

WEST TISBURY  
CONSERVATION COMMISSION  
MINUTES OF MEETING  
December 13, 2016

**Present:** John Brannen, Prudy Burt, Whit Griswold, Peter Rodegast, Michael Turnell and Tara Whiting

**Absent:** Binnie Ravitch

**Staff Present:** Maria McFarland

**Also present for all or part of the meeting:** Tom Chase, Cody Coutinho, Elise Elliston, Carly Look, and George Sourati

The meeting was called to order at 5:05 P.M. Tara Whiting, Chairman presiding.

The minutes of the November 15 meeting were approved as revised. Prudy abstained.

**Continued Public Hearing:**

**James Pond/SE79-364:** a public hearing under the requirements of G.L. Ch.131 § 40, as amended, and the West Tisbury Wetlands Protection Bylaw and regulations to consider a **Notice of Intent** filed by the West Tisbury Board of Selectmen and Herring Warden for a project proposed at James Pond and Map 6 Lots 13 and 20. The project consists of work associated with breaching the barrier beach at James Pond including dredging the associated meander for the purpose of restoring a fish passageway, placement of fiber rolls and salt marsh plantings.

There was not a quorum for this public hearing. No testimony was taken. The hearing was continued to January 10, 2017 at 5:10 PM.

**New Public Meeting:**

**Map 7 Lot 150.5/22 Sachem Circle:** a public meeting under the requirements of G.L. Ch.131 § 40, as amended and the West Tisbury Wetlands Protection Bylaw and regulations to consider a **Request for Determination of Applicability** filed by Vineyard Land Surveying & Engineering, Inc. on behalf of Susan Abbott and Davie Schweizer. The project consists of the re-grading of an existing parking area, relocation of driveway; and removal of two oak trees in the buffer zone.

Cody presented the project. The project plan shows the existing and proposed conditions.

Cody provided answers for questions from the site visit. The section of driveway that will be abandoned will be cleared of the blue dense mix. The new driveway material will be the same material. The edge of the parking area will remain woods. The two oaks that will be removed are located on the plan. There is no plan to alter the understory. Prudy suggested that the owner be made aware that the understory should not be cleared because it is providing filtration between the house and the wetland. Michael asked if there was existing irrigation. Cody said there was not.

The project is within an already disturbed buffer zone to a wetland located across a paved road. A motion was made and seconded to issue a Negative Determination with no special conditions. All in favor.

#### **New Public Hearings:**

**Map 23 Lot 1/85 Reservoir Road/ SE79-374:** a public hearing under the requirements of G.L. Ch.131 § 40, as amended and the West Tisbury Wetlands Protection Bylaw and regulations to consider a **Notice of Intent** filed by Vineyard Land Surveying & Engineering, Inc. on behalf of Merrills Haven LLC to remodel an existing garage into a guest house, add second means of egress, trellis, deck, septic tanks and associated site work. The project is located at 85 North Reservoir Road, Assessors owned by Merrills Haven LLC.

Cody and Elise presented the proposed project. Dormers will be added to the existing structure. The oak tree behind the garage will not be taken down but may need limbing. The retaining walls are too close to the house. The retaining wall closest to the wetland on the northeast side will be altered to accommodate a building code requirement regarding egress. The retaining wall work will be mostly hand done with a machine working from the driveway if necessary.

Work to install a new septic tank and pump chamber and perform associated trenching are away from the wetland. No grade changes are proposed.

John reminded the board that there has been landscaping debris placed in or near the wetland. Cody said the landscaper has been asked to discontinue this practice.

A motion was made and seconded to approve this project as set forth in the Notice of Intent and shown on the project plan. A construction/snow fence will be placed 10 feet from the edge of the wetland to establish a limit of work line. Stockpiling will be done in the driveway away from the wetland. The vote on the motion was unanimous in favor.

**Map 31 Lot 3/ 677 Old County Road:** public hearing under the requirements of G.L. Ch.131 § 40, as amended and the West Tisbury Wetlands Protection Bylaw and regulations to consider a **Notice of Intent** filed by Sourati Engineering Group LLC on behalf of David Burt for a project to regrading and landscaping within the Riverfront Area and landscaping within 100 feet of a bordering vegetated wetland. Prudy recused herself from participating in this hearing.

George and Carly represented Mr. Burt. The project plan shows existing and proposed conditions.

The owners would like to create a more level area around the house. A blue stone patio is proposed but it is outside the buffer zone. They are proposing 2500 square feet of alteration that will require approximately 75 cubic yards of fill. The fill required to create this area will be placed outside the buffer zone to the bordering vegetated wetland but within the second 100 feet of the Riverfront Area.

Discussion centered on restoring the bordering vegetated wetland that has historically been mowed right to the edge of the pond and the brook. Peter asked if there was any plan for the mowed area near the brook. Carly replied that they would like to seed the area with an erosion control seed mix. Peter suggested allowing the native vegetation to grow back.

Carly said the Burts would like to have an open area in front of the pond so they can have access to it.

Tara said that there is a lot of disturbance within the buffer zone. The regulations allow the Commission to require restoration when an application is before the Commission. While the Bylaw has a 25 foot no-disturbance zone, she suggested that there a no mow zone of a minimum of 10 feet with a mown path to the pond.

