

WEST TISBURY  
CONSERVATION COMMISSION  
MINUTES OF MEETING  
July 23, 2019

**Present:** Brian Beall, Geraldine Brooks John Brannen, Whit Griswold, Peter Rodegast, Michael Turnell, and Tara Whiting-Wells

**Absent:** Donna Paulnock and Binnie Ravitch

**Staff Present:** Maria McFarland

**Also present for all or part of the meeting:** Morgan Berman, Prudence Burt, Cody Coutinho, John Eisner, Maureen Eisner, Kris Horiuchi, Chris Lyman, Joan Malkin, Al Mark, Jessie McIsaac, Adam Moore, Chris Murphy, Phil Regan, Tom Shockey, and Scott Stearns

The meeting was called to order at 5:00 P.M. Tara Whiting-Wells, Chairman presiding.

**Minutes:** The minutes of the June 25 meeting were approved as written. The Board did not meet on July 9.

**Public Hearings:**

**Map 39 Lot 14/SE79-404:** a public hearing under the requirements of G.L. Ch.131 § 40, as amended, and West Tisbury Wetlands Protection Bylaw and regulations to consider a **Notice of Intent** filed by Schofield, Barbini & Hoehn Inc., on behalf of Shampoo Beach LLC for a project located at 350 Big Homer's Pond Road. The project consists of site work in the Buffer Zone associated with the construction of a single family dwelling, guest house, garage and swimming pool primarily located outside the Buffer Zone. A portion of the main house will alter approximately 450 feet of Land Subject to Coastal Storm Flowage (LSCSF), a resource area with no Buffer Zone.

Phil Reagan of Hutker Architects and Kris Horiuchi presented the project. Scott Stearns represented the builder.

This property abuts Big Homer Pond and is the subject of a Conservation Management Permit issued by the Natural Heritage and Endangered Species Program (NHESP). The NHESP comment letter for this project has not been issued yet.

The board reviewed a not-to-scale staking plan dated July 18, 2019. The staking plan shows FEMA flood elevation on the west side as 10 on the west side and 11 on the east side. The NHESP and Buffer Zone setback lines are also shown.

All of the proposed structures are located outside of the Buffer Zone except as noted below.

Phil described the site conditions and the vision for the house that the owner and architect have. The woodland breaks out into a meadow with specimen oaks that they plan to preserve. The meadow areas will be "restored." All of the structures will be less than 18 feet in height and are designed to be hard to see from the beach.

All of the structures are outside the Buffer Zone with the exception of two areas of construction that have potential impacts to resource areas. As presented, the plan calls for excavation for the basement on the east to be 11 feet off the buffer zone line. Phil said they shifted the house off the buffer zone line but that pushed the a corner of the structure and the deck on the west into LSCSF

The results of groundwater testing will dictate the basement construction. They need to confirm that the bottom of the foundations will be 8 feet above ground water. Currently testing showed 10 ½ feet of clearance to groundwater. Anything less than 8 would require reducing the height to a 6 foot crawl space for the mechanical. All of the yellow forms on the staking plan will have crawl spaces but they would like to have a full basement under the kitchen to accommodate mechanical and storage.

The yellow structures are gabled roof with shingles. The gray areas are flat roofed. The total square footage of all the structures that make up the main house and porches is 4,900 square feet. The pool foundation is 10 feet off the buffer zone line.

Phil proposed reducing the distance to the edge of the Buffer Zone for the east wing from 11 feet to 5 feet on the east in order to shift a section of the west wing foundation and all of the deck outside LSCSF. The foundation for the east wing will be a 4 foot crawl space.

The leach field is located more than 200 feet from the edge of the pond and more than 100 feet from the edge of the top of the coastal bank. Both setbacks meet Board of Health requirements.

Scott Stearns described the plan to remove the existing 900 square foot camp within the Buffer Zone on the east side of the property. Demolition will be done from the inland side of the structure. They plan to pick up the structure and put the pieces into a dump truck.

