

WEST TISBURY
CONSERVATION COMMISSION
MINUTES OF MEETING
October 11, 2022

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, Geraldine Brooks, Whit Griswold, Angela Luckey, Donna Paulnock, Peter Rodegast, and Michael Turnell

Also present for all or part of the meeting: Katharine Barnes, Justin Ford, Jefferey Horenstein, Dylan Sanders, Reid Silva, and Chris Wike

Whit called the meeting to order at 5:02 PM.

Minutes: The minutes of the September 13, 2022 meeting were approved as revised. Roll Call Vote: Angela-aye, Donna-aye, Fred – aye, Geraldine – aye, Michael-aye, Peter- aye, and Whit-aye.

Public Meeting:

Map 6 Lot 2/ 145 Obed Daggett Road: a public meeting under the requirements of G.L. Ch.131 § 40, as amended, and West Tisbury Wetlands Protection Bylaw and regulations, to consider a **Request for Determination of Applicability** filed by Vineyard Land Surveying & Engineering., on behalf of Michael Minars, Trustee of the Songwind Nominee Trust for confirmation of the resource delineation of an intermittent drainage way.

Reid reviewed the plan entitled, "Wetland Resource Plan West Tisbury, Mass. Prepared for Songwind Nominee Trust", dated August 23, 2022 the stream in question is identified as an "intermittent drainage-way".

The USGS map for this location was not submitted in with the filing so Reid was asked to put it up on the screen so the meeting could see that the stream is shown as a solid blue line designating it as perennial. Reid explained that per the state regulations (310 CMR 10.58 (2)a(1) a the stream is presumed to be perennial if shown on the most recent United State Geological Survey (USGS) map. Notwithstanding this presumption, the regulations further provide that the Commission shall find that any stream is intermittent based on a documented field observation that the stream is not flowing.

As defined in the regulations, a documented field observation consists of observations made at least once per day, over four days in any consecutive 12-month period, during a non-drought period on a stream not significantly affect by drawdown from withdrawal of water supply, wells, direct withdrawal, impoundment or other human-made flow reductions of diversions.

In accordance with 310 CMR 10.58 (2)(a)1d, Vineyard Land Surveying submitted a report dated September 12, 2014 detailing observations conducted on August 27, 28, 29, and 30, 2014. A second report titled Drainage Basin Analysis of an unnamed watercourse prepared by Cooper Environmental Services LLC dated September 26, 2018 was included in the filing. The Cooper report lists observation dates of September 9, 26 and October 20, 2018; one day short of the required 4 days. The report does not include a map or any photographs. The report references calculations using the USGS Streamstats data base but the data was not included in the report. According to 310 CMR 10.58 (2) (a) (1)(c) (ii), the USGS Stream Stats method cannot be used because the stream does not have a mapped and digitized centerline). Reid said that the Cooper report was only back-up information and didn't think the absence of the data was an issue.

Reid said neither observation periods were done at a time when drought conditions were present.

Neither report included the required statement signed under the penalties of perjury attesting to the authenticity and veracity of the field notes, photographs and other credible evidence. (Vineyard Land Surveying submitted a statement the day after this meeting. None was submitted from Cooper Environmental Services.)

At the site visit on October 6 the Commissioners present observed that the stream was running where it flows out onto the beach. The Commission was unable to walk the length of the stream as it is on the abutting property.

Commissioners Comments/ Questions:

Angela asked about the size of the watershed. Reid explained how they determine the size of a watershed. He said that the Cooper report shows the watershed basin is 0.24 acres.

Peter said he would like to see another round of observation since the board is being asked to go against what the USGS map shows.

Geraldine pointed out that it was flowing on October 6 even though we are in a declared drought. Reid responded that the stream was flowing because there is a small basin and it had been raining.

When asked the reason for the filing to have the stream declared intermittent given that no proposed work is shown on the site plan, the applicant's representative said that the property owner would like to construct a guest house on their property that would be within the Riverfront Area if the stream is determined to be perennial.

Reid said the regulations allow the board to determine if the observations and report were done by a competent source. Peter said that Vineyard Land Surveying is a competent source but would like to see current data.

Attorney Sanders, counsel for the applicant said that while it is always good to have more data, Reid is correct that the only thing the Commission needs to weigh is whether Reid is a credible source and that he has documented 4 days of no flow in a consecutive 12-month period. In his opinion, Reid has met the standard.

There was then a discussion about when a new round of observations could be done. Geraldine pointed out that it can't be done during drought conditions.

Reid reiterated that there is no limitation as to when the observations are done as long as it is any 4 days within a consecutive 12-month period. If the board considers VLS to be a credible source, and they don't disagree with the data presented, it does not matter how old the data is. If the evidence provided isn't adequate then process would have to be redone.

