

MEMBERS PRESENT – Bert O'Donnell (BO) acting chair, James Kilcoyne (JK), Rick Carberry (PC), Eric Goodwin (EG), Bill Grafton, Conservation Administrator (BG), Town Counsel Bob Galvin (TC) (7-733pm). Assistant Town Counsel Anthony Riley (AR) (804-829pm).

MEMBERS NOT PRESENT – Frank Woodfall (FW), Art Lage (AL)

CALL TO ORDER BO makes a motion to open the meeting at 7:00 pm. PC second. Approved 4-0-0.

MINUTES

- The minutes for the 5/7/19, 5/21/19, and 6/4/19 meetings were distributed for approval. BG edited the 6/4 minutes, and had received a change to the 5/21 minutes by e-mail.
- EG asks whether he has to recuse from voting since he was not a Commissioner at the time of these meetings; BG indicates that he need not recuse unless he so chose, as these votes don't concern a specific open public hearing, but recommends that he abstain. There still will be a quorum to vote.
- BO motion to accept the minutes for the 5/21/19 and 6/4/19 as edited. PC second. Approved 3-0-1, EG having abstained.
- BO motions to accept the minutes for the 5/7/19 as written. PC second. Approved 3-0-1, EG having abstained.

BUSINESS

B1 1327 Union, Spring Planting Restoration-Enforcement/Compliance discussion / Commission – Town Counsel / Gene Guimond

- Town Counsel Bob Galvin (TC) present along with Attorney Gene Guimond (GG), representing applicants. Also representing homeowners is Brad Holmes (BH), ECR, and Phil Benjamin (PB), Benjamin Forestry Service. All parties discuss a draft Chapter 61 plan received by the Conservation Office on July 3.
- GG states that since the last meeting, PB and BH met on the property with Joe Perry (JP), MassDCR; they have also put in and paid for a tree order for the restoration plantings. The trees are slated for delivery in early September and will be planted subject to the needs of the forestry management plan. The location of the restoration plantings may be slightly altered or remain the same. PB will be finalizing the plan prior to the plantings. GG also notes that they have provided the boundary lines of the forestry management land and that the restoration area will fall within these boundaries.
- BH reviews a site plan of the property, noting that the property has now been fully delineated. He is working with PB to coordinate the restoration plan with the forestry management plan. BH notes that the restoration plan required a 3:1 restoration of trees based on the number of stumps observed in the field. The trees to be planted are primarily cedars and deciduous species. The number, species, and placement of trees was largely set by the Commission. BH states that the applicants wanted to ensure there was no conflict with PB's forestry management plan before the restoration plantings were started.
- PB comments that BH originally reached out to him in March, but he wasn't able to actually visit the property until June 10, and he reviewed BH's restoration plan at that time. PB notes that June is past the time he normally does tree plantings; to ensure their survival, he prefers to do the plantings in the

fall or earlier in the spring. PB also feels that the trees, as sized in the approved restoration plan, will be difficult to hand-plant in the area of the bank indicated.