The block frost wall foundation is not in good shape. One pine tree will need to be removed. He anticipates that this will cause very limited and temporary disturbance to the Buffer Zone.

Rather than snow and silt fencing to mark the limit of work line on the east side of the property, Scott proposed installing 200 feet of construction fence that would consist of 4x4 posts set in the ground 16 feet apart with snow fencing fastened to 2x4s. The posts holes will be hand dug.

Kris reviewed the landscape plan. Most of the landscaping, including planting beds of blooming ornamental summer perennials and a manicured lawn will be outside the Buffer Zone. A new septic system and 2 underground tanks will also be outside the Buffer Zone. The driveway will be pea stone, with access to the house over a boardwalk system. The project plan shows existing trees that will stay and trees marked in red within the footprint of the house and pool that will be removed. Landscaped areas will be fertilized. The pool has a terrace surround and fence, all outside the Buffer Zone.

After the existing structure is removed the site will be restored by grading and seeding. Subsequently, they would like to mow this area once annually.

Kris said they would honor the original no-cut zones from the 1994 Order of Conditions. She will locate the original no-cut zones and where they exist in relation to the Buffer Zone today. They plan is to restore the existing meadow by planting little blue stem, seeded with sheep fescue.

Within the Buffer Zone, a 4 foot wide mown path will be established to access a set of existing beach stairs. They will actively management the area through monthly mowing during the growing in construction areas.

#### Commissioner's Comments/ Questions:

Geraldine asked if they could scale the project down. Phil answered that the proposed plan represents 8 months of work. They worked with the new owner to pull the house away from the peninsula.

He explained that if they move the east wing closer to the Buffer zone, the west wing they won't have to flood proof the 450 square feet of the west wing structure sited within LSCSF.

Michael asked if the guest house could be pulled away from the Buffer Zone line. Phil said the guest house is two rectangular units connected by a deck with a cantilevered roof currently set 7'6" off the Buffer Zone line. The guest house was sited to line up with a walking path so that the owners can step off the deck onto the path.

Peter commented that by shifting the house to the east they are not changing the elevation and will get the west wing out of the flood zone making construction methods for the bedroom wing easier.

Whit asked about what appears to be a retaining wall on the project plan. It was described as an architectural/ landscaping feature to demarcate the edge of the woodland. It will be a dry-laid stone wall consisting of a gravel footing with stacked stones. It was noted that the stone wall would be located within LSCSF.

Michael asked how much of the footprint will be rotovated for construction. Kris answered that the construction access soils will be stripped and stockpiled. The large oak trees will have protection around the drip line of each of these specimen oaks. They plan to work around these trees. Michael suggested they strip some of the meadow mat to be used over the footprint of the structure being removed. Kris added that it is critical to make sure that the soils are saved for the seed bed so there needs to be a stockpiling plan that will accomplish this.

Michael asked what the construction sequence will be. Kris responded that the work will progress to completion once started. Construction fencing will be placed so that the over-dig will not encroach into the Buffer Zone. Scott said all work and equipment will be kept on the inland side.

Maria asked about fertilizers and irrigation. Kris said there will be underground irrigation for the lawn and temporary irrigation for the meadow areas until they are established.

John suggested that the owner be asked if they would voluntarily install a denitrifying septic system. Phil replied that he has had a conversation with the owner and he did not think they would have a problem doing this.

Peter recapped that the applicant will revise the plan to show the west wing shifted to the east to get the foundation out of the FEMA elevation 10 line, recalculate the overage of the deck and recalculate the wetland edge to show the original no-cut zones and the current 25 foot No-Disturbance Zone. Permanent boundary markers will be required to demarcate the No-Disturbance Zone.

Tara asked if the eastside of the property is currently mowed. Kris said that mowing will be done once annually in accordance with conditions of the NHESP Conservation Management Permit.

Tara asked that the location of the construction fencing be shown on the plan.

A motion was made and seconded to continue the public hearing on this Notice of Intent to August 13 at 5:10 PM. All in favor.

