

WEST TISBURY CONSERVATION COMMISSION
MINUTES OF MEETING

April 4, 2006

Present: Prudy Burt Chair, Judy Crawford, Patricia Durfee, Patrick Phear, Tara Whiting, Peter Rodegast, Debra Swanson, and Maria McFarland

Also present for all or part of the meeting: Brian Hurley of Rackemann, Sawyer & Brewster, Nancy Strecker, Kent A. Healy, Joseph L. Eldridge, Tim Sweet, Glenn Provost of Vineyard Land Surveying, Inc, Frank Sutula, Mary Tavares, Richard W. Johnson of Sheriff's Meadow

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

Hearings

Map 3 Lots 68 - public hearing under the Wetlands Protection Act and the West Tisbury Wetlands Protection Bylaw to consider a **Notice of Intent** filed by Schofield, Barbini & Hoehn, Inc. on behalf the Timothy D. Sweet for a project at 20 Longview Road. The applicant seeks permission to repair an existing dam that runs over the Blackwater Brook.

Tim Sweet is purchasing this property from the estate of Eva Palmeira. Kent Healy prepared a plan showing the proposed dam repair. Kent explained that the dam needs to be repaired as it gets washed out on a regular basis and the pond is not holding water. The dam will be slightly reconfigured and a footing on the bridge will be repaired. A small bobcat will be used to do the work. They did not know exactly how the work would be accomplished. Tim will talk to David Merry to ascertain the plan to divert the flow of the brook during the work. The applicant was instructed to come back with a more detailed plan for accomplishing the reconstruction of the dam. The DEP has not issued a file number letter so the hearing will need to be continued. The applicant agreed to the continuance. A motion was made to continue this hearing to April 25th at 5:10 PM. The motion was seconded and the vote in favor unanimous.

The Commission also signed a Certificate of Compliance for the dredging project done on this pond in 1996 (SE79-3).

Map 3 Lots 2 and 2.1 - public hearing under the Wetlands Protection Act and the West Tisbury Wetlands Protection Bylaw to consider a **Notice of Intent** filed by Vineyard Land Surveying Inc. on behalf of William and Nancy Strecker for a project at 237 & 243 Lambert's Cove Road. Mary Tavares, Trustee of the RFS Trust owns Lot 2.1. The applicant seeks permission to brush cut and maintain a 3 to 4 ft. wide path in the buffer zone and across a dune, and to construct and maintain a 4 ft. wide boardwalk across a bordering vegetated wetland along the edge of a pond and across a perennial brook. The purpose of this project is to relocate a path to within a deeded easement.

Debra recused herself as her husband; Richard Johnson is the Executive Director of Sheriff's Meadow, the conservation group that holds the conservation restriction on these properties.

Before Prudy opened the public hearing on this matter, she explained the issue surrounding the lack of property owner permission. Section 10.05 (4)(a) of the DEP regulations effective March 1, 2005 requires the applicant to obtain permission of the property owner. In this instance, the applicant is the holder of an easement for access to the beach over the property owner's lot. The path that was originally laid out by the property owner for use by them and the applicant is not within the deeded easement. Without getting

involved in the details of the dispute between the parties, which is the subject of a lawsuit set to go to trial on April 25th, the Commission needs to determine if it can hear this Notice of Intent without the permission of the property owner. Prudy explained that the Commission sought an opinion from Town counsel, but due to a conflict they are not able to assist. McCarron and Murphy also had a conflict. Maria detailed the options open to the Commission: ask the applicant to withdraw the application until the legal case is settled; open the public hearing and ask the applicant to agree to indefinitely postpone the hearing; or open the hearing and deny it as being administratively incomplete. The letter from the applicant's attorney arguing that the Commission could hear the application was read into the record, as was the letter by the property owner stating their objections to the application.

Patrick stated that having an easement entitled the applicant to file and required the Commission to hear the application. Prudy said that the Commission should ask permission of the Selectmen to obtain an opinion of outside counsel and should open the hearing and continue it until such time. Maria reminded the Commission that this was probably going to be a lengthy court case and that any decision the Commission made was likely to be appealed to DEP and beyond. By agreeing to hear this application the Commission was getting caught up in what essentially is a legal dispute.

The members agreed with Patrick that the applicant was entitled to a hearing on its application. Prudy opened the public hearing. No presentations were made by either party. A motion was made to continue the hearing to April 25th at 5:25 PM in order to see if the Commission will be allowed to obtain an opinion from outside counsel. Prudy asked for comments from the parties. Both sides agreed to a continuance to that date and time. The motion was seconded and unanimously approved. It was also noted that the DEP file number letter and the letter from NHESP were still outstanding and it the policy of the Commission to keep hearings open until these letters are received.

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 30th. The current proposal is detailed in the Magistrates order following telephone conference dated 17th day of March 2006.

Old Business

Map 6 Lot 2 (SE 79-237) Glenn Provost was present to informally inquire of the Commission that the plan for the new house has changed and is the change significant enough to require the filing of a new Notice of Intent. The Commission looked at the plan Glenn submitted and advised him that the plan was insufficient for the board to determine the scope of the changes. Glenn was advised to submit a written letter and plan (copy to DEP) detailing the changes.

New Business

Judy updated the Commission on the projects the Water Alliance is working on.

Administrative:

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

Respectfully submitted,
Maria McFarland
Board Administrator
APPROVED