- PB states that he and BH were able to walk the property with JP on June 28 and exchange some initial ideas, as well as get a good sense of what parts of the property would be excluded from the forestry plan. A minimum lot size around the residence must be excluded, and PB walked around the house with a GPS to establish the approximate land area that would be excluded for the purposes of MassDCR and Chapter 61; the total area excluded is about an acre, and is set forth on the site plan.
- TC asks how the restoration plan will be altered by the forestry management plan. BH states there has been a slight change to the list of species proposed to be planted. BG notes that these include an increase in eastern red cedar from 2 to 4 and red oak from 1 to 2. Sassafras, white oak, pignut hickory, and hophornbeam have been removed from the plan and replaced with red maple, tupelo, and shagbark.
- TC notes that the adjoining property owned by Messersmith has been under a part of forestry management plan for about 10 years; both properties were at one time part of one farm for many years, and only divided into house lots in the early 80s. However, since the property in question is not currently in agricultural or forestry use, he feels that technically it has to be restored.
- BG comments that the Town Bylaw holds that selection of restoration plantings is to be done by a qualified wetland scientist, and asks PB whether he is a qualified wetland scientist; PB states that he is not. TC inquires whether the proposed species had been modified because they would be better suited to a forestry management plan; PB feels the proposed species would be better suited to the site. BH adds that he is happy with the alterations suggested by PB.
- JK feels that BH is one of the most qualified restoration planting specialists in the area and questions why his plan would be altered by a forestry management specialist. PB comments that the recommendations were made with a view to the type of forest stand that the applicants are going to create. JK asks whether the trees will ultimately be harvested; PB states not necessarily, as sometimes trees are left up as a windrow and are never harvested.
- TC asks GG, BH, and PB what they anticipate the restoration area will be used for in their forestry management plan. PB feels this is too early to tell. The trees in the area are to be planted with the goal to have them growing there for 50+ years, and therefore suitability to the site is important. PB notes that the soils on the property change the closer one gets to the river, and this is reflected in the species recommended and their proposed locations. He also feels his suggestions will provide enhanced bird and animal habitats.
- TC asks PB whether all trees planted will actually be left alone for 60-70 years. PB feels that some thinning may be appropriate over time. JK asks PB whether they are planning on cutting any trees within the North River Scenic Corridor; PB has not yet made any specific cutting plans for the property. No cutting has taken place on the adjoining property, also part of the Corridor, due to a lack of loggers in the area. PB states that a forest cutting plan would have to be filed with and approved by the State if the owners were to contemplate any tree cutting.
- JK comments that the Commission has some trust issues with this applicant because they don't seem to follow through on what they say they're going to do; he also notes that the restoration plantings were supposed to have been made in the spring, and PB was not contacted until mid-March. He also questions whether the plantings called for in the forestry plan will destabilize the riverbank area in the same way PB says will happen with BH's plan.
- BO asks GG whether the North River Commission is involved. NRC will need to review the proposal. BG adds that NRC approved an RDA for the previous cutting, as they felt it was a result of storm damage. However, the Commission has evidence that this is not in fact the case.

- JK is concerned that some of the restoration plantings could eventually be harvested under the forestry plan, but BO thinks this should not be a consideration, as no harvesting is currently proposed. BO feels that at this meeting, the Commissioners should decide whether to accept the species substitutions recommended by PB.
- BO asks BH whether the substituted trees mature at the same rate as those he originally recommended. BH indicates that all species, both originals and substitutions, are native upland buffer zone trees; he feels there isn't much difference between them all. BH feels that the main difference is that under the original restoration plan, the Commission mandated trees of a certain size without reference to the logistics of hauling in and planting them in the riverbank area; PB has generally recommended 1.5 inch caliber trees to reduce disturbance to the area. BH states that they routinely change species on restoration plans, and he has no issues with the changes proposed by PB. He would like the restoration plantings to not conflict with the coming forestry management plan.
- BG comments that applicants seem to have changed the game by trying to layer a forestry plan on top of a restoration plan. He also notes for the record that the wetland line on the site plan shown at this meeting is not the correct line, as the previous delineations associated with the dock work mainly focused on the dock work area. He feels that the site plan needs to show an accurate wetland line for the entire property in order for the Commission to evaluate the proposal, as well as the additions that were recently made to the house.
- GG states that his clients are not asking the Commission to agree to any wetland delineation, and are not asserting that the line shown on the site plan is the final delineation. All parties discuss whether the delineation should be done using the state or the town bylaw criteria. GG notes that the forestry plan submitted to DCR must use the state criteria. TC comments that the Bylaw does not control where there is a conflict with MGL Chapter 131 Section 40 and Forestry Regulations.
- With respect to the restoration plan, TC feels the crux of the issue is that applicants are proposing new plantings in the same area, and the question is whether they are going to restore the area or come back and show the area as being less restored as part of a forestry management plan. JK feels that applicants deliberately did not do the restoration plantings on time, after agreeing to do so, and now are introducing the forestry management plan to change what they previously agreed to. GG comments that his clients ran into some weather issues, but JK notes that they never asked for an extension in the spring. BH states he never received anything from the Commission specifying the due dates. BG states that the restoration plan was approved on December 5 of last year, and the due dates are specified in the approved minutes and included on ECR's restoration plan.
- JK asks about changes in the location of the restoration area; BH comments that the original restoration area was set by the Commission and not designed by him, and that the Commission wanted as many trees placed in the area of the cutting as possible. He characterizes this as less than optimal for the tree growth, and is the reason PB recommended changes to the planting locations. JK asks BH whether the restoration area is getting bigger or just shifting. BH states the restoration area has not changed, and they are proposing to plant 12 trees in that area. BG feels that BH's original plantings were spread out well, but agrees that the Commission wanted bigger trees in a specific area. JK feels the original plan was the result of a compromise between all parties.
- BO feels the Commission should decide whether to accept the modified plan or require implementation of the original plan. JK states that if BH is okay with the changes, he is willing to accept them; BG concurs and expresses confidence in BH's work. BH notes that the Commission wanted 12 native trees going into the area, and this is still the case with the modified plan.
- JK asks GG why his clients did not comply with the original restoration plan. GG states his clients wanted to make sure the restoration plantings did not conflict with the recommendations of the

