

September 19, 2017

**MINUTES – CONSERVATION COMMISSION
TUESDAY, SEPTEMBER 19, 2017 7:00 p.m., Hearing Room 2
TOWN HALL, 870 MORaine ST., MARSHFIELD, MA**

Approved 11-21-17 5-0-0

MINUTES 08/01/17; 08/22/17

Members Present: Robert Conlon, Chairman (RC), Frank Woodfall (FW), Chad Haitisma (CH), Bert O'Donnell (BO), Bill Grafton, Conservation Administrator (BG).
James Kilcoyne (JK) and Art Lage (AL), not present

Open: RC motioned to open the meeting at 7:00 p.m. FW Second, motion passed 4-0-0. Approved.

BUSINESS

- Beach seaweed policy-DPW/BOH/Beach Commissioner
 - BG gave a background on the models reviewed (Scituate, Duxbury, NPS); interaction with local, state and federal agencies to get advice. Beach Focus Group has been meeting on almost a weekly basis to develop a seaweed management policy that can be followed in the future in lieu of an individual permitting approach. The goal is to advance the policy to the Board of Selectmen.
 - FW Seaweed management is not beach grooming. Beach grooming does not belong in the policy.
 - BO Burying vs removing? What is preferred?
 - BG MassDEP indicated no removal so as to maintain the integrity of the beach.
 - BG suggested that US Army Corps, Coastal Zone Management and other agencies should review this USACE review and/or permit is required for any activity below mean high water.
 - Commission did not require additional review by other agencies.
 - BG The policy is designed to be like a menu providing options for seaweed management.
 - Commission would like any reference to grooming be removed from the seaweed policy.
 - CH Commission supportive of policy but not Attachment B (beach grooming).
- SE42-2592 Morris-Hipkins, 955 Careswell St. – Discuss Open Space Easement (need T.C. input)
- SE42-2509 Rowell (restoration), 480 Ferry Street
 - Mr. Mark Rowell (MR), speaking about 480 Ferry Street, drainage run off running under the bridle path and onto his property, causing the property to be full of silt, salt and debris. He has researched Massachusetts Law about this and believes it is illegal.
 - MR Trees on his property in the wetlands became unstable and died so he cut them down. Conservation reached him and required filing a permit.
 - MR hired Steve Ivas as his wetland specialist.
 - MR receiving storm water run-off from hill; states a pipe/switch exists that the water flow can be diverted.
 - MR states vernal pool is not supporting life and it is salty.
 - FW asks BG if he has spoken to Rod Procaccino (RP) from DPW about existing pipe and possible water diversion. BG states not yet.
 - MR states that Town wanted him to buy an easement. RP was not willing to buy an easement from him, he was unwilling to sell.
 - MR spoke to environmental specialists in Boston, Fall River & New Bedford said that a wetland cannot be created by road runoff.
 - MR researched this further and learned that a large berm was built and then later a pipe that directs water onto his property was installed. He said that there is a switch to divert the water off of his property that was installed by DPW in the event that MR ever had to file a lawsuit against the Town. He does not want to explore this option.
 - MR feels that the drainage pipe has created wetland and also killed a lot vegetation on his property. BG states that there are hydric soils on this property which would have an extensive age likely preceding the installation of the subject pipe.
 - MR homeowner presented with diversion plan from DPW, he would like some of the water to be diverted away from his property, not asking for all the water to be diverted but would like some of it to be diverted.
 - BG provided a history. The existence of hydric soils indicates that this wetland has existed for an extensive time probably predating the installation of the pipe. Jay Wennemer issued an Enforcement Order that required an Order of Conditions to address the vegetation management. MR has not

September 19, 2017

registered the Orders with the Plymouth County Registry of Deeds until just this week. BG and JK met with MR on site on August 4th to explore different options:

- Additional trees and plantings.
- Possible berm to create waterflow.
- Vegetative management.
- MR did not disagree but stated that hydric soils exist but his property should not be receiving such an extensive amount of stormwater that is not clean (contains salt, sediment and road debris). RC states that the road runoff is a DPW issue. MR states that the road run off is killing the wetlands and he has evidence of this.
- BG proposes working under interim orders; the current orders are expired.
- BG indicates he can work with MR.
- MR shows the commission a video of the current culvert full of debris causing run off.
- CH asks what amount of rainfall causes that amount of run off?
- BO asks when the house was built; homeowner says he bought home from the bank.
- MR presented registered orders to the Commission.
- BG asks for direction on how work on this. BG asked for Steve Ivas reports. MR says that he will ask Steve Ivas to present the report to him.
- RC asks who is responsible for berm? Needs to be addressed.
- BG 2 different problem, DPW (water) and Conservation (unpermitted veg mang).
- MR states the Rod P. tried to purchase the 1 acre of land and easement.
- BO asked if ConCom has the file with the original NOI & conditions –might clarify the original condition of the front part of this property.
- BG would like the Special Conditions for order of conditions to be addressed. Specifically, he asked for Steve Ivas's report. MR said that he will take care of the report.
- BG & MR would like to speak with DPW and find a solution that works for everyone. Looking into December as a time frame to revisit.

