentences in red: “When the boundary is not presumed accurate or to overcome the lack of clear and credible evidence, additional information shall be submitted to the Commission **by a Qualified Consultant selected by the Commission and paid for by the Applicant.** The submittal by the Commission’s qualified consultant may necessitate the applicant’s qualified consultant to submit additional information. **The Commission maintains sole discretionary authority relative to a determination that a wetland delineation is accurate.**”
- JO asks about the difference between a “wetland delineation” and “wetland line.” CH clarifies that a “wetland delineation” is the procedure by which a “wetland line” is verified. BO believes these updates will bring the bylaw definition in line with the state definition. CH adds that the updated state definition puts more weight on hydrology and soils, and somewhat less on wetland indicator plants. A public hearing for the proposed changes will be held at the next meeting.
- CH motions to advertise for a public hearing to adopt the proposed bylaw changes. JP second. Approved 4-0-0.

B2 Carolina Hill (Trail Alterations) - RTC and Jeff Wilson & Commission

- Recreational Trails Committee Chair Ned Bangs (NB) present to discuss a proposal by Jeff Wilson, of the New England Mountain Bike Association, to add switchbacks to several trails in the property that will replace “up and down” inclines that are subject to erosion and present a safety hazard. The volunteers who would do the work are specially trained in trail creation and maintenance.
- CH and JP ask about the location of the proposed work; it is near the trail head by the Carolina Hill shelter on Route 3A. JP also asks what would be done with the old trail; it would be closed off and allowed to re-naturalize.

BO has no issue with the proposal but would like to see the trails on the assessor's maps or similar resource with landmarks to help them identify the proposed work area.

- MS visited the site with Jeff Wilson and notes that the existing trail sections are very steep and lined with loose cobble. They have discussed using a split rail fence to prevent use of the old sections. CH and BO suggest that attention be paid to blocking off access to the hazard areas once work is complete - "Some people like a challenge."
- CH motions to approve the Carolina Hill trail section closures and switchback additions, as proposed, to mitigate safety and erosion issues. JP second. Approved 4-0-0.

B3 795 & 887 Plain Street Setback discussion – Smith & Sons & Commissioners

- A site visit was recently made with BO, JO, CH, and Conservation staff regarding a proposal to clear the property to the 25 ft wetland line to allow for greater green waste storage. CH notes that the site is well maintained and is a clean operation, but has concerns about allowing the expansion; JP and BO concur. BO would support an expansion to the 50 ft buffer line but not to the 25, as doing so could result in "virtually everybody asking for it."
- CH reads an excerpt from the MACC wetland buffer zone guidebook noting that "buffers of less than 50 feet are more susceptible to degradation by human disturbance." JP notes that the wetland abuts Route 3 and may serve as a wildlife corridor. LA and MS note the presence of a steep drop-off near the wetland area.
- JO agrees that the site is in good shape presently, but feels applicant should have asked for the 25 ft buffer at the time of permitting. BO adds that the back part of the property was not developed until after the bylaw change establishing the 50 ft buffer and suggests it is important to consistently enforce it; CH is reluctant to change a previous Commission's decision. JO adds that the hearing minutes from 2018 clearly indicate applicant accepted the 50 ft line at that time.
- CH moves to deny the request by Smith & Sons to expand activity to the 25 foot buffer line. JP second. Approved 4-0-0.

B4 Brewster Road / Chilton Street Cease & Desist Discussion – Commissioners

- Attorney Jay Creed (JC) present for applicant to discuss a cease and desist order issued in response to clearing and tree removal east of the grass swale past Chilton Road. JC states he was in touch with MS within an hour of the abutter's complaint and was told there would be a site visit with himself and applicant present, which didn't happen but might have resolved the issue. Regarding the cease and desist, JC asserts the tree "to all of our observations was dead" at the pre-start-of-work meeting with LA, and they left the meeting believing they had authorization to remove the tree; the tree likely would have died and possibly fallen as a result of the disturbance resulting from construction and planting of the black willows required under the OOC.
- LA states there were a number of trees on the site that looked diseased, but there was also a significant amount of overgrowth in the area that limited access. MS visited the site with LA after the complaint was received, and observed rotting in the stump of one of the trees that was cut, indicating it was ready to come down, but he did not observe such signs of rot in a second stump. It's possible this tree was diseased, as the two trees were close together, but he didn't see it before it was cut and, as it has in fact been cut, the Commission should consider what it wants to see in that area as a result.
- CH notes that the arborist also did not see the tree prior to its being removed, but a special condition of the Order of Conditions specifically states "there shall be no clearing of vegetation to the east of the grass swale halfway past Chilton Road, including a white pine which will be marked in the field." As such, CH suggests applicant should have come back to the Commission before proceeding. JC argues they clearly indicated what work they were planning to do at the pre-construction meeting and "we followed the Order of Conditions and addressed the issue of these trees." CH replies that the Commission, not staff, is the final deciding authority on such questions and maintains applicant should have come back to the Commission before proceeding. JC contends they acted in good faith based on the pre-construction meeting with the conservation agent, "who gave us an okay to cut the tree down."
- Attorney Kimberly Kroha, representing abutters Mark Ochs, states the condition regarding retention of the white pine was specifically negotiated during the approval process, and her client placed signage on the tree indicating it was not to be taken down. KK also notes the condition specifies no clearing whatsoever east of the

swale and suggests the resulting activity was “a direct, egregious breach of the order of conditions” warranting replication approved by the Commission.

