

**WEST TISBURY CONSERVATION COMMISSION  
MINUTES OF MEETING**

November 30, 2010

**Present:** Prudy Burt Chair, Joanie Ames, Judy Crawford, Binnie Ravitch, Peter Rodegast, Tara Whiting and Maria McFarland

**Also present for all or part of the meeting:** Katharine Sterling, Benjamin Reeve, Matthew Dix and Glenn Hearn

Prudy Burt called the meeting to order at 5:02 P.M. [This meeting has been taped and is available for review]

The minutes of the November 9, 2010 meeting were approved. Prudy abstained.

**Public Meetings:**

**Map 8 Lots 22.12&22.14 respectively and 81 State Road Map 10 Lot 194.2/SE79-304:** Public hearing on a **Notice of Intent** filed by the Martha's Vineyard Land Bank for property located at 165 & 200 Merry Farm Road. The proposed project includes the clearance and maintenance of 500+/- linear feet of walking trail within a Bordering Vegetated Wetland and Buffer Zone including ground-level and raised boardwalks or view platforms. Also proposed is the removal of invasive species covering approximately 2 acres. These properties are known as the John Presbury Norton Farm and Wompesket Preserve. Matthew Dix outlined the work. The site plan was reviewed.

Issues Discussed:

John Presbury Norton Farm:

- New trails will connect existing trails through a section of Isolated Land Subject to Flooding.
- Boardwalk will be constructed using 4 x 4 black locust boards resting on the ground.
- The performance standards for Isolated Land Subject to Flooding under the state and local regs were reviewed with the applicant.

On Wompesket Preserve:

- Removal of invasive species including Russian Olive and Honeysuckle.
- Work is in the Buffer Zone.
- Areas of invasive species will be mowed and over seeded with Little Blue Stem and Switch Grass.
- Russian Olive stumps will be taken out.
- Maintenance mowing will be done
- Work will be done when the ground is dry or frozen.
- Majority of the work done by farm tractor/no excavator.
- NHESP letter reviewed. Under MESA regulations, habitat management work is exempt from the MESA regulations provided that stump removal, scarification and access with heavy machinery must take place between October 1 and March 31. Work can not be done between April 1 to Sept 30<sup>th</sup>.

There was no public comment. The public hearing on this matter was closed. A motion was made and seconded to approve the project as presented. All in favor.

Special Conditions:

- Work will be done in accordance project description and NHESP letter.
- On going maintenance provisions will be included to allow mowing in January or March when ground is frozen.
- No pressure treated wood.

A motion was made and seconded to approve the special conditions. All in favor.

**Map 8 Lot 1/SE79-303:** Public Hearing on a **Notice of Intent** filed by the Martha's Vineyard Land Bank for property located at 100 Buttonwood Farm Road. The proposed project includes the clearance and maintenance of approximately 500+/- linear feet of walking trail within the Buffer Zone and a 45' raised wooden boardwalk through a Bordering Vegetated Wetland on a trail easement over a section of **Map 8 Lot 1 owned by Katharine Parks Sterling**. The trail easement runs between the Land Banks' Wompesket Preserve and John Presbury Norton Farm properties.

- Matthew Dix presented the project. This is the second time the Land Bank has filed for permission to do this project (see SE79- 299). The first time Matthew filed one application for the trails at Wompesket, John Presbury Norton Farm (just approved/SE79-304) and this trail over the Sterling property. This time he separated the projects into two filings.
- The proposed trail will run through the Buffer Zone. Regardless of where the trail ends up being located, the work to establish the trail will be done in the same manner. There is no more impact to the Buffer Zone from the trail being put in one area or another. The Land Bank and the property owner are in a dispute over the validity of the relocated easement and whether the relocation of the easement impacts the scenic value of the easement. There is no view easement granted in the easement document and the applicant has not asked for approval to create a view channel.

Issues discussed:

- Is the Commission able to issue an Order of Conditions when the applicant has an easement but there is a dispute between the parties over the location of the easement and which easement document controls?
- The history of the easement and relocation of the easement was reviewed in detail by the Land Bank and property owner.
- Commissioners discussed whether it was necessary to ask town counsel for an opinion. It was decided that it was up to the applicant to provide the Commission with a written legal opinion. Commissioners discussed the regulation in question:  
*310 CMR 10.05(4) states that if the applicant and landowner are not the same, an applicant shall obtain written permission from the landowner(s) prior to filing a Notice of Intent for proposed work except for work proposed on Great Ponds etc.*
- Commissioners also discussed the last time it was faced with making a decision about this issue (SE79-260). In that instance, the Commission asked the applicant to withdraw the NOI but the applicant refused. The Commission and the applicant each got a written legal opinion. Town Counsel advised the Commission to deny the application as being administratively incomplete.
- Commission staff described how an Order of Conditions could be written if the NOI was approved. The order could require the applicant to come back to the Commission once the final location of the trail is settled. An approved order is recorded on the title of Katharine Sterling and for the title to the Land Bank easement. Both parties are listed in the Order. Putting in a trail is permissible work.