EXECUTIVE SESSION – place holder

ENFORCEMENT ORDERS

McCarthy, 46 Bay Avenue
Drosopoulos, 7 Ladyslipper Lane
Levangie, 3 Cove Creek

Mahaney, 46 Preston Terrace
White, 180 Atwell Circle
Pam ?, 237 Webster Avenue

- Jay Creed, Esq inquired about Mahaney. BG provided an update. No action at present.

REQUESTS FOR CERTIFICATES OF COMPLIANCE

Current:

SE42-2607 Pomerantz, 56 Bartlett Island Way

- BG to schedule a site visit.

SE42-2205 Roper, 14 12th Road

- Commission signs COC (RC, FW, CH, BO)

SE42-2616 Sealund, 1454 Ferry Street (a.k.a. 140 Grandview Ave)

- Commission signs COC (RC, FW, CH, BO)

SE42-2389 Spruill, 4 Damon's Point Drive

- On hold. BG needs to speak with applicant.

SE42-2592 Morris-Hipkins, 955 Careswell St.

- Awaiting Town Counsel (T.C.) input on conservation restriction versus open space easement.

Backburner: (until problems are resolved)

SE42-1658 Heaney, 29 Farragut Road

SE42-1090 Peterson, 219 Ridge Road

SE42-1827 L. L. Smith, 60 Macomber's Ridge

SE42-2381 NSTAR, Pine Street

SE42-1318 Darman, Chestnut Hill Trust, Holly Road

PUBLIC HEARINGS

SE42-26XX Bethanis, 1184 Ferry Street.....(NEW)(Jim)

- RC Read the legal ad. JK is the Hearing Officer.
- BG Abutters have not been notified so suggests continuation.
- RC motion to continue to Oct. 3rd; BO second motion passed 4-0-0. Approved.

RDA 17-22, Massee (sfh), Ames Ave Ext.....(NEW)(Chad)

- RC Read the legal ad. CH is the Hearing Officer.
- CH states to ALL PRESENT PARTIED that an RDA is a discussion to further determine if an NOI is needed.
- Terry McGovern (TM) from Stenbeck and Taylor, presents:
 - Hanan Massee, applicant; Jonathan Smith, owner, Jay Creed, attorney assisting in real estate process.
 - The original applicant has withdrawn their application to build home at this address.
 - Under this withdrawn application, Sabatia, Inc.(Bob Gray) was selected as a 3rd Party Consultant to generate a report based a site visit and review of the Site Plan and submittal documents. The applicant agrees to the continued review by Sabatia, Inc. under this new RDA filing.
 - Filing RDA is a ½ step and the applicant is aware that this will lead to a NOI filing.
 - Similar to an ANRAD to secure the delineation line of all the resource areas, demonstrate that any adverse impacts are overcome by the proposed project activities (e.g.) mitigation.
 - Agreement on the location of the coastal dune and that no NHESP EH or PH is on site.
 - Sabatia indicated that potential coastal bank, drainage ditch and setbacks were needed.
 - Want to make sure they have correctly identified resource areas, that they are appropriately shown on the plan and then proceed to development on site in respect to resource areas. Important criteria:
 - Line of coastal dune has a bank associated with it. This is the closest setback line.
 - Criteria for a coastal bank slope is between 10:1 and 4:1; most importantly has to intercept the 100-year FEMA flood plain. Current 100-year FEMA flood plain doesn't intersect w/coastal bank.
 - Location and any set back from storm water drain.
 - Drainage channel shown on site plan with setbacks under the WPA and Bylaw.
 - TM spoke to John Zimmer (JZ), South River Environmental. JZ would call the drainage ditch, an inland bank under the local bylaw so it under the jurisdictional boundaries of the Conservation Commission but there is no riverfront involved as it is not a perennial stream nor has the required drainage area and all the real estate was created before August 1, 1996. It is significant to conveying stormwater.
 - JZ's report will go to Bob Gray for additional comment if it is has not already been forwarded to him.
 - Mr. Hanan Massee (HM) would like to build a different type of home on this lot and would like to know how this work will impact the resource area, under this RDA.
 - House is set north to south and site slopes northwest to southeast.
 - Would like to offer some vegetative management and allow current vegetation to continue to grow. It has been cut in the past on a periodic basis but seems to be regenerating nicely and would like to monitor. Open to site walk with the Commission if additional or different plantings are required.
 - TM points out that a property located at 27 Porter, opposite the subject site has a large cleared area within 50 feet of the drainage ditch (inland bank) that includes a lawn and sitting area. This area was well vegetated prior to the cutting.
 - Would like to provide dry wells around structure.
 - Nothing will be done to increases storm water flowing into the drainage ditch (inland bank).
 - Nothing to be done in the 50 foot setback.
 - Request variance so garage portion of the structure can fall within the 75 foot setback.
 - FW asks what Bob Gray's original report was missing?
 - TM states missing coastal bank and the drainage ditch (inland bank) along Circuit Ave.
 - BG says the wetland upstream of the drainage ditch (inland bank) is shown on MassGIS Oliver. It dries up but the run off from the wetlands and along the banks does feed it along its course.
 - TM thinks they have met all the requirements except requesting the variance under the local Bylaw.
 - CH asks what makes this (sfh) unusual? And why is there a need for a variance?
 - TM seeking variance from drainage ditch (inland bank). This was a dug ditch that has evolved into something else.
 - CH asks what in your professional opinion is the significant component that requires a variance?

