

WEST TISBURY  
CONSERVATION COMMISSION  
MINUTES OF MEETING  
February 14, 2023

The meeting was held via Zoom in accordance with the Governor's order suspending certain provisions of the Open Meeting Law, G.L. c.30A sec.20. Public participation will be via remote participation (Zoom) pursuant to M. G. L. Chapter 20 of the Acts of 2021.

**Present:** Fred Barron, Whit Griswold, Angela Luckey, Peter Rodegast, and Michael Turnell

**Absent:** Geraldine Brooks and Donna Paulnock

**Staff Present:** Maria McFarland

**Also present for all or part of the meeting:** Chris Cottrell, Rebecca Cournoyer, Richard Fehon, Dan and Marilyn O'Connell, Reid Silva, and Rebekah Thomson

Whit Griswold called the meeting to order at 5:05PM.

**Minutes:**

Approval of the minutes of the January 24, 2023 meeting were tabled to the next meeting.

**Public Hearing:**

**Map 35 Lot 6.7/80 Plum Bush Point Road/ WTCC23-01:** public hearing under the requirements of the West Tisbury Wetlands Protection Bylaw and regulations to consider a **Notice of Intent** filed by Vineyard Land Surveying & Engineering, Inc., on behalf of Jeffrey & Carolyn Carney for a project to excavate and remove an existing 18'x 37' in-ground swimming pool and construct a new 18'x 42' in-ground swimming pool, add a spa and perform landscaping within the Buffer Zone to Land Subject to Coastal Storm Flowage (LSCSF). Construction of the pool and pool house pre-dates the effective date of the West Tisbury Wetlands Protection Bylaw and regulations that established a Buffer Zone to LSCSF.

Reid presented this project. The pool is leaking and the patio has settled. A complete replacement would be easier than a repair. The new pool will extend 5ft towards the pond. They are adding a spa to the side of the pool. The pool equipment shed that sits on the lot line will be moved to a location outside the Buffer Zone. No changes to the pool house are proposed and no new alteration of the Buffer Zone is required to implement this plan. Access for this work will be the existing driveway. All demolition debris will be trucked off site. The existing pool fence is within the privet hedge.

**Commissioner's Comments/Questions:**

Fred asked why they aren't just repairing the pool. Reid explained that it was too difficult to assess the leak, so the owner decided to rebuild it. Fred then asked if it was possible to expand the pool towards the pool house. Reid said it is possible, but not what the property owners would like to do.

A discussion between them took place regarding how the Commission handles these types of requests and how the Commission can work with people on projects in advance so that they are not asking to be built within the board's jurisdiction.

Maria explained that, in this instance, the pool predates the local wetlands bylaw regulations, there is no new alteration; the patio is not being extending, only the length of the pool within the existing patio footprint will change. The pool will not be closer to the flood elevation line or closer to the top of coastal bank. Temporary disturbances during construction mitigated by erosion control fencing. The pool area is elevated so it is unlikely that a flood event would have any impact. If the property owner was proposing a new pool, the bylaw regulations allow for construction of a pool within LSCSF.

Peter said it is outside the buffer zone to the top of the coastal bank and the expansion is within an already paved area. Peter then asked, and Reid confirmed, that no alteration of the retaining wall will be necessary and that the overdig area for the expansion will be within the existing pool enclosure.

Michael observed that the pool extension will be located within the existing coping around the pool. He asked if the extension could be done on the pool house side rather than the water side. Reid said the applicant doesn't want to do that. Michael added that the biggest impact will occur when they tear out the pool so there will need to be protection in place during construction to be sure that there is no erosion toward the pond.

Reid will submit a revised plan showing a limit work within the existing retaining wall and a construction fence with a siltation barrier.

There was no public comment. The public hearing was closed.

Peter made a motion, seconded by Michael, to approve the project as presented. Conditions will include the standard pool conditions; a pre-construction site visit; all work to take place from the south side of the pool, debris to be removed offsite; and the footprint of existing pool equipment shed to be restored. Roll Call Vote: Angela -aye, Fred- aye, Michael,-aye, Peter-aye, and Whit -aye.

#### **New Business:**

**Map 25 Lot 1.1/ Ag Society/2023 Event List/ APR co-holder sign off:** Whit gave a brief summary of the meeting he participated in with representatives of the Ag Society, VCS, the Town Administrator and Town Counsel. After a brief discussion regarding a new event called Climate Action Day that has been added as a community event, Peter made a motion, seconded by Fred to approve the 2023 schedule of events. Roll Call Vote: Angela -aye, Fred- aye, Michael,-aye, Peter-aye, and Whit -aye.