forthcoming forestry management plan, and thus have to be relocated or removed. JK notes that this was done without notifying the Commission until the last meeting.

- BG asks the Commissioners whether any fines should apply for the missed restoration plan deadlines. JK asks TC whether he feels a citation is warranted. TC comments it seems to him that applicants decided they had another alternative that they wished to pursue. He feels it would have been helpful if they had discussed this with the Commission before the deadline expired, but also notes that it seems the trees being proposed are equally acceptable according to BH, and will restore the area when planted.
- JK is concerned that other applicants will seek to make unilateral changes to their restoration plans if there are no consequences. TC suggests that the Commission make a finding that these applicants did not comply with the plan, and that the Commission reserves all rights to act on such noncompliance, but that no such action will be taken if applicant's alternative plan is acceptable for the purposes of restoration and completed by a certain date.
- EG asks PB what is the optimal planting season for the proposed plantings. PB feels the window is mid-September and mid-October; ideally, he would like to see them in the ground by the end of September so the trees can get settled in for the winter. EG follows up by asking what the risk is of putting the trees in now; PB states these trees are sensitive to heat and drought conditions that occur mid-summer.
- BO asks GG whether they intend to come back to review the forestry management plan with the Commission. GG believes that when the plan gets submitted to DCR, it also gets submitted to the Commission, who can then review and submit their comments to DCR. PB states he tries to keep town Commissions in the loop to avoid surprises. GG states they have no issue providing a copy of the finalized plan to the Commission. EG asks whether the Commission has any jurisdiction over the area once the forestry management plan is approved by the state. GG states that any cutting would be subject to Commission approval. PB adds that the Commission can comment on the management plan prior to its approval. BG feels the Commission could retain jurisdiction over the area by requiring a NOI for the proposed activity. GG contends that the original plan is simply setting boundary lines of the forestry management area as opposed to any alteration, such as a cutting plan; BG concurs and suggests that the Commission ask for an ANRAD to retain jurisdiction and clarify the delineation.
- EG asks PB if there is a possibility that the final forestry management plan could be significantly different than the draft presented at this time. BH comments that the 12 trees proposed to be planted have already been paid for and are scheduled for delivery. JK comments that this was done before the Commission approved the changes, but BH comments that applicants were trying to show good faith in ordering and paying for the plants.
- EG also notes that the plan states "tree placement to be adjusted in the field at time of planting," and asks PB to comment on how big such an adjustment might occur. PB characterizes the range as minor, mainly to ensure an optimal distance of 10-12 feet between the individual trees.
- All parties discuss whether approval of the forestry management plan exempts the area from the Wetlands Protection Act. GG states that all activity under a forestry management plan is subject to the WPA, but JK reads a regulatory excerpt stating that a forest cutting plan approved by DCR and faithfully executed is exempt from the WPA. GG notes that they are not presenting a forest cutting plan at this time; only for approval of the revised plan and an extension of the planting deadline.
- PC is okay with the amended plan, implemented with BH's oversight, and a September 30 planting deadline. JK concurs but notes he still is troubled by applicant's noncompliance and lack of timely communication, and feels there should be a fine. BO is okay with the modified plan with the September 30 deadline. He feels the delineation is a separate issue and notes that applicants have to come back with an ANRAD. BG suggests that approval of the plan be conditioned on applicants filing

an ANRAD by September 30. BO comments that the Commission will need to educate itself as to the implications of the forest management plan. GG states they will provide a copy of the final plan for the Commission to review and comment on.

