

MEMBERS PRESENT – Robert Conlon, Chairman (RC), Art Lage (AL) Bert O'Donnell (BO), James Kilcoyne (JK), Patrick (Rick) Carberry (PC), Bill Grafton, Conservation Administrator (BG).

MEMBERS NOT PRESENT – Frank Woodfall (FW)

CALL TO ORDER – RC makes a motion to open the meeting at 7 pm. JK second. Approved 5-0-0.

PUBLIC HEARINGS

18-42 Bergstrom, 1028 Ocean Street (Dog Pen).....NEW (Bert)

- RC reads Legal Ad. Hearing Officer BO confirms administrative requirements are complete.
- Homeowner Jacoall Bergstrom (JB) requests an RDA for the addition of four panels to the existing fence already permitted under a previous NOI in order to keep her dogs in the yard. The panels will be attached to the fence and the home. BO asks if any of the previously permitted plantings are in the area of the dog pen. JB states they are not.
- BO asks for comments from other Commissioners and the public; none.
- BG notes that applicant was proactive in approaching the Commission for the permit.
- BO makes a motion to close and issue a DOA, neg # 3, with special conditions drafted by BG. AL second. Approved 5-0-0.

2742 St. Ours, 84 Bay Avenue (Raze & Rebuild SFH).....cont from 9/11/18 (Art)

- BG advises that applicant had requested continuation in writing.

2754 Hanlan, 72 Bay Avenue (Raze & Rebuild SFH).....cont from 9/11/18 (Bert)

- BG advises that applicant had requested continuation in writing.

2727 Digan Jr., 1327 Union Street (Pier & Dock).....cont from 6/5/18 (Jim)

- BG advises that applicant had requested continuation in writing.

2684 Bethanis, 1184 Ferry Street (Found. Rest. Driveway Recons).....cont from 10/03/17 (Jim)

- BG advises that applicant is in the process of requesting a Flood Mitigation Assistance grant.

REQUESTS FOR CERTIFICATES OF COMPLIANCE & EXTENSIONS

0947, Martin (Chateauvert), 10 Brighton Street (COC) - Incomplete / not ready for signature

1193, Joyce, 833 Ocean Street (COC) - Incomplete / not ready for signature

2389, Spruill, 4 Damon's Point Drive (COC)

- BG advises that previous agent Jay Wennemer had requested that a buffer be established to keep fertilizer out of a pond. BG has checked with JW, who feels that applicants have complied.
- RC makes a motion to issue a COC for 4 Damon's Point Drive, 2389. PC second. Approved 5-0-0.

2740, Connolly, 80 Rugani Road (COC)

- RC makes a motion to issue a COC for 80 Rugano Road, 2740. AL second. Approved 5-0-0.

2122, O'Flaherty, 70 Carolyn Circle (EXT)

- RC makes a motion to grant an extension to the OOC for 70 Carolyn Circle, 2122. AL second. Approved 5-0-0.

2217, John Sherman Estates, Main Street (EXT) - Incomplete / erosion control issues; not ready for signature

ENFORCEMENT ORDERS

Smith, 38 Liberty Street **(08/09/18 KS & BG Sept site visit)**
 Mahaney, 46 Preston Terrace **(08/15/18 TC & BG to meet)**
 Drosopoulos, 7 Lady Slipper Lane **(08/15/18 TC Final Notice)**
 White, 180 Atwell Circle (Escalation letter in Process)
 Digan, 1327 Union Street **(07/30/18 BG submitted EO)**
 Bednarz/ Nouza, 65 Ireland Road (Unpermitted Cutting w/in 50 ft)
 Levangie, 3 Cove Creek (Communication in Progress)
 Tamara Macuch, 237 Webster Avenue
 Jogi's Liquor Store, 951 Ocean Street **(08/13/18 BG submitted Citation Advisement Letter)**
 Stifter, 102 Bartlett's Island (unpermitted revetment wall)
 New Owner, Winslow Avenue Ext.