**Complete Streets Committee/ North Tisbury Bridge:** The Complete Streets Committee has been working Dan Doyle at the MVC and Howard Stein Hudson on a design for the reconfiguration of the North Tisbury bridge to provide safe passage for pedestrians and cyclists. The design was discussed with the Select Board at their February 1 meeting. Maria suggested that the Commission consider sending the Planning Board/ Complete Streets Committee a letter asking to be kept in the loop on this project as they proceed with discussions with MA DOT. A motion was made by Peter, seconded by Michael to send said letter. Roll Call Vote: Angela -aye, Fred- aye, Michael - aye, Peter-aye, and Whit- aye.

#### **Map 15 Lot 1/ Possible Wetland Violation: Chris Cottrell met on an informal basis to discuss complaints filed with the Commission by Mr. Cottrell's neighbors.**

Whit began this discussion by explaining that the board has been made aware of activities on the south side of this property that were observed by Peter, Michael and Maria on February 9. It appears that the activities are within the Commission's jurisdiction but because the mapping of the area is in question it is ambiguous as to where the wetlands are.

Chris Cottrell explained that at the February 9 site visit, he submitted a letter dated 2/2/23 which is noted for the record. The letter detailed his plans for farming activities, the need to reduce ticks because of health issues and wet site conditions supposedly due to past activities on the road. He would like to install drainage that would deal with these wet conditions as it may impact his plan to farm his property.

Chris went to say that based on his misunderstanding of the limit of work approved under the Order of Conditions he thought the buffer zone was 75 feet wide. He told the board he put a path in the buffer zone to access the back of his property in order to have a garden for flowers and vegetables to which he recently added stone because the path was slippery. He admits that he has made some mistakes and is willing to rectify them. He thinks the garden is out of the buffer and the path, if it is in the buffer zone can be moved. He asked if he could file a Notice of Intent to be able to do what he wants to do.

Maria went over the history of the Commission's involvement in this property.

In 2019, an Order of Conditions was issued for site work in the buffer zone in connection with the renovation of an existing antique house on Indian Hill Road, a new septic system and guest house all outside the Buffer Zone. A temporary construction access was required because the existing driveway was too tight. This area is now a gravel parking area that was not approved as part of a landscaping plan.

The 2019 project plan showed a clear limit of work. The Order contains the following conditions:

- *No construction activities, storage of equipment or materials or stockpiling of excavated fill shall occur outside the limit of work as shown on the Project Plan.*
- *In accordance with the provisions of 310 CMR 10.53 ( 1), where previous development of the Buffer Zone is extensive, the Issuing Authority may consider measures such as the restoration of natural vegetation adjacent to a Resource Area. Therefore, the stone wall shown on the project plan shall serve as the limit of approved mowing within the Buffer Zone. The area beyond the stone wall to the south and south west to the edge of the wetland shall be left undisturbed in order to allow the disturbed vegetation in the Inner Buffer Zone and the Bordering Vegetated Wetland to grow back. This is an ongoing condition that does not expire with the issuance of a Certificate of Compliance.*
- *Any new landscaping within the Buffer Zone and outside the existing stone walls requires the submission of a landscape plan for review and written approval from the Commission.*

Construction was started without the required pre-construction site visit which lead to a site visit on March 12, 2020. Chris had done some site work beyond what had been approved so Maria asked Chris to have the wetland flags rehung along the entire length of the wetland edge so he would know where the it and the buffer zone was. This was done by Julie Fiske in March of 2020 after the Covid pandemic was declared consequently, no action was taken by the Commission. The flags hung were put on a Schofield, Barbini and Hoehn plan dated August 14, 2020 and showed a much- diminished wetland a new wood chipped path and a garden. At the time, the path didn't seem problematic as it was access to a garden and the wetland appeared to have changed.

In July of 2020 another site visit was done after the Building Inspector suggested it. Chris had planted a few fruit trees in a couple of places which was approved under as an administrative review.

In the last couple of months , the town has received complaints from abutters to this property because of increased activity and an application before the Planning Board for a new barn. The neighbors reported excavators working in the back of the property with piping being laid; possibly in a wetland area which could have resulted a site visit that was held on February 9 at which Peter, Michael and Maria observed considerable alterations.

Peter described a lot of activities including a large wood pile, the wood chipped path now covered with gravel and shifted up hill. A perimeter way constructed around the south edge of the property that had filter fabric laid on it and was covered with wood chips and at least one other path established covered with filter fabric and wood chips. Peter suggested that the two different wetland edges done years apart could have resulted in confusion. The wetland edge needs to be delineated and the discrepancies shown on the plan. The buffer zone setbacks should be flagged in the field so the Commission can evaluate what is going on. In the meantime, there should be no further work or attempts to clean up these areas.

Michael said there are hundreds of square footage of filter fabric under the woodchipped areas and that changing the wood chipped driveway to a gravel driveway changes the hydrology of the area. He also observed a lot brush cutting. He would like to know where the piping was laid and where it is exits. Maria said she asked Chris at the site visit about the piping but didn't get an answer.