**Map 32 Lot 31:** a public hearing under the requirements of G.L. Ch.131 § 40, as amended, and West Tisbury Wetlands Protection Bylaw and regulations to consider a **Notice of Intent** filed by Vineyard Land Surveying & Engineering, Inc, on behalf of John and Maureen Eisner for a project located at 62 Music Street. The project consists of the installation of a 5 bedroom Title V septic system to replace two failed cesspools. The existing cesspools will be backfilled and abandoned. The DEP file number letter has not been issued.

Cody Coutinho of Vineyard Land Surveying and Engineering represented the applicant. This property is bounded by the Tiasquam River on the west. Two rows of the infiltrator bed for the leach field encroach into the Riverfront Area. The 1,500 gallon septic tank is outside the Riverfront Area and the Buffer Zone to a Bordering Vegetated Wetland.

There is an existing 4 bedroom house and a structure identified on the project plan as a one bedroom bunk house. An ejector pump will be installed to connect the bunk house to the leach field. A new waterline will be trenched from the main house to the bunk house. Work will be done from the driveway, stockpiling will be outside the Riverfront Area.

#### Commissioner's Comments/ Questions:

Tara asked if the leach field could be moved outside the Riverfront Area. Cody explained that they can't meet the required setbacks to existing wells and lot lines without a variance from the Board of Health. Site conditions dictate the location.

Brian followed up by asking if the leach field could be rotated in order to meet the setback. Cody explained that the existing topography doesn't allow the leach field to be rotated because the field can't be more than 3 feet below grade and must have a pitch of 1% back to the tank.

Geraldine asked if there has been any discussion about an enhanced system. Maria responded that the Board of Health setback to a wetland is 100 feet and this field is set 109 feet from the edge.

Mr. Eisner responded that they bought this house with a failed system and the house needs substantial renovations. Tara explained that while this board can't require it, the board is beginning to ask if installing an enhanced system is possible. It was noted that the new system will be further away from the resource area than the failed cesspools.

John asked about a PVC pipe that is running to daylight from the house. Mr. Eisner explained that this is a drain pipe from the outside shower. When renovations are done on the house, this will be fixed.

Peter asked about the costs of an enhanced system. Cody said he couldn't provide exact figures, but there is an increase in construction cost. Enhanced systems require an annual maintenance contract and there is increased electricity costs associated with these systems.

Michael asked about the cleared area between wetland flags 2 and 3. Maria replied that typically the board will require that any mowing into a BVW be stopped.

Tara said that based on information received today, the Board of Health will be re-reviewing this plan at their August 8 meeting.

Cody clarified that this is not an expansion; it is an upgrade. Maria reminded that the concern of the Conservation Commission is impacts to resource areas during construction, not the number of bedrooms that are allowed on a property per zoning.

#### Public Comment:

Prudy Burt spoke on behalf of her family who are abutters to this property. At her request, the Building Inspector and Board of Health are looking at the status of what is called a studio in the building department permit to determine the required amount of upland area required per bedroom. In her opinion it is not necessarily a bedroom. She described the structure as being uninsulated and unfinished. It sits on

piers and is not a year round dwelling. To her knowledge it was seasonally occupied by the owner for 2 months each year. Her family never questioned the use of the structure because it had a composting toilet that didn't add to the septic use of the property. The Board of Health regulations requires 10,000 square feet of upland per bedroom. She calculated that if the land designated as wetlands is taken out of the equation, the lot is about three-quarters of an acre. Her family is concerned that it will be converted into fifth bedroom with year round use increasing the use of the septic system.

Mrs. Eisner responded to Prudy's statement that the last two summers the bunk house/studio was rented for 2 months. It is not a legal guest house but there is kitchen sink. Tara said the matter of legal use of this structure is up to the Board of Health and the Building Inspector.

Mr. Eisner acknowledged that the "bunk house" was originally permitted as a studio. The bunk house, as he called it, is 270 square feet. They plan to renovate it but they will not be expanding it. They are not changing the use of the structure. According to Assessor's records dating back to the 1981 there was a kitchen with stove and outdoor shower.