- After further discussion, the Commissioners agree to the planting changes proposed by PB and endorsed by BH, a September 30 planting deadline, and the filing of an ANRAD by September 30. Applicants will provide a copy of the final forestry management plan that is submitted to DCR.

B3 Administrative Review (other Towns)/Minor Modification (DEP)/Minor Activity vs. Exemption (list)/Commission – Town Counsel

- Tabled. BG indicates that a separate working group will need to address; TC has concerns that such permits may not be legally defensible.

PUBLIC HEARINGS

On / After

19-21 Ronayne, 138 Ridge Road (2nd Story Addition & Sewer Connection to Existing System)...NEW (Rick)

- BO reads the legal ad. Hearing Officer PC confirms administrative requirements are complete.
- PC states he visited the property today; property owners are adding a room and bathroom over the detached garage and will tie the piping into the recently redone septic system. Scott Fanara (SF), Grady Consulting, presents for applicant. SF affirms that the project concerns an addition above the existing freestanding garage; the only work on the ground is the connection to the water line and septic system, and no grade changes are involved.
- BO also visited the property today and agrees with PC that the project looks straightforward; the filing was only necessary because the piping will be installed in LSCSF.
- PC asks for comments from the public; none.
- PC motions to close and issue a DOA, Pos. #5, Neg. # 3, with special conditions drafted by BG. JK second. Approved 4-0-0.

28 Ganda, 119 South River Street (Raze & Rebuild).....NEW (Bert)

- BO reads the legal ad and then advises that the matter must be continued due to outstanding taxes and lack of a DEP file number.

28 Flavin, 70 Bay Avenue (Replace Porch & Repair Patio).....NEW (Bert)

- BO reads the legal ad and, as Hearing Officer, confirms administrative requirements are complete.
- Rick Servant (RS), Stenbeck & Taylor, presents for applicant Paul Flavin (PF), who is also present. The deck and patio on the property sustained damage in the March 2018 winter storms. They would like to repair the patio and rebuild the porch in the same location on driven wooden piles; they will wait until the seawall in front of them is repaired before repairing the patio.
- JK asks RS if the project will result in an increase pervious area; it will be a reduction, as they are getting rid of the concrete slab underneath the porch area. The patio will remain concrete. In response to a query from BO, BG spoke to Building Commissioner Jim Folkard, who indicated the project was not considered substantial.
- BO also notes that stairs on the property are currently connected to the seawall, in violation of Town Bylaw 217. RS indicates they are aware of the regulation, and neither the new concrete patio slab nor the new stairs will be connected to the seawall.

- JK feels that the new seawall will hit the concrete patio when it shifts, possibly causing it to crack or buckle. He suggests that applicants consider the use of pervious pavers for the patio. PF feels that pavers would not last in this location, and may become missiles in a velocity zone. He feels it would be better to attach the patio to the seawall but states he won't do it so as to comply with the bylaw. BG comments that the policy originated with the Board of Selectmen.
- BO asks for comments from the public; none.
- BG comments that the special conditions will include that applicant follow all applicable bylaws including 217 (seawalls), 305-13.01/inland wetland district, and 305-13.02/coastal wetland district. Applicant must also ensure the footprint of the pervious space depicted on the approved site plan remains open or use pervious coverage only, such condition to remain in perpetuity.
- BO motions to close the hearing and issue Orders of Conditions with special conditions drafted by BG. PC second. Approved 4-0-0.

28 Smith & Sons, 795 & 887 Plain Street (Sawmill & Access Crossing Road).....NEW (Bert)

- BO reads the legal ad and then advises that the matter must be continued due to lack of abutter notification and DEP file number. The hearing is continued until the next public meeting of the Marshfield Conservation Commission on July 30, 2019.

2808 DPW, 14-162 Bay Ave (Seawall Repairs).....cont from 6/04/19 (Jim)

- A continuation was required due to a lack of a quorum of eligible Commissioners. The hearing is continued until the next public meeting of the Marshfield Conservation Commission on July 30, 2019.