- JC reads the following section of the arborist letter into the record: “All opinions are based on photographs provided by the client and a site visit to inspect the area after the tree was removed. The photographs show excessive interior branch deadwood. The bottom 30 feet estimated show to be dead due to a lack of sunlight and competing bittersweet vines. The root zone area appears to be impacted by seasonal water infiltration. The outer canopy of the tree sparsely holds only the current year’s needles. This typically is caused by a saturated root zone, needle blight, or wood-boring insects; one or all of these factors will result in tree mortality. It is my opinion that the tree should be removed for safety reasons alone. The species is highly susceptible to blow-over when the root system is wet, and in high-wind coastal areas. The overall health of this tree was in an accelerated rate of decline due to multiple contributing factors.”
- JC also states that at the preconstruction meeting, they asked “permission to clear the area that was necessary to create a 3 to 1 slope grade to drain swale and plant four bittersweet willows” as required under the OOC, and claims “we walked away with permission to do the work that we did” and were not told to reappear for the Commission for further authorization. JC further notes that the base of first 50 feet of Chilton Road is set to be laid the week of September 25, which “has nothing to do with this area,” and suggests they are willing to wait on installation of the swale if Mr. Ochs understands this will delay addressing of the drainage issues on his property.
- CH notes she was on the Commission at the time of the public hearings; when she visited the site at the time, she was surprised by the amount of clearing into the Chilton Street area. BO’s expectation was that all clearing and grading was to be within the erosion controls and is confused as to why clearing took place outside that area. JC notes that the proposed location of the black willows is outside the erosion control area, and they can’t be planted unless the area is cleared, but CH points out that the plan doesn’t indicate the area is to be cleared or that the Commission intended such, and “you don’t have to scrape the ground clear to plant a tree.”
- CH opines that having the road work start next week as scheduled “is a really good thing for everyone concerned,” and suggests that this and the swale construction, willow planting, and erosion control installation proceed without delay. However, she would like to see additional plantings to mitigate removal of the pine and conservation markers installed “around the perimeter of the property” as soon as possible. CH also notes that the DEP sign is missing from the site and needs to be replaced. The plantings can be suggested by the Conservation Office or applicant can use their own consultant. JC will consult with his client and Conservation staff. KC thinks this is a reasonable solution but would like her clients to review the plan; the Conservation Office will send the plan to KC for review. BO asks if the erosion control should be expanded to the swale area; JC will consult with the project engineer. CH has no issue if this is needed to obtain the proper slope.
- Jeff Creed (JF), who is assisting on the project, notes that the black willows grow to be 100 ft and isn’t sure there is room for any other plantings. CH knows they grow fast but would like to see some other plantings in the area in the interim. JF also states they did not “clear to the east” because it isn’t their land; they cleared to the north of Chilton to allow for road construction access.
- CH confirms to JC that the cease and desist will be lifted and road work scheduled for the week of September 25 can go forward. The Conservation Office will send correspondence to JC confirming the steps to be taken.

PUBLIC HEARING (ON OR AFTER 6:40PM)

3020A Laur / Baumann, 0 Ferry Street (Pier, Ramp & Float OOC Amendment).....NEW (Craig)

- CH reads the legal ad. Hearing Officer CH confirms administrative requirements are complete.
- Project engineer Greg Morse (GM) present for applicant along with attorney Bill Edes (BE) regarding amending the Order of Conditions allowing just one dock in the area comprising 46 and 60 Preston Terrace in perpetuity.
- CH notes that a variance was necessary to build the dock, and the condition in question, D1, documented “The Commission’s concerns about the adverse impacts and cumulative adverse impacts of multiple docks that are expressed in these regulations.” There was an error in issuing the OOC on a timely basis which led applicants to file for a superseding order of conditions with DEP. On June 9, CH, BO, Attorney Adam Brodsky, and GM met with DEP at the site, after which it was decided that the Commission should revisit the condition.
- CH notes the intent of the original condition was to ensure that just one dock was constructed in the area comprising 46 and 60 Preston Terrace in perpetuity. Upon receipt of DEP’s feedback, the Commission asked if

applicants would be amenable to complying with this condition until a transaction occurred on either property, but they are unwilling to do so; thus, CH advises the Commission will need to strike the paragraph in Condition D1 specifying that only one dock is allowed between the two properties in perpetuity.

- CH motions to strike the paragraph in Condition D1 of the Order of Conditions SE42-3020, at 0 Ferry Street, specifying that only one dock will be allowed in the area comprising 46 and 60 Preston Terrace in perpetuity.
- BO second. Approved 4-0-0.