Fred stated that he was not comfortable relying on one set of observations.

Maria pointed out that the required statement signed under the pains and penalties of perjury was not submitted for either VLS or Cooper Environmental.

Whit said the Commission is not questioning Reid's credibility; only that the data is old.

Angela said she would be more comfortable if the sampling was redone. She told the meeting that she looked at the rainfall data for 2014 and found that rainfall was less than average even though there wasn't a declared drought. Rainfall in August 2014 was 1.54" compared to an average of 3.98". Maria added that in October 2014 there was a drought advisory.

The board asked the applicant to redo the sampling which would require continuing the public meeting to a date and time certain. Because of the declared drought, this cannot be done until conditions return to normal.

Reid said there isn't a reason to continue the meeting unless there is data the Commission thinks is missing. Reid said there is no doubt that this stream flows 9-10 months a year but according to the regulations, if it doesn't flow during the 4 days of the observation that it is not perennial.

In Reid's opinion the only missing data is his sworn statement.

The decision in front of the board is whether to accept the report submitted and “confirm” that based on this report the stream is intermittent or to not confirm the status as intermittent. Reid said he could submit the missing affidavit and calculations for the Cooper report, but beyond that, the 4 days of observation can not be done this year.

Geraldine, Fred and Whit all commented that because of changes in climate, natural conditions and building that has taken place, 8-year-old data isn't credible.

Justin Ford, architect for the applicant, asked if there is a statute of limitations on the age of the data submitted. Maria answered that she confirmed that with DEP that there is none.

Peter asked if it is a hardship for the applicant to wait until the process can be redone. Mr. Ford said there would be a financial hardship if the building permit had to be renewed. Angela asked how he was able to get a building permit without an Order of Conditions permit from this board if the stream is currently considered to be a perennial stream. Mr. Ford replied that they sited the structure just outside the 200 ft. Riverfront Area. They would like to move it over about 50 ft closer to the stream. The permitted location isn't optimal. Geraldine did not consider that a hardship. Angela commented that he could have applied to the Commission for a permit for work in the Riverfront Area.

Whit said that the consensus of the members is that they don't think the data is inaccurate only that it is too old to make a decision.

Whit closed the public meeting.

Geraldine made a motion seconded by Fred to issue a Positive Determination of Applicability under section 2B of the determination form which states in part that, the boundaries of the resource areas are not confirmed by this Determination because the Commissioners are not comfortable confirming that the stream is an intermittent drainage way based on data collected in 2014 for the reasons stated above. Roll Call Vote: Angela-aye, Donna-aye, Fred – aye, Geraldine – aye, Michael-aye, Peter- aye, and Whit-aye.

Public Hearing:

Map 7 Lot 108/87 Longview Road: a public hearing under the requirements of the West Tisbury Wetlands Protection Bylaw and regulations to consider a **Notice of Intent** filed by South Mountain Company, Inc., for a project to construct a single-family dwelling, garage with detached bedroom, septic system and driveway and to perform associated site work within 70 feet of an isolated wetland on a sloping 1.6 acre pre-existing non-conforming lot. The project location is owned by Caroline Flanders, Trustee of the Second Street Trust.

Chris Wike of South Mountain Company presented the project. The northwest corner of the house extends into the buffer zone 5-10 ft. Chris would like to establish a limit of work 20 feet off this corner because the grade is quite steep at that corner. He wants to be able to maneuver and excavate around the corner safely.

Chris said he planned to use an enhanced siltation barrier like the one South Mountain used on another project on Longview Road. Maria asked Chris to submit the specifications on this product.

Commissioners Comments/ Questions:

Geraldine asked if the 25ft side yard setback could be reduced or if the house could be shifted. Chris said he couldn't reduce the 25 ft side line setback because the lot is already non-conforming.

Michael asked Chris if he could articulate the house differently. Chris explained that he is trying to keep a southern exposure and that there might not be enough room if he rotated the building. He is also trying to stay out of the sight line of the abutting house. Michael then asked if he will need to build a stone retaining wall. Chris said he did not think so. If a retaining wall is needed it would be on the south side.

Geraldine asked about restoration of the 20ft construction zone and if a landscape plan will be submitted. Chris will do plantings but doesn't have a landscape plan yet. Geraldine also asked what kind of extra siltation barriers will be

used given the steepness of the slope. Chris described a mat made of woven jute fiber backed by a polypropylene silt fence. He said he installed this system at a project on Sumner Circle a year ago that has held up very well.

Peter also commented on the steep slope and amount of grade change. He asked how much of a grade change is proposed. Chris said he is trying to keep the natural grade. Peter expressed concern that the final grade may be steeper and harder to contain than Chris might realize.