**Public Comment:**

- Ben Reeve submitted a letter dated November 30, 2010 objecting to the filing of this Notice of Intent.
- Acting in his capacity as a member of the Land Bank Commission, Glenn Hearn read a section of the original easement agreement concerning prohibitions on relocation of the trail for the record. Relocation of the easement must be agreed to by the grantee. The Land Bank did not agree to the relocation and filed an objection to the relocation. Glenn stated that he thinks the Commission can act on the Land Bank application.

**Next Steps:**

- Maria will try to get some guidance from the MACC/ legal help line. The Commission decided that they would not ask the Board of Selectmen for access to counsel.
- Matthew will have to go back the full Land Bank Commission for permission to obtain a written legal opinion.

After the discussion, the applicant requested a continuance. A motion was made and seconded to continue this public hearing to 5:30 PM on December 14<sup>th</sup>. All in favor.

**Old Business**

**Sutula/Map 3 Lot 2:**

As Built Plan: Members reviewed e-mails from Frank Sutula regarding the Commission's request for as-built plan. Mr. Sutula thinks we have everything we need and do not need a new as-built plan. Maria replied to his email to let him know that the plan we have is not an as-built. We asked for this as-built plan to avoid issues arising when he wants to do work in on his property. The board reaffirmed the need for an as- built plan.

Snow fencing: Maria reviewed a second e-mail from Mr. Sutula regarding the existence of a lease between the Sutula's and the Town for the beach zone on the Sutula property. Jen and Maria were unable to find a signed copy of this lease. There was a lease between Peter Goethals the prior owner and the town for the beach zone which expired in 1997. Board of Selectmen minutes reflect that there were discussions with Mr. Sutula but no record can be found of a lease. Maria has asked Mr. Sutula to send in a copy of the signed lease.

The Beach Zone is part of the Sutula property adjacent to Lambert's Cove Beach which is owned by the Town.

Using GPS, Kristen Fauteux was able to confirm that the fencing Mr. Sutula put up without permission from the Commission is located within the Easement Zone covered the SMF conservation restriction. Mr. Sutula contends in his email that he put the fencing in the Beach Zone because people were trespassing from the town beach and causing erosion. He said that the lease required the Town to put in this fencing. The Beach Zone is 100 feet wide and runs the length of both the Strecker's and Sutula property. [These zones are shown on the plan attached to the Goethals lease.]

Maria was instructed to send Mr. Sutula a letter informing him that the lease matter should be taken up with the Board of Selectmen and that regardless of where the fence is located he needed permission from this board to install the correct type of fence. He also needs permission from Sheriff's Meadow Foundation if the fencing is in the Easement Zone.

**New Business:**

**Land Bank update:** Tara updated the Commission on discussions the West Tisbury Land Bank Advisory Board has had concerning APR's on Land Bank properties, specifically Uncle Leonard's Farm. The APR doesn't cover fertilizers etc. Tara asked if the Conservation Commission can actively look at these Land Bank properties regarding the APR's. If the Town doesn't hold the APR, and if the farming activities are not within the Commission's jurisdiction, there isn't anything the Commission can do to enforce the APR.

**Administrative:**

**FY2012 Budget:** The Commission reviewed the FY 2012 budget and the narrative. As Maria will be with the Commission for 10 years in May, there is a 1% increase in the salary line item for longevity. A motion was made and seconded to approve the FY 2012 budget. The vote in favor unanimous.

**Correspondence:**

In: Endofthedirtroad, LLC Copy of joint motion for a Stay of Proceedings dated November 18, 2010  
Letter from Sheriff's Meadow Foundation dated November 19, 2010 re: fencing  
Memo from the Army Corp of Engineers dated November 26, 2010 re: bomb project  
E-mails from Frank Sutula dated November 30<sup>th</sup> regarding an as-built plan and beach fencing.

This portion of the meeting adjourned at 5:55 PM.

Respectfully submitted,

Maria McFarland  
Board Administrator  
APPROVED