Currently the bunkhouse gets water from a garden hose from the main house above grade. Mr. Eisner said they have no plans to change the use of the bunkhouse. They plan to use it for 6 months of the year. They are not changing the foundation post and pier foundation.

A motion was made and seconded to continue the public hearing on this Notice of Intent to August 13 at 5:40 PM. All in favor.

#### **New Business:**

**Map 6 Lot 2/ Rattner-Sheriff's Meadow Foundation/ Amendment to Conservation Restriction (CR): Adam Moore was before the board** to ask them to sign a municipal certification for an amended and restated conservation restriction.

Sheriff's Meadow Foundation holds 42 Conservation Restrictions protecting approximately 850 acres island wide. Most of the CR's in West Tisbury are in the Cedar Tree Neck area. The original CR covers 3.85 acres. The amendment will increase the CR holding to 8.45 acres. The owner proposes to remove 1.7 acres of upland and replace it with a combination of upland and wetland.

Members reviewed a map showing the existing and proposed layout of the parcels. The underlying reason for this request is that the property owner would like to relocate his tennis court.

Adam told the board that this amendment has been in the works for 15 years.

Adam explained that the Executive Office of Energy and Environmental Affairs (EOEEA) require that more land be set aside in conservation. An appraisal was done that shows that the land being swapped is worth more than the acreage being removed. The EOEEA is in the process of doing its final legal review.

The Town is a party to this CR in that the Board of Selectmen signs the document. While a municipal certification form is not required, Adam prepared one for the board to sign. It states that the public benefits include the following:

- Protects 8.45 acres of "Critical Natural Landscape" containing "Landscape Blocks" as defined by the Massachusetts Natural Heritage and Endangered Species Program.
- Protection 5.31 acres of "Core Habitat" for "Species of Conservation Concern as shown on Bio Map 2 and included in the State Wildlife Action Plan

- Protects the scenic and natural character of the abutting Cedar Tree Neck Sanctuary and the J. Percy Moore, Kathleen Carter Moore and Marion Hamilton Carter Nature Preserve owned by Sheriff's Meadow Foundation
- Protects a Native American burial Ground
- Expands the amount of protected land from 3.58 acres to 8.45 acres.

Tara asked if the burial ground was already protected. It was. She also asked if the area being added to the CR could have been developed. Adam replied that the upland area could have been developed or sold off to an abutter to be developed.

John asked why it took 15 years. Maria explained that the Ratner's filed a Notice of Intent to relocate the tennis court in the 1.7 acre section of the original CR. Apparently Mr. Rattner did not recall that there was a CR on the proposed location of the tennis court. The NOI was withdrawn. The other issue for the Conservation Commission was that the driveway to the new tennis court was located within 20 feet of the wetland.

Tara said she was concerned that this is the second time recently that a request has been made to amend a CR, setting another precedent of making changes to a CR.

Whit commented on the fact that newly protected piece, does not, in fact, abut Cedar Tree Neck as stated as one of the benefits.

Maria explained the role of the CC in this process. The parties to the CR are not required to obtain a sign off on a Conservation Restriction (or an amendment) from this board. It is at the applicant's discretion to ask for the Commissions involvement, however; EOEEA recommends that the applicant obtain approval of the CR to demonstrate the public benefit.

Geraldine asked if the vote could be postponed to have an opportunity to read the amended and restated CR.

John asked if the board could see the appraisal. Adam said he would need the permission of the property owner to share relevant sections of the appraisal. Maria asked if the baseline report which is a public record would have the information John is looking for. Adam didn't think so.

Public Comment:

Prudy Burt asked what the public benefit is and how much is wetland resource area. Tara reviewed as stated above.

This matter was tabled to the August 13 meeting in order to allow members to read the CR and for Adam to submit some information on the value of the land being swapped.