Also, applicant would like to place a non-native weeping cedar in the buffer zone that would grow into a tree their children could climb.

Carly said the Burts are ok with some buffer but feel that mowing is important to keep the ticks down. They would like to keep 45 of the 155 feet of frontage along the pond between the two cedars open.

The Notice of Intent does not have a DEP file number or letter from NHESP so the hearing cannot be closed.

After discussion it was agreed that the applicant's representative would discuss the requested changes including ending mowing into the wetland and placement of a path for access to the blueberry bushes.

A motion was made and seconded to continue the public hearing to January 10 at 5:25PM. All in favor.

## **Old Business**

**Map 38 Lot 1 and Map 29 Lot 81:** Amendment to Conservation Restriction (CR)/ Homer Watcha Trust (Trust) The Nature Conservancy (TNC).

Tom Chase was present to discuss the request from the Trust dated November 28, 2016 to the Commission asking the board to re-visit its decision not to recommend approval of an amendment to the CR between TNC and the Trust

To recap, the Trust wants to revise the CR held by TNC on Map 38 Lot 1 to include a horse trail. In return, the Trust would convey its remaining interest in a parcel to the north (Map 29 Lot 81) which is in the middle of two other parcels contiguous to the CR parcels and owned outright by TNC.

The November letter references changes to the document to reduce the width of the trail and includes an email from the National Heritage and Endangered Species Program that, in their opinion, the horse trail would not result in habitat fragmentation.

In March, the Commission voted not to recommend approval of this amendment to the Board of Selectmen for two reasons; it would create a precedent of changing conservation restrictions and concerns about habitat fragmentation.

TNC and the Trust went to the Selectmen because they have to sign the amendment to the CR. The Selectmen asked Tom to verify whether the Commission's concern about habitat fragmentation was valid. Tom submitted an email from the Natural Heritage and Endangered Species Program approving the revisions made to the CR to reduce the width of the horse trails and that the new trails will not result in habitat fragmentation of the state-listed species on the property.

#### Commissioner's Comments/Questions:

Tara said that she appreciated Tom's effort. She said that while she was concerned about habitat fragmentation, of greater concern to her is setting a precedent by changing a conservation restriction of any kind. She did not feel like she has the expertise to determine if there is an overwhelming conservation benefit to acquiring additional interest in the parcel to the north. Tara noted that the trail is now two feet narrower but also two feet higher so it still creates a box corridor and that there was no net reduction in size of the trail. She also said she appreciated the NHESP opinion that the horse trails will not create habitat fragmentation.

Whit asked to be reminded what constitutes habitat fragmentation. Tom replied that habitat fragmentation is breaking up the landscape so that species can't move from one place to another and species get separated.

Whit said he agreed with Tara.

John said he was confused about who originally asked for no horseback riding. Tom replied that when the CR was written, Scrubby Neck Horse farm was still in existence and the property owner wanted to limit horseback riding to the existing road that runs through the property. Currently, the CR allows horseback riding but only on the existing road.

Prudy referenced the Selectmen's minutes of their meeting on June 15, 2016 when agents of the owner said that the reason the Trust wants to add horse trails is because the property is for sale and it would make it more marketable. She noted that conservation restrictions are considered to be in perpetuity. Prudy said this amendment would not increase the public benefit of this CR.

Tom responded that the Commonwealth does allow amendments so there is precedent that conservation restrictions can be changed. Tom told the board that TNC initially turned this proposal down, but once the Trust offered to give TNC an additional fee interest in the conservation land to the north the larger ecological benefit of acquiring additional conservation land outweighed the de-minimus impact of the horse trails.

Prudy asked if there was another way for TNC to acquire this property. Tom said he didn't think Mr. DeBlois would be interested in selling his interest. TNC wants as much connected habitat as possible. A motion was made and seconded not to recommend approval of the amendment to the CR.

Discussion on the motion: Peter asked why there have been so few amendments to conservation restrictions. Tom explained that there has to be an overwhelming public benefit otherwise the Environmental Secretary will not sign the amendment.

Peter asked what the public benefit of the amendment is and John asked how one evaluates the difference between public benefit and public access. Tom responded that there is no formal public access but hunting is allowed.

After discussion on the motion ended, the vote was 4-1-1. The motion to not recommend this amendment to the Board of Selectmen carried.

**Administrative:**

FY2018 Budget: A motion was made and seconded to approve the FY 2018 budget and budget narrative as presented. All in favor.

**Map 1 Lot 50/SE79-358/Tate: Certificate of Compliance:** The Certificate of Compliance was not signed because the area around the well is not stabilized and needs additional plants. The snow and silt fencing should remain in place over the winter. A motion was made and seconded to not issue a Certificate of Compliance at this time. All in favor.

**Map 11 Lots 36 & 37/Silva-Peters: Certificate of Compliance:** The shoulders along the section of driveway over the culvert are too wide. The finished road surface was approved to be 10feet wide with three foot wide shoulders. The boulders that were placed to keep vehicles on the driveway need to be pulled into the driveway more. Also, the As-Built survey has not been submitted. A motion was made and seconded to not issue the Certificate of Compliance at this time. All in favor.

There being no new business to conduct, the meeting adjourned at 6: 45 PM.

Respectfully submitted,

Maria McFarland  
Board Administrator  
APPROVED