BUSINESS

4 Mallard Road / Septic Upgrade (Riverfront & LSCSF) – Peter Armstrong

- BG updates the Commission regarding conversations he has had with Peter Armstrong (PA) concerning the subject property. This property is in the outer riparian zone and in LSCSF. There is an exemption in 310 CMR 10.58 in the outer riparian zone, but there is no direct exemption in the Town Bylaw. There is a similar exemption under 505(10), specifying repairs or improvements to existing systems in resource area setbacks.
- BG asks the Commission to consider establishing an exemption for flood zone properties in the outer riparian zone. He feels this would reduce the number of filings for septic upgrades. BG notes that Commissioner Woodfall feels that all septic projects should be NOIs, but BG feels that properties in the flood zone and riverfront can be exempted from this requirement.
- RC would like to know if the Commission is allowed to make such an exemption. BG comments that the Commission can change its regulations, and this is an area where he would favor some additional flexibility. RC notes that in a previous discussion, he favored handling all septic projects as RDAs. JK asks BG about the potential downsides; BG notes there is a risk of losing control on a project that could have elevation changes, which could create runoff issues.
- BG adds that "septic repair" is not clearly defined in the Bylaw Regulations currently. BO feels that any property that already has a septic system should be considered a repair. He can't recall any septic project requiring anything beyond the standard special conditions. RC would like specific guidelines for this, as there are for the state, and feels that some sort of notification should be required.
- JK comments that septic projects are generally improvements, and he can remember only one such project requiring any kind of a change or special condition. RC points out that the Commission has sometimes changed the location of a system in hearings.
- BG notes that PA has started work on the septic upgrade for the subject property so it can be sold, and asks the Commission for guidance as to what filing to require. If PA can document that the property is in the outer riparian, he has no issues with the project. RC would consider modeling the Bylaw to reflect the state's language provided there is some notification requirement. He is willing to follow the state guidelines for this particular project, but would like to get Commissioner Woodfall's input prior to changing Commission policy.
- BO notes that the wetlands on a property should be set forth on the site plan submitted to the Board of Health. BG should be able to review the plan and make a decision as to whether a Commission filing is required. BG would like to receive notification of such projects by phone or e-mail; he could then inspect the BOH documentation accordingly.

- BG advises the Commission that he will ask PA to send in his existing documentation concerning the project, and then allow the work to proceed; the Commissioners assent.
- PA appears later in the meeting to discuss options and opportunities for exemptions. PA notes that inspections are done for septic projects in advance applicants appear before the Commission, including Title 5 inspection and perc testing. His reading of the current regs is if an applicant conducts a Title 5 inspection, they have to file a NOI. RC comments that this seems to be a draconian requirement. PA agrees and feels that applicants should be exempt in these cases. BG comments that there is an exemption under 10.02 for temporary test pits. RC feels this would be a minor activity; BG feels it depends on the specific activities in a project and PA agrees. A simple form notifying the Commission of a project and documenting the work area's location and resource area(s) may be useful. Some projects may not require the filing of an RDA.
- BG comments in summary that he is looking for some guidance, from PA, the Commission, and other entities, as to how to adjust the regulations to appropriately reduce the workload of applicants and the Commission for projects that are fundamentally upgrades and not adverse impacts. Certain alterations may trigger some sort of filing, but if the overall result of the alteration is a betterment of conditions, he feels the project should be exempt from a full review. JK, and RC think an RDA is an appropriate filing for septic projects rather than a NOI, provided only the septic system is being upgraded. AL concurs, provided the size of the new system matches up to and does not exceed the number of bedrooms.
- After further discussion, the consensus of the Commissioners present is that an RDA is the appropriate filing for septic upgrades going forward. RC notes that this would avoid the need for new forms, and positive findings and special conditions can be added in as needed. The matter will be discussed further when Commissioner FW is present.

