

**MINUTES – CONSERVATION COMMISSION  
TUESDAY, OCTOBER 6, 2015 7:00 p.m.  
TOWN HALL, HEARING ROOM 2, 2<sup>ND</sup> FLOOR  
870 MORaine ST., MARSHFIELD, MA**

**Approved 2-2-16 5-0-0**

Members present: Robert Conlon, Chairman (RC), William Levin (WL), Frank Woodfall (FW), Chad Haitsma (CH), Bert O'Donnell (BO'D) and Jay Wennemer, Conservation Agent (JW). Alison Cochrane (AC) was not present.

RC motioned to open the meeting, WL second, motion passed 5-0-0.

**MINUTES**

**BUSINESS**

- Vote & sign Orders of Conditions for closed hearings  
(if projects are voted closed and/or the Commission is prepared to vote on Conditions)  
SE42-2569 McNeil, 11 Hancock St – Commissioners read draft orders. FW motion to approve as written, RC second, passed 5-0-0.
- Scheduled Meetings: October 20, November 10<sup>th</sup>.

**EXECUTIVE SESSION**

**ENFORCEMENT ORDERS**

**REQUESTS FOR CERTIFICATES OF COMPLIANCE**

Backburner:

1. 1658 Heaney, 29 Farragut Road
2. 2324 Wallace, 110 Damon's Point Road
3. 1090 Peterson, 219 Ridge Road
4. 1827 L. L. Smith, 60 Macomber's Ridge
5. REQPC-1925, Cushing Construction (Parsonage St.) Garden Gate
6. 2381 NSTAR, Pine Street

**Current:**

1. 1318 Darman, Chestnut Hill Trust, Holly Road – not yet
2. 2546 Hutchinson, 499 Union Street – not yet
3. 2155 Ready, 3 Hidden Acres Road – not yet
4. 2564 McKenzie, 375 Church Street - ready
5. 2104 Insight Bridgeway, 1277 Ferry Street – not yet
6. 237 Flagg, 42 Cove Street – ready

JW recommends CC's for McKenzie and Flagg, RC motion to issue, WL second, passed 5-0-0.

**REQUESTS FOR DEVIATION**

**REQUESTS FOR EXTENSION**

- 2190 Flagg, 42 Cove Street  
2191 Flynn, 46 Cove Street  
2195 Arsenault, 50 Cove Street

Adjacent to one another – 5 or 6 years ago, collectively put in shore front protection rebuilding rip rap.  
JW recommends – RC motion to extend, WL second, passed 5-0-0.

## **NEW BUSINESS**

### **PUBLIC HEARINGS**

**7:05 2573 Corry, 102 Preston Terrace** - RC read notice of public hearing. CH hearing officer. Mr. Corry and Darren Grady of Grady Consulting present. This application is for a retaining wall and slope stabilization. Proposing to replace existing timber wall with stone retaining wall, 96" x 44" deep, put together segmentally. Proposed rip-rap slope below at level of marsh for coastal protection. Sparse vegetation on upper slope. Slope is 2 to 1; proposing vegetation between the stones – beach rose or equal. Mr. Corry would also like to build a staircase to the permitted dock. JW has been out to the site – discussed proposal; ties together an unprotected area to two partially protected areas. CH motion to close, FW second, passed 5-0-0.

**7:10 2579 Dalton, Lot 5 Highland Street** – Hearing had been continued for a new plan showing the driveway moved further from the wetlands. Mr. Dalton & family present. Greg Morse, Morse Engineering, presented new plan. Driveway out front – was between 50 and 75' zone. Have since obtained easement over the property next door and moved the driveway outside the 75' buffer zone. FW motion to close, RC second, passed 5-0-0.

**7:10 2578 MA Audubon, 260 Winslow Cemetery Road**- Abutters have not been notified of this hearing. RC read notice of public hearing with no testimony taken and motioned to continue to 10/20/15 at 7:10 for proper notification. WL second, motion passed 5-0-0.