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

- A continuation was required due to a lack of a quorum of eligible Commissioners. The hearing is continued until the next public meeting of the Marshfield Conservation Commission on July 30, 2019.

2772 Snyderman, 26 Littles Lane (Pier, Ramp & Float).....cont from 10/2/18 (Jim)

- A continuation was required due to a lack of a quorum of eligible Commissioners. The hearing is continued until the next public meeting of the Marshfield Conservation Commission on July 30, 2019.

2793 Sullivan, 176 Beach Street (Veg Restoration & Other Activities).....cont from 5/21/19 (Bert)

- A continuation was required due to a lack of a quorum of eligible Commissioners. The hearing is continued until the next public meeting of the Marshfield Conservation Commission on July 30, 2019.

REQUESTS FOR CERTIFICATES OF COMPLIANCE & EXTENSIONS

0738 McGurl, 3 Minot St [COC]

- BG indicates that ongoing conditions include that the vegetated area will remain as such, per the as-built revised 7/9/2009.
- BO motions to issue a COC for the property with ongoing conditions as noted. JK second. Approved 4-0-0.

0126 Railsback (now Hannafin), 1317 Union Street [COC]

- BG indicates that he received an updated site plan for the property; ongoing conditions include no storing of fuel on dock, no fueling of vessels from dock, no dragging the float across the salt marsh for storage or maintenance reasons, no chemical spraying in resource areas, periodic maintenance of

float and pilings to ensure alignment as per original orders, repair for safety reasons within approved scope of orders.

- BO motions to issue a COC for the property with ongoing conditions as noted. PC second. Approved 4-0-0.

2788 Knight, 158 Foster Ave [COC]

- BG comments that he visited the property and observed no issues. The stairs and deck were permitted previously under after-the-fact Orders of Conditions SE42-2788.
- BO motions to issue a COC for the property. JK second. Approved 4-0-0.

2264 Bertolami, 10 Richard Street [COC]

- BO motions to issue a COC for the property. PC second. Approved 4-0-0.

2496 Storach, 45 Avon Street [COC]

- BG comments that he visited the property and observed no issues. Ongoing conditions include no revetment stones within 100 ft of the delineated salt marsh, conservation markers to remain in perpetuity.
- BO motions to issue a COC for the property with ongoing conditions as noted. JK second. Approved 4-0-0.

2691 Taylor, 137 Grandview [COC]

- BO motions to issue a COC for the property. PC second. Approved 4-0-0.

ENFORCEMENT ORDERS

Smith, 38 Liberty Street **(11/19/18 KS will set early Dec visit)**

Drosopoulos, 7 Lady Slipper Lane **(08/15/18 TC Final Notice)**

New Owner, Winslow Avenue Ext.

Mahaney, 46 Preston Terrace **(12/12/18 BG met with TC)**

White, 180 Atwell Circle (Escalation letter in Process)

Bednarz/ Nouza, 65 Ireland Road (Unpermitted Cutting <= 50 ft)

Tamara Macuch, 237 Webster Avenue

Levangie, 3 Cove Creek (Communication in Progress)

Stifter, 102 Bartlett's Island (unpermitted revetment wall)

BUSINESS (Continued)

B2 47 Central/Taggart SE42-2568(COC issues-garage elevation change) / Rick Servant/Commission-Town Counsel (TC)

- Rick Servant (RS), Stenbeck & Taylor, present for property owner Taggart. The project in question was completed several years ago and they have filed for a Certificate of Compliance (COC). BG noted a deviation from the site plan with respect to slab garage height, whereby the original site plan specified the height to be at elevation 10 but the actual elevation once constructed was 9.40'. The contractor told RS the garage was lowered to make it a full step down from the house, but this was not specified as such on the approved site plan. RS notes that even the original 10' elevation is well below the 16' flood elevation. He would like the Commission to approve the deviation so the COC can be issued.