14 Bank Road/Minor Deviation – Bill Grafton

- BG advises that the homeowners have hired Brad Holmes (BH), ECR, for assistance complying with the OOC. Several neighbors have expressed concern about the associated beach nourishment and feel the work should have required an Amended NOI.
- Brad Holmes (BH), ECR advises that the owners, the Rogans have an OOC for a retaining wall and some other improvements. They completed this work, but still had some erosion impacts in front of their wall. They then submitted a beach erosion plan under an NOI to provide protection to the wall and nourish the beach using coir logs and salt marsh plugs. This area had previously been salt marsh but had eroded out; they would like to restore the marsh as much as possible. This work has been completed, and there will be ongoing monitoring to maintain the salt marsh plugs. The Rogans and BG has been in contact throughout the process and have submitted photos of the project. Several neighbors were concerned with flooding, but BH notes that the whole area lies within the coastal flood zone.
- In response to a question from RC, the modification consists of the beach nourishment and the plugs. BG adds that the original OOC allowed for a one-time beach nourishment of 4 cubic yards. BH's plan proposed the addition of 25 to 50 cubic yards of sand annually, but only about 15 cubic yards were put in. Neighbors were concerned that some of this sand might migrate to their properties. BG comments that some spreading may occur naturally, but the sand is needed in order for the salt marsh to thrive. The two coir logs will help slow down this spreading. At BH's suggestion, applicant took out some of the riprap underneath one of the logs.
- BG states that the issue has to do with the discrepancy between the 4 cubic yards allowed in the OOC and the 15 cubic yards actually put in, but he felt the deviation was permissible due to applicant's diligence, including the hiring of BH, in seeking to nourish the beach and restore the marsh.
- Paul Rogan (PR), 14 Bank Road, states that when the work was first approved, the neighbors were concerned that the retaining wall was going to put water in their basements; however, it is the river that puts water in basements in his neighborhood, and his own basement is flooded almost every year. He states he is just trying to protect his front wall, feels the work does not cause additional flooding, and provides photos of recent river flooding for the file.
- BG feels that the spirit of the work is still proper for a minor deviation, but that he could have required an amendment to the NOI. RC feels BG made the appropriate call, and that an extra 11 cubic yards is not going

to make a difference. BH agrees that the work involved constitutes a minor improvement and notes they have submitted a letter to the file indicating they would not be doing any further nourishment without an additional filing. After further discussion, the Commissioners agree by consensus that the work was properly permitted under a minor deviation.

- RC makes a motion that the Commission accept the minor deviation as is. AL second. Approved 5-0-0.

Conservation: Floats / Fields / Fees / Fines – Bill Grafton

- **Floats:** BG advises that there is a float on the Little Goggin Property that gets removed every year; Russ Clark (RC) does this at a cost of \$1500. There is a new float on the South River, behind the CVS, that also needs to be removed; RC indicates it would cost about \$2500 to remove this float because there is a need for a crane to lift and remove it. There are also questions as to storage. BG has asked RC to think about another way to remove the float.
- The Commission discusses assuming the cost and responsibility of removing and placing this float annually. BG notes that the promotion of recreation is one of the Commission's interests. JK asks whether Open Space could assume this expense. BO suggests that BG approach Waterways, as they do have revenues to spend; Mike DiMeo as Harbormaster might be the one to talk to. BG may be able to get this cost budgeted in from the General Fund going forward.
- The Commissioners discuss possible locations to store the South River float. BG mentions a bermed area behind the CVS, but the owner of the area is unknown.
- **Fields:** BG advises that Commissioner FW would like to see the John Little Conservation area be mowed more often. Mowing the fields is approximately a \$400 cost, and BG has checked in with MassAudubon regarding the birds and possible time of year constraints; after July 15, there should be no issue. BG suggests that this property be mowed twice a year instead of once but notes that this would incur additional costs.
- **Fees:** BG states he has compared the Commission's fees with those in other towns in the area to see where they stood as to the amount of filings. Marshfield, with 37 NOIs, had the third highest number of filings over the last four months, behind just Barnstable and Falmouth, and ahead of Scituate and Plymouth. PC asks whether this could be interpreted as an increase in compliance with the regulations. BG feels that residents are generally more comfortable with the process and are seeing the benefit of proactive compliance and filings.
- BG notes that the filing fee for an RDA in Marshfield is \$50, whereas the fees start at \$100 for Norwell, \$175 for Barnstable, and \$116 for Falmouth. He feels that some of the categories in the Town portion of the fees need to be elevated to come into the range of similar towns.
- PC asks what the money from increased fees can be used for; BG states the money can be used for the administration and the enforcement of the Act and the Bylaw; this could include improvements to the filing process, and BG notes that scanning and automation of filings could be a potential benefit to both the town and applicants. JK and AL ask if the Commission has the authority to change the fees. BG indicates yes, and reads the applicable Bylaw Regulations excerpts into the record.
- BO feels that Marshfield's fees should be on average of the neighboring towns. JK agrees, but feels maybe Marshfield should be a leader. He adds that the Commission has limited funds to take care of its properties and raising the fees will help.
- The Commission discusses possible increased amounts for various filings under Chapter 505. BG notes that applicants save money by filing RDAs since engineered drawings are not required and recording costs of Orders of Conditions. The following fee changes are proposed: RDA \$150, Cat 1 NOI \$125, Cat 5 NOI \$450, Cat 6 NOI \$3/linear ft, Amended NOI \$100, After-The-Fact NOI or RDA doubled, Extension Orders of Conditions \$100, COCs (0-5 years) \$125, COCs (more than 5 years) \$250.
- RC comments that his only concern is that the increases not impact people who can't afford it. He would like to keep the fees for people in smaller houses/properties, as opposed to larger properties or developments.
- As part of a discussion about COCs, Peter Armstrong (PA) comments that if the regulations were met when the permit was pulled, that is what an old COC should be based on rather than today's regulations. BG comments that neither he, the Commission, nor Town Counsel can change an OOC's conditions. People have not always built to what was required in their permit, sell their property, leaving the new owners with the