**7:15 2580 Tasney, 55 Cross Street** - RC read notice of public hearing. Greg Morse, Morse Engineering, presented. Septic system repair; property is developed with 3-bedrooms, failed Title 5. Two resource areas on site - Riverfront and Bordering Vegetated Wetlands. Entire site is located within endangered species habitat. Dug two test pits. Found suitable soil up-gradient of existing cesspool, new septic, distribution box – all located outside buffer zone. MESA has exemption for septic repairs: 10.58 Riverfront standards do not apply to septic. The proposed location is the only feasible location Mr. Morse said. JW stated he was on site and is concerned about the proximity of the yard and disturbance to the wetland – would like to have more protection for the buffer. House appears to be only 25' from wetland delineation. Would like to recover as much of that 25' as possible by reducing clearing, lawn and yard next to wetlands.

Also, in the back yard, there's a depressed walkway leading to the cellar door; JW would like to see finished grades shown on the plan and a different treatment for the cellar and depressed walkway. "Pit" will be removed. JW suggested a small retaining wall off back corner. Revised plan desirable.

Abutter present – asked about repair or replacement. Mr. Morse said it would be a new septic tank and field; conventional system. Had enough area on this property; didn't need 50% size reduction.

The applicant has a Board of Health meeting on October 19<sup>th</sup> and Mr. Morse said he expects they will approve the plan. CH motioned to continue to October 20<sup>th</sup> at 7:00, RC second, passed 5-0-0.

**7:15 25\_\_ Mahaney, 46 Preston Terrace** - RC read notice of public hearing. FW hearing officer. Taxes paid, abutters have been notified and file number has been received from the State. Mr. Mahaney was present. Atty. Creed, who is representing abutter Mr. O'Leary, was both present. This project is the result of an Enforcement Order and has been in the works for a while. NOI is to permit work that has been completed along the bank of the South River. Mr. Mahaney has changing the grade of the land, bringing in fill, which is re-directing storm water flow. JW stated the paper road adjacent to Mr. Mahaney's property has had some grade changes made on it. JW had told Mr. Mahaney previously to remove the fill. FW asked if the grades shown on the plan are the final grades 'as is' now; Mr. Mahaney said they are. JW noted the slope is quite steep.

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Atty. Creed, representing Mr. O'Leary, 40 Preston Terrace, stated the NOI is a result of a decision from the ZBA, which was appealed in Superior Court by Mr. Mahaney, which he lost. Mr. Mahaney filled to the center line, up about 10 or 12 feet, to create a driveway for himself. ZBA indicates he did that without right and in violation of the

Zoning Regulations. A print from the Town's GIS shows the grades. RC said the plan is stamped by an engineer and should be stamped by a surveyor.

Mr. Mahaney said the previous Building Inspector said he could put in the fill in order to build a deck close to the lot boundary. 2007 plan of proposed septic system for Mr. Mahaney – portion built in the roadway; encroaches into Peabody Road. Lines shown in 2007 do not match what Mr. Mahaney is calling "restored" lines.

Historic road from the 1960's (shown in pictures Mr. O'Leary brought). Shows gradual slope; more consistent, runs parallel to Preston Terrace. Mr. Mahaney also created a berm wall. Mr. Mahaney said it's lower now than it was then because he removed the fill. FW noted looking across to the house behind, it looks like a level area; looking at recent picture he sees a big rise, which indicates there's still fill to be removed. JW stated Mr. O'Leary is getting flooded now that water is re-directed by changes to the grade. RC said the Building Code states you're not allowed to shed water on your neighbor's property. Crushed stone trench shown on plan Atty. Creed pointed out – there is no information as to where outfall is going. FW – don't have original grades; would like to look at that. Appears it hasn't been restored as it should be. Mr. Mahaney said the grade was changed when his house was built. RC said there are two issues here – restoration and mitigation. FW – need to see a drawing showing the grades. CH – would like recap of legal argument. RC asked for a better plot plan; FW asked for a better idea of what was original and what is opposed.