**Fertilizer Bylaw: Morgan Berman and Jessie McIssac** are both seniors at Tufts University and are working this summer as internes with the Ocean River Institute in Cambridge, MA. They are working on a project to encourage municipalities to adopt a bylaw prohibiting the use of lawn fertilizers. They described a bylaw adopted by the Town of Falmouth in 2012 that prohibits the use of quick-release fertilizer and only allows a half pound of slow-release fertilizer for every 1,000 square feet of lawn in spring and fall.

They reviewed the current West Tisbury Board of Health Regulations Article 43 Section 5.1.5 that requires at least 50% slow release fertilizers. They would like to see this amended to require 100% slow

release fertilizers. Jessie mentioned that she has spoken with Michael Loberg who spearheaded the Vineyard fertilizer regulations and that he is in support of tightening the fertilizer regulations.

Morgan referenced the UMASS Extension Turf Program an organization that deals with turf health allows up to 5 lbs. of quick release fertilizers per 1,000 square feet based on the science they are using. The island wide fertilizers regulations allow up to 3 lbs. of at least 50% slow release fertilizer per 1,000 square feet. They are proposing that this be reduced to a one half pound of 100 % slow release rather than quick release which is water soluble and turns into runoff and isn't taken up by the grass. Basing recommendations on a case study of a fish kill in Falmouth in 2012 in Little Pond the Falmouth Conservation Commission spearheaded a town bylaw that prohibits the use of quick release fertilizer and caps the use of fertilizer to a half pound of slow release per 1,000 applied in the spring and fall.

Jessie said she has talked to Omar Johnson, the Board of Health Agent, but he cannot endorse anything.

Prudy Burt commented that there is a gap between the town fertilizer regulations that allows fertilizers within the first 25 feet of a resource area.

It was noted that watershed based regulations will reach more properties than bylaws or regulations created by the CC whose jurisdiction is limited.

The students asked for suggestions on outreach.

Michael suggested approaching the local nurseries about the types of fertilizers that they sell and use. Joan Malkin said when they worked on island-wide regulations they talked to nursery owners. The response was that they are not illegal. She said they would be getting further if they could get the Board of Health to address this issue Jessie and Morgan said they had the same conversation with stores that sell fertilizers.

Members of the audience offered several suggestions for outreach and strongly directed them to the Boards of Health. Board members suggested they reach out to the Vineyard Conservation Society, the local newspapers, landscapers, farmers, and the Brazilian community.

Tara said the board would be willing to write a letter of support. She also suggested talking with the farmers. Jessie replied that because of agricultural exemptions they are not focusing on farming. There was a brief discussion about impacts of fertilizers used by island farmers.

Jessie and Morgan would also like to see the Town ban Round Up and Weed Be Gone. Chris Murphy said that the Commonwealth of Massachusetts has a law that states that towns cannot regulate the use chemicals that are regulated by the state. Chilmark was able to ban the use of Roundup because they filed a home-rule petition.

Jessie will submit a copy of the bylaw they are promoting for members to look at. The board thanked Jessie and Morgan for coming in and wished them good luck on their internship. No action was taken.

**Land Bank:** Peter reported that the Land Bank is working to strengthen the boat storage regulations at Sepiessa. They are considering regulations that would prohibit allow overnight boat storage.

## **Old Business**

**Tisbury Great Pond/subcommittee:** John informed the Board that he and Whit will meet with Emily Reddington of the Great Ponds Foundation on August 8 and with the Tisbury Great Pond Riparian

Owners at their annual meeting on August 10. Working on coordinating and sharing information on an informal basis rather than setting up a formal committee. No action was taken.

**Letter to Board of Health:** John suggested the Board send a letter to the Board of Health asking them to require enhanced septic systems for new and failed septic systems within 200 feet of a coastal pond. On October 26, 2017 Tara met with the Board of Health and provided them with samples of Board of Health Regulations from Chilmark and Oak Bluffs in an effort to encourage the Board of Health to adopt similar regulations. No action will be taken until the summer season is over.

There being no further business to conduct, the meeting adjourned at 7: 10 P.M.

Respectfully submitted,

Maria McFarland  
Board Administrator  
APPROVED