- BG notes that Special Condition A in the Order of Conditions states there should be no deviation from the approved plan without written approval from the Commission. The deviation can be written into the as-built, but it also has to come before the Commission for review and approval.
- JK asks whether an as-built plan has been submitted with the correct garage elevation. RS indicates that this has been submitted along with an elevation certificate. PC comments that the deviation seems to have been made for safety reasons, to create a full step down, and he has no issue with it; JK and BO concur provided it is reflected in the as-built. BG notes that all other issues have been addressed.
- BG also notes there is an old filing fee check for \$50 that was never cashed; the fee has since gone up to \$125. Town Account has subsequently requested that all fee checks be promptly deposited, which has been done. He would like to know whether to request a new check for \$50 or for the new fee of \$125. RS notes that \$50 was the correct COC fee amount at the time the check was delivered to the Conservation Office. JK comments that since the application was submitted before the fee schedule was changed, he is fine with requesting just the \$50; BO concurs.
- BG notes for the record that the Commissioners approve the as-built garage height of 9.4 feet and the \$50 filing fee.

B4 110 Preston Terrace (restoration/access to beach) / Commission-TC

- Homeowner Patrick Melia (PM) present along with Brad Holmes (BH), ECR.
- BG notes that this matter concerns a revetment wall/coastal stabilization project on a coastal bank. PM approached him after the January 2018 storms and advised that a chunk of his backyard by his septic system was taken out by the ocean. He received a permit for construction of a revetment wall and restoration plan. As part of the Orders of Conditions (OOC), BG requested the Commission require a construction access plan but this was not required as part of the OOC special conditions and there were subsequently access issues/construction machinery impacts during construction, including a bulldozer that sunk into the coastal beach at the base of the coastal bank.
- BG subsequently discussed a restoration plan to address the construction impacts with PM, but he has not received one in writing. Currently there is construction material such as pea gravel and chink rock on the site. DPW has provided sand to be distributed in the area. PM has tried to coordinate with DPW and the Commission, but BG feels there needs to be a specific plan in writing to restore the site, as he is concerned the sand provided is incompatible with the spartina patens and other salt marsh vegetation in the area.
- JK asks BH about the suitability of sand along the base of the bank as opposed to other beach-compatible material. BH would like to take a look at the site before commenting, but feels pouring a little sand over the spartina does not present a problem.
- PM states that the revetment wall is finished; they have cleaned up the beach area and are currently at the planting stage. The wet spring weather caused them some delays. They are trying to figure out how to get the planting/fill materials for behind the revetment wall onto his property, but he states they will not be brought in over the beach.
- JK feels this area was already compromised and disturbed, and therefore doesn't feel PM should be responsible to restore this area.
- BG feels the already approved restoration plan needs to get going, and he would also like restoration plans for the area in front of the revetment wall and a staging area at the intersection of Grandview Avenue and Ferry Street. BH is unsure they have the authority to restore an area that is somebody else's property. JK comments that the area in front of the revetment wall was already disturbed, and believes the Commission decided that the second plan was not needed. He would like BH to look at ways to restore this area only to how it was before it was utilized for construction access.

- BG notes that there is significant hardening/armoring of the riverbank in the area, but there is a need for softscape to provide real protection to property owners in the area. Now that the septic is protected by the new revetment, BG would like to ensure that the planting plan required in the OOC is implemented. JK notes that BH may recommend lower plantings for stabilization of the revetment wall, and it may be in PM's interest, but he doesn't feel the Commission should require such plantings; BO concurs.
- All parties briefly discuss BG's recommendation that the Commission not extend this OOC if an extension is requested. BG notes the granting of an extension is at the Commission's discretion, and he wants to make sure the restoration gets going before any such extension is contemplated.
- JK feels that PM has tried to act in good faith and wants to work with all parties toward a resolution. BO feels that BH should take a look at the site and report back his observations and recommendations to the Commission; PC concurs. All parties plan a site visit for next week; PM would like to demonstrate the difficulty of getting supplies to his property during the visit. After further discussion, all parties agree that a plan will be provided by the July 30 meeting. BH will look at the OOC and plan of record, and will coordinate with all parties during and after the site visit.

B5 208 Bay Avenue, unpermitted dune clearing, property ownership discussion / Commission-TC

- Tabled.

ADJOURNMENT – BO makes a motion to close the hearing at 8:43 pm. EG second. Motion approved 4-0-0.

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

Bill Grafton, Conservation Administrator
Bert O'Donnell
James Kilcoyne
Art Lage

Frank Woodfall
Rick Carberry
Eric Goodwin