JW suggested a site visit – makes more sense once you get out there. Short term issue on how to stabilize the site; lots of potential for erosion. Relatively stable now due to drought, down 6-7" of rain since January. Site is pretty stable but the drainage from Preston Terrace can be a big issue in this area. Interim stable condition now JW said. FW motion to continue to Oct. 20<sup>th</sup>, at 7:10; RC second, motion passed 5-0-0.

**7:20 2582 Crowther, 163 & 167 Island Street** - Rick Servant, Stenbeck & Taylor, presented. RC read notice of public hearing. Mr. Crowther and Atty. Brodsky present. Proposing to demo house at 167 Island Street and put addition on 163 Island Street, extending onto adjacent parcel, 88' from wetlands. Proposed addition is located within 100' buffer, and also located in the AE-9 flood zone. Not in Barrier Beach; proposing concrete piers at elevation 10. Has upcoming hearing with Zoning next week. JW on site and said flood zone issue and setback to wetlands standards are met with this proposal.

Adam Brodsky stated Orders of Conditions were issued for the existing swimming pool. BO'D stated the shed, which is partially on town land, needs to be moved. JW said it will be put in the Orders to move the shed. Atty. Brodsky suggested special condition that shed be moved onto property to comply with zoning requirements. Applicant agrees to stone trench a foot and a half by a foot and a half, and filter fabric for infiltrating roof runoff. CH motion to close, FW second, passed 5-0-0.

**7:20 2581 DPW, 35 Marshall Ave.** – This hearing was continued for DEP # from the State. Number has been received. Mr. & Mrs. Dukstra present. Comments from Marine Fisheries received – recommended stops under the float. FW motion to close, RC second, passed 5-0-0.

**7:20 2565 Vacirca, 20 Wilson Road** - Atty. Creed and Mr. Vacirca present. Commission asked for a better plan showing the delineation, plan was submitted. Also submitted- Lenore White of Wetland Strategies report; Ms. White feels there is no impact to the Wetland By-law interests, and is asking for Orders that allow these items to remain in place, and to restore the grassy area and level it. JW disagrees with the delineation and stated it's clear that fill had been brought in, filling wetland closer to driveway; driveway has wetland plants growing through the driveway. Mr. Vacirca stated he has pictures showing that area has been grass forever, and always maintained as grass. 1995 permit was pulled for patio made with pavers. They were later removed and laid Trex over it; it was a repair so no one would get

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hurt. RC asked if there is any other alternative, i.e. putting the driveway on the other side. JW – need permit to work in wetland; entire site is barrier beach, LSCSF now looking at site that is changed from original. Recommends that new driveways and filled BVW be removed and wetlands restored. BO'D asked if the ramp, swing set and leveling of back yard should be allowed.

Mr. Lane, who owns the land behind Mr. Vacirca on Adams Road, stated as kids they all played ball on that land and that the phragmites are fairly new. Atty. Creed asked if the land was maintained; Mr. Lane said always. FW – hydric soils weren't addressed in the report. Looking to get the driveway removed. Mr. Vacirca has no problem with a third party's report. Mr. Lane asked if, since driveway exists, would it be more detrimental to the area to tear it up? Abutter at 15 Wilson Road, who has been there 30 years, said Mr. Vacirca mowed that lawn when he was a little boy. Marion Vacirca, who has owned the property since the 1950's, stated the side of the house has always been lawn. Joe Pecevich, 25 Wilson Road, asked to see the plan. JW recommends hiring an independent consultant to review the site. RC motion to continue to 10/20 at 7:15 and hire a consultant to review the site and submit a report, FW second, passed 5-0-0.