problem. PA feels that in such cases, the outstanding OOC ideally would be detected by the buyer's due diligence and then addressed. If deviations are discovered after the purchase, the old owner should be held responsible if possible, but the new owners ultimately own the problem. PA thinks that the Commission should deny the COC in such cases; then the new owner would have to re-file and obtain a new OOC so they can fix the problem; BG concurs with this sequence.

- The Commission discusses an increased fee for older COCs; BG would like to stagger the COC fees depending on the age of the OOC, with a lower fee for newer OOCs; he thinks that 5 years would be an appropriate threshold for the higher fee. JK comments that the Commission should encourage applicants to file for extensions when needed, so the outstanding OOC doesn't get passed on to a new owner. RC is willing to issue a COC for older projects if the spirit and intent of the project were met. After further discussion, the Commissioners agree to a higher COC fee of \$250 for projects more than 5 years.
- The Commissioners assent to the changes proposed; BG advises he will meet with the Town Administrator Michael Maresco to discuss.
- **Fines:** The Commission then discusses the use of fines to address noncompliance issues. BG references the matter of Jogi's Liquor Store, in which the owner has been nonresponsive. He has also spoken with Town Counsel and the Chief of Police on how to effectively use the citation booklet, in case it is needed on this matter. AL comments that if there are no consequences to a Commission ruling, the whole process would be a waste of time. BG discusses trainings he has received on enforcement/citation procedures through MACC, and the Commission reviews the enforcement process: enforcement order issues, escalation letter sent with timeline for response, ticket issues, owner has 21 days to appeal and then matter goes to Court.
- AL would like to talk about Jogi matter specifically at the next meeting, as he feels the owner is gaming the process. BG will consult with Town Counsel as to next steps. The Commission authorizes BG to write a letter to Jogi and discuss the matter in October.

Pier elevation filing – Rick Carberry

- Speaking as a resident, PC advises that the engineer and contractor for his previously approved dock project would like to increase the height of the dock by two feet; the ramp size and footprint of the dock would not change. He would like some guidance on what type of permit he would need for this alteration.
- BG notes that the Commission had recommended an RDA on a modification to a recent project by Commissioner JK. He feels the change would be a minor deviation but would like the Commission to make its own finding. Commission consensus is that PC should file an RDA along with an updated site plan. The as-built plans will also document the updated dock height.
- AL asks whether a change in elevation of a house would also be handled with an RDA. BG feels it would depend on how the project was being changed. AL notes that neighbors might be impacted by change in elevation of a house, but no abutter notification is required with an RDA. RC feels this would be a different situation due to the abutter impacts, and an amended NOI would be required; BG agrees due to the potential abutter impacts.

ADJOURNMENT – RC makes a motion to close the meeting at 8:39 pm. BO second. Motion approved 5-0-0.

Respectfully submitted,
Liz Anoja, Conservation Administrative Clerk
Marshfield Conservation Commission

Bill Grafton, Conservation Administrator
Robert Conlon, Chairman
Frank Woodfall
Rick Carberry

Bert O'Donnell
James Kilcoyne
Art Lage