

WEST TISBURY CONSERVATION COMMISSION
MINUTES OF MEETING

June 13, 2006

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

Absent: Patrick Phear

Also present for all or part of the meeting: Richard Johnson of Sheriff's Meadow Foundation, Attorney George Brush, George Sourati of Sourati Engineering Group, Ian Fein of the Vineyard Gazette, Bill Wilcox, Bob Woodruff and Lesley Eaton

The minutes of the May 23, 2006 meeting were approved as corrected.

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

Hearings

Map 32 Lot 101.2 – Continuation of a public hearing under the Wetlands Protection Act and the West Tisbury Wetlands Protection Bylaw to consider a **Notice of Intent** filed by Sheriff's Meadow Foundation owner of property located at 1002 State Road. The applicant seeks permission to remove invasive species along the so-called Whiting ditch and to use the upland portion of this property for a native plant restoration project. The proposed project is located within the Buffer Zone of a Bordering Vegetated Wetland. The DEP file number letter and the comment letter from NHESP have been received.

Debra Swanson recused herself from this hearing.

The two outstanding issues are 1) what wetland plants are going to be placed in the resource area and 2) whether the Whiting ditch meets the definition of a perennial stream under 310 CMR 10.58.

Dick Johnson submitted a revised narrative and plant list, which Prudy read into the record. Due to the concern of some Commission members, Sheriff's Meadow has decided not to do any plantings on the bank or in the Bordering Vegetated Wetland. The only planting will take place in the Buffer Zone and the upland. Under 310 CMR 10.02(2)(b)(1)(d) plantings of native species of trees, shrubs, or groundcover in the Buffer Zone is a minor activity not subject to regulation. It is also an exempt activity under the Bylaw.

The only work to be done in the 540 feet Bordering Vegetated Wetland along the ditch will be to remove invasive species. A brief discussion was had on whether or not this property should be considered to be in the Riverfront Area. Maria reported that she spoke with Kent Healy who has done extensive monitoring of the Mill Brook and the ditch and he said that the ditch is intermittent and in his opinion would not meet the definition of a perennial stream. Prudy noted that when the abutter to this property came to the Commission for a permit, the area was not treated as Riverfront Area. In any event under the Riverfront regulations at 310 CMR 10.58(6)(b) the minor activities exemption noted above are also applicable to the Riverfront Area.

All work will be done by hand and all materials pulled will be disposed of off-site.

Peter asked if the invasive species to be removed would be flagged in the field. Maria reported that the NHESP letter required such flagging to insure that protected species not be touched. The NHESP letter was read into the record. NHESP also requires that qualified staff supervise this work.

There being no further questions or discussion the public hearing was closed. A motion was made and seconded to approve the project as revised and presented today. All in favor.

Conditions will include the NHESP requirements. A DEP sign will be posted so people will be aware that this is an approved project. Dick mentioned that they got a grant from the Dukes county Savings Bank that will pay for some of the plants and a sign acknowledging that this is a Sheriff's Meadow Foundation and Charter school project. A motion was made and seconded to approve the special conditions. All in favor.

Map 35 Lot 1 - A public hearing under the Wetlands Protection Act and the West Tisbury Wetlands Protection Bylaw to consider a **Notice of Intent** filed by Sourati Engineering Group on behalf of John Rosenmiller for a project at 70 Pond View Farm Road owned by Janice Manter. The applicant seeks permission to perform the following activities: cut and maintain the 100 ft buffer zone up to a 10 ft wide buffer strip to be established along a bordering vegetated wetland and Muddy Cove; cut and maintain the vegetation over 36" tall within the 10' wide buffer strip; cut and maintain a path through the 10' wide buffer strip to the dam; cut and maintain vegetation on the dam between Muddy Cove and the pond; cut and maintain vegetation between the east side of the pond and the property line; cut and maintain vegetation up to 5' around the existing high bush blueberry bushes within the bordering vegetated wetland; cut and maintain two four-foot wide paths through the 10' wide buffer strip to the edge of Muddy Cove south of the dam; construct and maintain two sections of livestock fencing and maintain a 6' wide path for livestock access to the pond.

George Brush and George Sourati were present to discuss the project.

George Sourati submitted a revised plan as requested by the members at the site visit. The plan now shows the edge of the wetland to both lot lines.

Prudy asked what the live stock numbers are. George Sourati said he thought there were 3 sheep. George Brush said he spoke to Mr. Manter about that but he did not know what was currently there.

Prudy noted that DEP has not acted on the Manter's appeal to DEP for a Superceding Determination of Applicability as to an agricultural exemption. She further added that the Commission has to act on this Notice of Intent, as it is a new application for new work. It is not for work that is the subject of the appeal of the Determination or the appeal of the enforcement order in Superior Court.

George Brush said that these appeals should become a moot issue. George Brush represents the applicant. He told the Commission that it is the objective of his client to purchase this property clear of any litigation, so he is not claiming an agricultural exemption. The only work proposed in a resource area under this Notice of Intent is clearing around the blueberry bushes for access to the bushes for maintenance and harvesting.

The Commission reviewed the revised plan and noted that the proposed 10 ft buffer strip is not shown on the plan. The applicant would like to place the fencing within the 10 ft buffer strip so that the fence will be somewhat hidden. The fencing will be wire. Maria reminded that the fence could not impede wildlife movement.