Geraldine then asked about the condition of the wetland and if there are any native plant species. Chris explained that Reid provided a letter saying it is the result of road construction. Doug Cooper determined that there is no outlet, and is isolated based on observations. He did not submit any field notes so there is no information on plant species. Maria noted that the slope is well vegetated.

Chris confirmed that the amount of brush cutting is not more than 10 feet off the foundation but that he wants a 20 ft construction zone so that the limit of work line fencing doesn't get damaged. Maria noted that getting the fencing woven within the trees and brush could be more disruption than is necessary. Michael noted that if the siltation barrier is 20 feet away, the runoff will not be stopped until it gets to the fencing so it needs to be closer to the work.

Trees that could be a hazard to the house will be flush cut. Chris would like to save a specimen beech tree that will be very close to the house but it might not be possible.

Michael asked if the leach field could be shifted to move it away from the edge of the buffer zone. Chris said he could revise the plan to make that happen. Peter said the Board of Health often accepts a slight shift of location as long as the leach field is still within the area of the test pit. The change would be shown on the as built septic plan.

Maria noted that DEP has not issued a file number letter for this application. Apparently, there was a snafu with the online filing Chris did. A file number is forthcoming. It is the board's policy not to close the public hearing without the DEP file number letter. Maria said that while Chris filed the Notice of Intent with DEP this isolated wetland is not protected under the state regulations, only the local bylaw and she thought it would be fine for the board to close the public hearing.

There being no public comment, the public hearing was closed. A motion was made by Peter, seconded by Michael to approve the project as revised during this discussion with the conditions that the limit of work line be moved to within 10 ft. of the foundation, enhanced siltation barriers be installed, soils stockpiled on the uphill side of the excavation for the foundation or removed from the site, and to the extent possible, slide the leach field to the south away from the edge of the buffer zone. A revised project plan dated today will be submitted. Roll Call Vote: Angela-aye, Fred-aye, Donna-aye, Geraldine-aye, Michael-aye, and Whit -aye.

New Business:

Map 23 Lot 10 /301 North Road/ Informal Discussion with Jefferey Horenstein and Katharine Barnes:

Whit explained that the Board was made aware of some paths that had been cut on the north side of Mill Brook. Whit, Geraldine, Donna and Maria met with the property owners on October 6 to walk the paths and view the cleared areas.

Prior to this meeting, Mr. Horenstein submitted photographs and site plans showing the stream, bordering vegetated wetlands, an isolated wetland and the regulatory setbacks to these resource areas. Mr. Horenstein told the board he and Katharine purchased the property in 2021. Since then they have rebuilt the stone walls that had been dismantled, cleaned up an old dumping area, and restored existing paths including a section of an ancient way. He recounted the history behind the removal of sections of the stone walls and the past violations of the Wetland Protection Act by the previous owner. Based on aerials from the 1930s the stone wall within the buffer zone pre-date wetlands regulations.

Maria pointed out where one path runs through a bordering vegetated wetland and one path that come close to an isolated wetland that may be a vernal pool.

The creation and maintenance of existing unpaved pedestrian paths are exempt under the state wetlands regulations but only maintenance of same is exempt under the local bylaw.

Fred said it was great that the ancient way is being maintained. Peter said he didn't have an issue with the paths and stone wall maintenance. He would like to see the small section of path through the wetland rerouted. Otherwise, he didn't see any problems. Michael agreed with relocating the section of path through the wetland. Whit said the land is flat and there isn't any threat of runoff.

Mr. Horenstein suggested that they would be doing more damage by cutting a new path rather continuing to maintain an existing path. Whit agreed. Maria suggested that the two areas simply be abandoned.

The consensus was that there is no violation. A letter will be sent to Mr. Horenstein that he may continue to maintain the paths provided no heavy equipment is used and the paths are not widened.

Old Business:

Bylaw revisions view channel edits review: tabled to a future meeting

Blackwater Brook Farm/ Runamuck Farm and Leonard-Peck Farm: No update.

Administrative:

Geraldine and Peter left the meeting.

Map 32 Lots 105, 105.1, 122 and 131/ 1005 State Road/ Parsonage Pond/SE79-269/Hydro-rake project: A motion was made by Michael, seconded by Fred to approve the issuance of a Certificate of Compliance for this project. Roll Call Vote: Angela-aye, Donna-aye, Fred – aye, Michael-aye, and Whit-aye.

Map 35 Lot 1.2/ 122 Pond View Farm Road/ SE79-413/Certificate of Compliance/ Dock: A motion was made by Michael, seconded by Donna to approve the issuance of a Certificate of Compliance for this project. Roll Call Vote: Angela-aye, Donna-aye, Fred – aye, Michael-aye, and Whit-aye.

There being no new business to discuss, the meeting adjourned at 7:17 PM.

Respectfully Submitted,

Maria McFarland
Board Administrator
APPROVED
NOVEMBER 22, 2022