

WEST TISBURY CONSERVATION COMMISSION  
MINUTES OF MEETING

March 14, 2006

**Present:** Prudy Burt Chair, Judy Crawford, Patrick Phear, Tara Whiting Peter Rodegast, Debra Swanson, Oceana Rames and Maria McFarland

**Absent:** Patricia Durfee,

**Also present for all or part of the meeting:** Peter Tamm, Esq., Sam Hopkins, Carol Magee, Eric Peters and Kathy Joba

Prudy Burt called the meeting to order at 5:00 P.M.

The minutes of the February 28th meeting were approved as presented. Thanks to Patrick for taking these minutes. Debra, Peter and Oceana abstained.

### Hearings

**Map 12 Lot 1** Public meeting under the Wetlands Protection Act and the West Tisbury Wetlands Protection Bylaw to consider a Request **for Determination of Applicability** for property owned by Karen Joba located at 54 Mayhew Road. The applicant is seeking permission to remove two derelict pump houses and five concrete block foundations of abandoned well structures, and to replace the existing point well. Karen Joba presented her application. There were originally 5 pump houses that served this property and 5 abutting properties. Over the years some people have installed wells on their own properties. The previous owner, Christine Callan, received a Determination from the Commission in 2002 to do this work, but did not complete it before the property was sold to Karen. Karen would like to complete the removal of the pump house structures and foundations and also have a new point well drilled. A new well will pump 6 gallons per minute; the existing well pumps 1 gallon per minute.

Karen would like to locate the new well next to the existing well. There is a second possible location which is outside the Buffer Zone. Both locations comply with Board of Health regulations.

Patrick asked what the sequence of events would be. Karen would like to remove the pump houses and foundations now and do the well next month. Ideally, if the well doesn't fail, she would wait until next January when the ground is frozen. If the new well goes where the old well is, there would be less trenching.

There were no further questions from Commissioners. Prudy closed the public meeting. A motion was made to issue a **Negative Determination** that this work may proceed without the need to file a Notice of Intent. Conditions will be that heavy equipment be limited to a bobcat, the Commission will be notified when the well work is to be started, and hay bales and silt fence will be placed along the edge of the wetland as shown on the submitted plan to catch spoils while the well is being developed. The motion was seconded and the vote was unanimous in favor.

**Map 5 Lot 2.1** Continuance of the public hearing under the Wetlands Protection Act and the West Tisbury Wetlands Protection Bylaw to consider a Notice of Intent filed by Frank Flanders on behalf of Joan Smith for property at 207 Obed Daggett Road. The proposed project consists of relocating an existing structure located in a bordering vegetated wetland to a new concrete foundation and the

installation of a new septic system in the Buffer Zone. Prudy opened the hearing. No one appeared for the applicant and the revised plan has not been submitted. At the request of the applicant's representative a motion was made and seconded to continue this matter indefinitely. All in favor. Patrick abstained.

## **Old Business**

### **Map 12 Lots 16, 18, 19, 68 & 69.2 Hopkins /Vineyard Open Land Foundation (VOLF) Conservation Restriction**

Peter Tamm of Goulston & Storrs, representing Sam Hopkins (also present) Eric Peters and Carol Magee representing VOLF.

Peter Tamm represents Sam Hopkins; the beneficiary of the Ann Hopkins Trust, the grantor of this CR. Peter outlined the evolution of this restriction. The Ann Hopkins Trust is the guiding instrument and the origin of the restriction. The Trustee, not Sam, administers the Trust. The trustee originally drafted the document as a Conservation Restriction rather than an Agricultural Restriction and the Department of Conservation Services has already endorsed the form. The form of this CR is recognized by the IRS and set by State statute.

This document was originally drafted with the overriding principle that there is a reasonability to keep this as an active farm and to preserve the real estate in the character of a working farm. This is not a habitat/preservation restriction. The intent was to mimic an APR in order to preserve future agricultural potential. It gives the farmer as the grantor the right to privacy and the right to carry out all farming activity. The public benefit here comes from the tax code. It is a 2-prong test. The tax code recognizes farmland as open space.

Patrick said he appreciates that other organizations use this form but he is concerned that 2 decades from now the people responsible for enforcing the CR will not know what it purpose really was. Nowhere are the conservation objectives articulated. How will they be measured?

Peter responded that what he thought Patrick was asking was why is conservation not listed as a value in the purpose clause. The conservation purposes here are based on the IRS tax code and are the preservation of agriculture, not habit protection or habitat corridors. Patrick said the document is inconsistent.

Peter continued that the conservation values are considered to be the preservation of open space and farming. It identifies areas that allow Sam to expand in order to keep it economically viable. Allowance of an agricultural development envelope gives him flexibility. The limitations in the CR are significant from a farmer's point of view. It is a compromise to keep significant fields open and to never develop them except for agricultural uses.

Prudy said there were 8 or 9 places where it mentions conservation purposes but is really a continuation of agricultural purposes. Peter replied that they could ask Irene Delbono at the Division of Conservation Services and the Trustee to make the language in the document consistent. Prudy added that she had never seen a document like this refer to conservation interests but nowhere are they listed. Peter responded that they are listed in the governmental policy under the tax code as conservation.

Peter Rodegast asked the VOLF members what their view on enforcement would be. Eric replied that they would step up and have a dialogue in any enforcement action. He said he doesn't have a problem with the performance standards in the document.

Patrick said their forthright statements about the situation have cancelled his discomfort.

A motion was made to approve the Conservation Restriction and sign the Municipal Certification and Inspection report. All in Favor.

**All Island Landscaping Flier:** A revised version of the landscaping flier was reviewed and comments given to Judy. Judy agreed to bring the suggested changes to the All Island Conservation Commission group.

**Map 35 Lots 1. 1& 1.13** The next conference call with DEP, the applicant's attorney and the administrative magistrate is scheduled for 2 Pm on March 16<sup>th</sup>.

**Administrative:**

**Map 3 Lot 17 (SE79-223)** The new culvert has been installed but the road has not been constructed. The Commission signed a three-year Extension Permit for this project.

The Commission accepted with regret, the resignation of Oceana Rames. Oceana has moved to Vineyard Haven. She will be sorely missed.

There being no further business on the agenda, the meeting adjourned at 6:45 P.M.

Respectfully submitted,

Maria McFarland  
Board Administrator  
APPROVED