With respect to the width of the buffer strip, Prudy gave a little bit of the history of site visits with DEP and the science behind the need for buffer strip wider than 10 feet. A buffer strip of 25 feet would be more adequate to filter out the nutrients and if there are going to be livestock and geese, the increased width of a buffer strip would go a long way to protecting the water quality of the drinking water in the farm pond.

Prudy expressed concern about the amount of mowing being suggested around the blueberry bushes.

Whit Manter interjected that perhaps the mowing around the blueberry bushes could be limited a foot outside the width of the canopy of the bushes.

Prudy asked for questions from the Commission. Judy said she was very concerned about the 10 ft and asked what is the intention to maintain the remaining 90 ft of the buffer zone? George Brush said it would continue to be maintained as it has been in the past.

Judy said that the fact it has been mowed so short has been part of the problem. The lack of vegetation on the hill has added to the erosion problem. Prudy said that if the rest of the Buffer Zone was maintained at a higher height the vegetation would be able to take up more of the silt and nutrients coming down the hill. Otherwise you are relying on 10 feet to do that. George Brush said the applicant would be amenable.

Maria asked what the ongoing arrangement would be. George Brush answered that Mr. Manter will be the caretaker once the property is sold. His client wants Mr. Manter to be able to do what he has always done as long as he doesn't run afoul of the Commission. George Brush thought that his client would be amenable to a higher height in the Buffer Zone overall.

Prudy suggested that Don Liptack of US Department of Agriculture and Natural Resources Conservation Service would be a good resource for the new owner. While the Commission could not require the applicant to use the services of the NRCS, it was hoped that they would if they were going to continue to have livestock on this property.

Tara commented that with respect to the paths, the one that is closest to the dam is in a very steep area. She asked if it could be relocated. Do they need two paths? They have access to the pond via the causeway and the dam.

Maria asked if the paths will be straight or will they meander. It is better if they are not a straight shot so they do not defeat the purpose of the Buffer Zone.

George Brush asked what the Commission's policy is about the width of the buffer strip. Prudy responded that now that there is a bylaw, the policy has been a minimum of 25 feet. In some instances, it has varied depending on the specific site conditions. This is a steep slope. The other issue is the location of the fence within the Buffer Zone. It was agreed that the fence should be located at the 20 foot mark within the buffer strip so that it would be less visible. The clearing around the blueberry bushes will be limited to 2 feet outside the canopy of the bushes.

Tara suggested that the six foot wide path for livestock access to the pond should be cut at a diagonal.

Prudy asked there was any public comment.

Whit said he was very impressed with the presentation.

Prudy said we do not have a file number or the letter from NHESP but we do have consensus.

Maria asked what was the plan for the on going maintenance of the farm pond. George said he did not know what the plan was. He said the applicant would want Skip to be able to continue doing whatever he has.

Prudy explained that the bulkhead and docks inside the farm pond are unlicensed and made of a material that would not be permitted to be used. George did not know what the new owner intended to do with these structures.

George Brush submitted a letter signed by Janice Manter, the property owner and Skip Manter, authorizing the applicant to file the Notice of Intent. The letter also states that if the Notice of Intent is approved the outstanding appeals will be withdrawn.

With the agreement of the applicant's attorney, a motion was made to continue the hearing to June 27th at 5:10 PM. George Sourati will revise the plan to show the 25 ft wide buffer strip and the location of the fence. The paths will not be shown but will be located in the field in the most appropriate location. The motion to continue was seconded and the vote in favor unanimous.

Old Business

James Pond - Bill Wilcox and Bob Woodruff discussed the letter drafted by Bill to be sent to the Riparian owners about plans to open the pond and to invite them to a meeting to discuss the Ad Hoc Committees recommendations. The letter was approved. The meeting will be held on August 8th at 5:30 PM at the Howes House. The Commission will send the letter.

Regulations –Maria reported that there was no further public comment. She incorporated the suggested changes made by Glenn Provost.

Judy motioned that the Commission adopt the West Tisbury Wetlands Protection Bylaw Regulations. The motion was seconded and the vote in favor unanimous. Many thanks to Patrick Phear for leading the effort to complete these regulations.

Map 6 Lot 3 – Roberts Maria reported that she spoke with John Early and a site visit will be scheduled later in the summer.

Map 35 Lot 1 – Appeal of Enforcement Order. Michael Goldsmith called to report that the appellant's attorney was requesting a continuation to October. Michael recommends this, as there will not be a judge in Superior Court until October. This might be moot if the appeal is withdrawn.

New Business

CPA Committee – Peter Rodegast and Lesley Eaton gave a short presentation to the Commission about the role and goals of the new CPA committee. They asked the Commission to begin thinking about open space projects that might be eligible to receive CPA money. Prudy said she had three items: the dredging of the Mill Pond, money to help revise the Open Space Plan and the Flatlands project. Judy commented that the money does not need to be spent every year. She encouraged the committee to bank the money for a few years in order to be able to do a project that would have a bigger impact. Judy also suggested that whenever it is possible to merge the goals of open space, affordable housing and historic preservation, that those types of

projects should be given a higher priority. Peter responded that projects that encompass all three of those elements would receive a higher priority. Peter's suggestion is that the town might look to a project that would preserve or subsidize farming. Judy added that a joint project with Chilmark for the Tisbury Great Pond might be considered.

There being no further business on the agenda, the meeting adjourned at 6:40 P.M.

Respectfully submitted,

Maria McFarland
Board Administrator
APPROVED