**7:25 2584 Collins, 251 Old Ocean Street** - RC read notice of public hearing. Mr. Collins was present and explained that he is proposing a new barn, had survey, one corner falls within 90' of wetlands. Can't move it up due to stone retaining wall. FW asked the elevation change between sides. Meets Zoning set back, 28' x 42'. Mr. Collins stated the property will not be used for commercial purposes; does not intend to use it as a kennel. FW stated roof run off should be taken care of; Mr. Collins said he is not opposed to dry wells. "No Disturbance" markers will be included in the Orders. Resident at 270 Old Ocean asked how far the project is from the South River. Mr. Collins said it is more than 200'. FW motion to close, RC second, passed 5-0-0.

**7:30 2566 Roderick, 2104 Ocean St.** - RC read notice of public hearing. Dana Altobello, Merrill Assoc., Atty. Guard, Mrs. Roderick present, and Jimmy Roderick present. This project abuts the South River, is 950' from the main street. 1.71 acres; 1.2 is upland. Wetlands flagged by Mark Garrett. 290' of frontage along the South River. FEMA flood zone AE elev. 8. The two previously existing buildings collapsed during the winter storms. Two new retail structures are proposed with a parking area with a drive-thru. There is no existing storm water management – the majority of run off goes directly to the South River. The proposal calls for capturing roof and pavement run off and treating it and infiltrating some. Overflow from larger storm events will be discharged to the River. Run off from parking area will be directed to deep sump catch basins and through water quality structure before discharging into the river. Total runoff will be reduced; each building will have its own septic system. Storm water design meets regulations. Silt sock proposed. NHESP has completed review – "no adverse impact". Have been through Zoning and has been closed. FW – building was originally 100' from the wetlands; now 42'?

There is a proposed retaining wall in back of the building, which Dana said will be the foundation. JW – met with Dana yesterday; talked about drainage concerns; clarified some points. Need to look into discharge near wetland and come up with a different method of discharge lower on the bank. Or possibly a much bigger, level spreader to dissipate the flow and reduce potential erosion on steep bank.

JW said the Commission should hire a consultant to look at this – re-development in Riverfront area is a complicated proposal with a lot of issues. JW was on site today and noticed where building A is, at the back edge of pavement, there's quite a large oil stain in the soil and a smaller one nearby. Has the site been looked at for contaminants? Jimmy Roderick said a 21E and a phase 2 have been done and they have monitoring wells in the back. CH noted the underneath surface is a concern.

Atty. Guard stated that Phase 1 is site surface assessment; Phase 2 is borings. Have a DEP closed file. JW asked if the presence of the large oil stain make a difference; Atty. Guard said it's possible it could be from a piece of equipment, and they will have it checked out by taking a sample. JW asked if it is up to the applicant to hire someone; Atty. Guard said it is. JW asked that they contact him.

CH asked what the consultant's job would be. JW said it would be to review and advise the Commission. RC motion to continue to October 20<sup>th</sup> at 7:30, and to hire Bob Gray of Sabatia as the Commission's consultant. FW second, passed 5-0-0.

**7:35 25\_\_ Barry, 137 Bay Avenue** - Hearing has been moved to 10/20 at 7:35 at the applicant's request.

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RC read notice of public hearing, no testimony was taken, and motioned to continue to 10/20, FW second, passed 5-0-0.

**7:45 2567 Wallace, 35 Water St.** - applicant has requested a continuance to a November meeting, no testimony was taken. RC motioned to continue to November 10<sup>th</sup> at 7:45, FW second, motion passed 5-0-0.

**7:50 2570 Ryan, 241 Foster Ave.** Hearing had been continued for new foundation plans which have been received. These plans address the questions from the last meeting. Proposing addition in front and new foundation on isolated supports, one-story addition on the back supported on sonotubes. RC motion to close, FW second, passed 5-0-0.