Chris said he did in fact explain at the site visit that two days after a big rain storm in the southwest corner of the garden there was a river flowing through the upper corner of the property. He installed a 4' x 6' diameter honey combed drain down the side line of the property abutting the Cournoyer property (Map 15 Lots 2-2 and 24) to try to get the water coming onto his property from the Cournoyer's back down to the lower part of his property towards the road where there is a wetland. Michael confirmed this.

Chris went on to say that he didn't think the drain was installed within an area under the Commission's jurisdiction. Maria explained that if the 2020 delineation is correct than that might be the case but the question remains, where is the water coming from, is its seasonal flooding, high groundwater, or surface water runoff that would normally feed into the wetland and will now always drain away. Angela added that based on the 2019 plan, it looks like the area Chris is describing was a wetland in 2019.

Chris said he has been working getting rid of the wood pile since it was created in 2020, offered to remove the filter fabric but claimed he put it down because of the ticks.

Chris asked to be allowed to file a Notice of Intent in order to show the wetland delineation done in 2020 along with the 25 and 50 ft. setbacks on the ground. He would be willing to put a fence up and be able to use the second 50 ft of the buffer zone.

Chris said he wasn't trying to hide anything and disclosed everything he has done on his property.

Whit said the members seem to concur that a new delineation is needed. Peter suggested another site visit because there were only two members at the site visit on 2/9.

Public Comment: Rebekah Thomson, one of the abutters who emailed the Commission and other town boards with video of activities on the site said that the area they saw the piping being laid is not the area Chris described. She commented on the discrepancy on the wetland size between the 2019 and 2020 plans and commented on the drought conditions in August 2020. Abutter Richard Fehon said he appreciated the board looking into this matter and hearing his concerns.

Maria reported that the abutters have filed a complaint with DEP and that she had spoken to DEP staff. The board received a follow up email noting that the Commission was handling the complaint.

Maria recommended the board send a notice of violation in the form of a letter rather an Enforcement Order at this time, requiring the delineation to be redone in order to determine what would be required in an enforcement order. A new delineation with a report on the characteristics of the wetland would be useful. The only information on file regarding the 2020 delineation was that it was done using hydric

soils. Peter commented that we should also have information on the wetland plant communities in this area.

Michael suggested that the wetland delineation be done by a new delineator and not either of the two who did it in the past.

Maria pointed out that the Commission has the ability to hire a consultant at the applicant's expense. (Turns out this can't be done in connection with an enforcement matter.)

The board discussed if one of the previous delineators should update the wetland edge or if it should be a third party. Peter said he should use whomever is available. Whit said it should be a third party. Maria offered to get an estimate from LEC Environmental Services. Maria will draft a letter for the board to review at their next meeting. A second site visit was scheduled for Tuesday February 21 at 8 am.

Whit wrapped up the conversation by telling Chris he is on notice that he should not do anything else on this property until the matter is resolved.

A motion made and seconded to send a notice of violation letter to be drafted and reviewed at the next meeting.: Roll Call Vote: Angela -aye, Fred- aye, Michael,-aye, Peter-aye, and Whit -aye.

#### **Administrative:**

**Map 36 Lot 18/ SE79-416/70 Taffy's Field Road/Certificate of Compliance:** A motion was made and seconded to approve this Certificate of Compliance. Roll Call Vote: Angela -aye, Fred- aye, Michael - aye, Peter-aye, and Whit- aye.

**Trustee of Reservations/ Long Point/Confirmatory Certificates of Compliance for lost certificates:** SE79-151-prescribed burns SE79-267-Phragmites removal, SE79-282-Restoration of duck blinds and SE79-288-prescribed burns. A motion was made and seconded to sign Confirmatory Certificates of Compliance for these projects. Roll Call Vote: Angela -aye, Fred- aye, Michael - aye, Peter-aye, and Whit- aye.

#### **Correspondence:**

- In: Map 36 Lot 18/ SE79-416/Request for Certificate of Compliance  
Division of Fisheries and Wildlife letter regarding the new Bio Map  
Emails from Abutters to Map 15 Lot 1 regarding zoning violations and possible wetland violations.  
Joe Walker Road/ NHESP letter/ "no take" under MESA regulations
- Out: Map 43 Lot 13/SE79-447/ 139 Little Homer's Pond Road/ Order of Conditions  
Map 39 Lots 7 & 8/ SE79-446/ 216 Middle Point Road/Order of Conditions  
Sherriff's Meadow Foundation/ Sign off on LCB walk

There being no new business to discuss, the meeting adjourned at 6:54 PM.

Respectfully Submitted,

Maria McFarland  
Board Administrator