3060 Vieules, 140 Atwell Circle (Addition & Deck).....NEW (John)

- CH reads the legal ad. The matter is continued to the 10/4/2023 meeting to allow for abutter notification.
- CH motions to continue the hearing to October 4, 2023. JO second. Approved 4-0-0.

3062 Nizbet, 116 Beach Street (Elevate SFH).....NEW (Bert)

- CH reads the legal ad. Hearing Officer BO confirms administrative requirements are complete.
- Brad Holmes (BH), ECR, present for applicant, who wishes to elevate the existing house above the FEMA flood elevation and install a new foundation with flood vents. There is no increase in the structure footprint; the existing deck will be rebuilt in the same footprint after the house is raised. Flood plain permitting is underway.
- LA suggests that some of the established plants be dug up and replanted. Applicant Brad Nizbet (BN) indicates he hopes to salvage them. BO asks if any driveway will be put in or expanded; BN indicates the gravel and paved driveway on the lot will remain as is.
- There was no public comment. The standard conditions of approval will apply, including submission of an elevation certificate.
- BO motions to close the hearing and issue Orders of Conditions with special conditions drafted by MS. CH second. Approved 4-0-0.

23-12 Recreational Trails Committee, 172 South River St. (Shoulder Improvements).....cont. from 6/21/23 (Craig)

- The applicant requested a continuation to the 10/4/2023 meeting.
- CH motions to continue the hearing to October 4, 2023. JP second. Approved 4-0-0.

23-20 Junior, 128 Highland Street (Septic Repair).....cont. from 8/2/2023 (Bert)

- The applicant requested a continuation to the 10/4/2023 meeting.
- CH motions to continue the hearing to October 4, 2023. JP second. Approved 4-0-0.

3051 Russo, 3 South Street (Deck Replacement).....cont. from 7/5/2023 (Craig)

- The applicant requested a continuation to the 10/4/2023 meeting.
- CH motions to continue the hearing to October 4, 2023. JP second. Approved 4-0-0.

3024 Maglio, 146 Dakota Street (Elevate & Reconstruct SFH).....cont. from 2/1/2023 (Craig)

- The applicant requested a continuation to the 10/4/2023 meeting.
- CH motions to continue the hearing to October 4, 2023. JP second. Approved 4-0-0.

3056 Celiberti Realty LLC, 0 Main Street (ANRAD).....cont. from 8/16/2023 (Bert)

- The applicant requested a continuation to the 10/4/2023 meeting.
- CH motions to continue the hearing to October 4, 2023. JP second. Approved 4-0-0.

3015 Medlin, 60 Foster Avenue (Addition, Garage & Porch).....cont. from 12/21/2022 (Susan)

- The applicant requested a continuation to the 10/4/2023 meeting.
- CH motions to continue the hearing to October 4, 2023. JP second. Approved 4-0-0.

23-21 Good, 0 Assumption Road (Beehives on Diamond Piers).....cont. from 8/16/2023 (Craig)

- The applicant requested a continuation to the 10/4/2023 meeting.
- CH motions to continue the hearing to October 4, 2023. JP second. Approved 4-0-0.

REQUESTS FOR CERTIFICATE OF COMPLIANCE AND EXTENSIONS

2717 BGHM (Now SHM), 239 Dyke Road – Gazebo and ADA Path Across from Peter Igo Park [COC]

- The pathway was constructed using pervious materials and the gazebo is raised on blocks.
- CH motions to issue a COC with ongoing conditions allowing maintenance of the ADA compliant path and gazebo. JO second. Approved 4-0-0.

2919 Kiley, 31 Branch Street [COC]

- Tabled pending receipt of the elevation certificate.
- CH motions to table the matter. JP second. Approved 4-0-0.

2923 Tedeschi, 162 Bay Avenue [COC]

- The enclosure beneath the home has not been addressed.
- CH motions to table the matter. JP second. Approved 4-0-0.

2995 Griffin, 21 Hartford Road [COC]

- The American Beach Grass plantings and other plantings are thriving with over 75% success rate.
- CH motions to issue a COC for SE42-2995 at 21 Hartford Road. JO second. Approved 4-0-0.
- After the vote, homeowner John Griffin notes he is working with LA to address issues at another property he owns on Mayflower Way.

2996 Vacirca, 16 Wilson Road [COC]

- The project was completed as permitted.
- CH motions to issue a COC for SE42-2996 at 16 Wilson Road. JO second. Approved 4-0-0.

ADJOURNMENT – CH makes a motion to close the hearing at 7:36 PM. JO second. Approved 4-0-0.

Respectfully submitted,
Liz Anoja, Conservation Agent

Marshfield Conservation Commission
Mike Seele, Conservation Administrator

Craig Hannafin, Chair
Jesse Platt
John O'Donnell

Bert O'Donnell, Vice Chair
Susan Caron