**8:00 2583 Junior, Cohasset Ave.** - Dana Junior present; several abutters (6). The Commission had asked Mr. Junior to stake out the end of the road; he said he has done that. Also made corrections on the plan pursuant to Planning Board meeting. Planning asked for four more changes last night; those changes are on the plan. Plan is showing blow up of where fill was at edge of road and in wetlands. CH asked JW if any of the changes are significant; JW said he is not sure correct ROW layout is shown. Mr. Junior said there is a mistake on the north side, not straight, actually a curve. Small plan shows where the fill is, approximately 95 sq. ft. and proposed replication next to it at a 2 to 1 ratio. Proposing 250' replicated wetland.

The Planning Board suggested, instead of crowning the road in the center and having catch basins on both sides and Cape Cod berms, pitching the road to the north side so there are Cape Cod berms and catch basins on the wetland side. Planning hasn't accepted plan, and won't approve it until Conservation does. FW asked if Mr. Junior had looked at different access from the other end; he answered the road would be longer but there's a lot of wetlands on that side. JW stated there are a number of issues – the roadway will fill wetlands; have a 75' setback for structures and a 50' setback for disturbance or alteration – this project doesn't meet either standard. This roadway not only has zero setbacks from wetland, it is *filling* wetlands. JW noted another issue is this whole neighborhood was the subject of dangerous storm water issues and the Town initiated a building moratorium to stop development in order to allow the Town to address the drainage issues. Storm water overlay district – each lot cannot be cleared more than a certain amount. Photos of two houses built in the last two years clearly show those standards are not being followed. We will have more uncontrolled runoff if more houses are built there.

JW said the proposed house itself is 75' from the new wetland line that filling the wetland creates. The back of the proposed house lot is quite steep, comes down into the back yard of a house on South River Street. Right now it is heavily wooded and vegetated. Development of this lot would make the runoff and flooding much worse for that house on South River Street. JW said he feels the area is not suitable for building and recommends denying the project. CH asked if there is any opportunity for Mr. Junior to re-do the plans to satisfy the Commission's concerns? JW said there is not.

Mr. Junior stated the intent of the Planning Board scheme to put in the trunk line was to take the drainage problem away from the area. You need gutters to carry water to the catch basins. Right now it rains, there's no pavement and no system to catch the water to funnel it into the trunk line. Proposed roadway catches the water and funnels it into the catch basins and alleviates the problem the neighbors are having now. Would be an asset to the whole neighborhood.

FW stated the whole hillside is steeply sloped – altering, diminishing wetland. House slope across the lot is about 10'. Any disturbance on that hillside just goes downhill to the house below. Mr. Junior answered that's the reason for the overlay district; have to have drywells to capture runoff from the house roof to re-charge groundwater. FW noted Mr. Junior is still filling wetlands. WL told Mr. Junior the Commission just denied an entire development because they wanted their road to be 10' from the wetlands. WL suggested denying this project that will fill wetlands.

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Mrs. Anne Vigil, 2 Kingston Street, showed a picture of the trunk line – can see the water running off that area. Trunk line didn't solve the problem; doesn't work; it's on Parkway. Mrs. Vigil said so much water that comes off that hill; the road-grader graded the dirt road and makes it difficult for the water to dissipate. Hard surface will make it more difficult to drain. It is a mess at the end of the street. Wetlands need to be left alone – Mr. Junior's property is a non-conforming lot. This is not an acceptable solution to the problem. Don Vigil stated that from Eagle Road and the proposed road it is all downhill – all wetlands. There are three underground springs there that weep all year long.

Barbara Farnsworth, 851 South River Street, said her house is down below the dirt road and she gets a lot of that water. She said she is in support of the construction of the road, since she believes that would alleviate the problem. Will be adding additional catch basins.

CH motioned to deny the proposal and close the hearing, FW second, passed 5-0-0.

RC motioned to adjourn at 9:30, WL second, passed 5-0-0

Respectfully submitted,  
Lois Keenlside  
Marshfield Conservation Commission

Jay Wennemer, Conservation Agent  
Rob Conlon, Chairman  
William Levin  
Frank Woodfall  
Chad Haitsma  
Bert O'Donnell