September 19, 2017

- TM we are meeting the performance standards of the coastal dune so we are seeking a variance from the drainage ditch (inland bank).
- FW asks why is there a requirement for a variance on the drainage ditch (inland bank) if the town dug it to serve as a runoff conveyance?
- BG suggests that the conversation about whether the drainage ditch (inland bank) requires a variance should be considered when all 6 Commissioners are present. There is evidence that wetlands (upstream and downstream) are associated with this drainage ditch (inland bank) through MassGIS and from observations during the first site visit attended by Bob Gray, BG and CH.
- FW asks if Bob Gray's report is complete?
- BG states it is not complete as Bob Gray requested a revised site plan depicting the coastal bank transect with cross sections, top and toe of bank and no public hearing presentation. If the intercept between the 100-year FEMA flood zone is beyond the coastal bank, Bob can provide confirmation.
- TM mentions Bob Gray states in his first report that if a jurisdictional boundary is associated with the drainage ditch (inland bank) then a variance could be requested to avoid a regulatory taking.
- BG states that after we receive the new report from Bob Gray then we will then have closure on the location of the bank. Until we receive Bob Gray's report, there might be 2 variances but Bob Gray would need to present to answer questions from the Commission. BG suggests that Bob Gray's report and presentation be required by the Commission under this RDA filing.
- TM states that they physically located it on the ground and he is confident that the bank is identified.
- BG states Town Counsel, Building Department and Planning have looked at the project as well. Important to ensure that the proposed conditions which are constrained do not require adjustments that might conflict with conservation jurisdictional boundaries later. Planning indicates that the road was part of a street determination in 1995. Building states that proposed conditions comply with the 15 foot property line setback. Based on this, there are no current conflicts.
- CH asks if audience has any questions. No questions
- TM would like to file NOI with request for variance to the drainage ditch (inland bank).
- BG would like to bring in Bob Gray for the review, report and public hearing under this RDA.
- TM thinks the client has responded appropriately and would like to advance this to a new NOI. They will provide all the physical ground shots associated with the transect.
- CH motion for a Positive Determination requiring new NOI filing, RC Second, all in favor 4-0-0.

SE42-2627 Bedig, Richard Street (SFH).....(cont from 7/11) (cont'd)

SE42-2678 O'Donnell, 52 Island Street (Raze/Rebuild).....(cont from 7/11) (cont'd)

NEW BUSINESS

SE42-2682 Dashner – Coastal Restabilization/Order Ready to be signed

- Commission signs OOC (RC, FW, CH, BO)

RDA 17-21 Harbormaster – 100 Central (parking reconfiguration, ADA additions, vegetative management)

- Commission signs Determination (RC, FW, CH, BO)

Adjournment: RC Close hearing FW 2nd at 8:17.

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

Bill Grafton, Conservation Administrator
Robert Conlon, Chairman
Frank Woodfall
Chad Haitisma

Bert O'Donnell
James Kilcoyne
Art Lage