

WEST TISBURY  
CONSERVATION COMMISSION  
MINUTES OF MEETING  
October 8, 2019

**Present:** Brian Beall, Geraldine Brooks, Whit Griswold, Donna Paulnock, Peter Rodegast, and Michael Turnell

**Absent:** John Brannen, Binnie Ravitch and Tara Whiting-Wells

**Staff Present:** Maria McFarland

**Also present for all or part of the meeting:** Kristen Geagan, James Moffatt, Reid Silva, and Scott Stearns

The meeting was called to order at 5:00 P.M. Whit Griswold, Vice- Chair presiding.

**Minutes:** The minutes of the September 24 meeting were approved as written. Peter abstained.

**Public Meeting:**

**Maps 38 Lots 1 and 1.2, and Map 39 Lot 14:** a public meeting under the requirements of the West Tisbury Wetlands Protection Bylaw and regulations to consider a **Request for Determination of Applicability** filed by Schofield, Barbini & Hoehn, Inc. on behalf of Shampoo Beach for a project to install public utilities within an existing dirt road that runs through 250, 280, and 350 Big Homer's Pond Road.

Scott Stearns represented the applicant. A trench will be dug down the center of the road. The closest point from the road to the wetland is 75 feet. Members reviewed the Eversource Plan.

The project is exempt under 310 CMR 10.02 10.02 (2) (b) 2 I, but it is not exempt under the Bylaw. Mike suggested that the applicant stockpile the excavated material in the driveway on the side of the driveway away from the wetland. A motion was made to issue a Negative Determination provided that the excavated material from the trench for the utilities will be place on the upland side of the road and the trench shall be closed within 48 hours. All in favor.

**Public Hearing:**

**Map 38 Lots 7.7 and 7.8/Sarita Walker Road/ SE 9-406:** 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 Michael R. and Christine Walsdorf for a project located at Sarita Walker 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 all of which are located outside the Buffer Zone. Work within the Buffer Zone consists of site regrading, re-establishment of meadow lands, installation of a wood post and wire fence and construction of a stone retaining wall. Permission is also requested to brush cut two paths through the Buffer Zone and Bordering Vegetated Wetland to Watcha Pond. The DEP comment letter was noted for the record. It states that mitigation is required for the alteration of Bordering Vegetated Wetland (BVW), and that a new review is required under MESA.

Reid Silva of Vineyard Land Surveying and James Moffatt, the architect for the owner, represented the applicant. Reid submitted a letter requesting a waiver from the requirements of the Bylaw for work in the No-Disturbance Zone.

The work being proposed in the Buffer Zone has three parts:

- Two 4 foot wide paths in the Buffer Zone and BVW
- Grading on the wetland side of the house and guest house and construction of a retaining wall near the main house as shown on the project plan.
- Post and wire pool fence within the Outer Buffer Zone.

Reid said the grading is minimal; approximately 6 to 12 inches at most to smooth out the contours. They are effectively trying to level the areas in front of the main house and guest house on the water side. The grading is part of the landscape plan which was not submitted.

The project is designed as though it is one lot. The main house is located on lot 7.8 (lot 2D on the NHESP plan) and the guest house, garage and pool are located on lot 7.7 (Lot 2C on the NHESP plan.) The septic system, which is not located within the Commission's jurisdiction, will service both parcels. In the event one lot is sold a second system would have to be installed.

The applicant is asking for two paths, one on each lot in the event one lot is sold and the other retained in the future. In 2016, the paths were shown were approved by NHESP (Reid did not have this plan available.). As currently designed, the amount of disturbance within the BVW for two paths would trigger the provisions of 310 CMR 10.55 (4) b that requires mitigation for alteration of more than 5,000 square feet of BVW. Under this same regulation the board may approved up to 500 feet of alternation in the BVW without replication. Reid did not provide the square footage to be altered.

Reid said he not think it makes sense to have to do replication for two paths. He asked the board if they would be receptive to two paths if they reduce the width to less than 30 inches to stay under the 500 foot threshold for BVW disturbance without replication.

Typically, the board only approves one path through a resource area to a pond. It was also noted that the paths are within land subject to coastal storm flowage. The pool is very close to the Flood Zone AE elevation 11.

The meadow will be reestablished. The only areas that will be rotovated will be the area being regraded.

Reid explained that the pool fence location was probably dictated by the landscape plan presumably because there is so much area and the property owner doesn't want to have the fence right on top of the pool. He claimed that the location as not being a barrier to wildlife.

With respect to the comment letter from NHESP, there is a 2016 approval letter for two 10 foot wide paths with a 40"x20' hammerhead at the end in the Buffer Zone and resource areas. The revised plan showing the new path locations and the structures has been submitted to NHESP but the comment letter has not been received. The path on the south end of lot 7.8 is in the same place on both plans and the northern one straddles the lot line.

Reid confirmed that they are revising the project proposal to be for 2 30 inch paths.

A waiver request was submitted for work in the No-Disturbance Zone.

Commissioner's Comments/Questions:

Generally, members objected to the amount of grading being proposed in the Buffer Zone.

Geraldine asked if the house could be pulled back so that no grading is required in the Buffer Zone. Reid said they could but the whole area is going to be disturbed. It is meadow now and will be meadow after

the project is completed. Geraldine commented that the area around the house is likely to be lawn that will be irrigated and fertilized.

Michael said he sees no reason why the house and pool can't be shifted to stay out of the Buffer Zone and the grading eliminated. The pool fencing does not need to extend so far into the Buffer Zone.

Peter said he is ok with the two paths if they are reduced in size. He noted that there does not seem to be a need for the intrusion into the Buffer Zone for the grading. It is not an erosion issue but more a cosmetic issue. Reid responded that need is a relative term; the applicant would like to do it.

Maria noted that the whole lot was recently mowed up to the wetland edge with the vegetation in the building locations left a little higher. Reid said the edge of clearing as shown on the plan matches the site conditions after the recent mowing. Maria asked that the landscaping plan be submitted.

A pool fence would not be required if there was going to be an automatic cover on the pool. James said they can't have an automatic cover because the pool is a trapezoid. The architect was asked if the pool shape could be changed.

Peter summarized by saying there is some resistance from the board members regarding the paths, the amount of grading and pool fencing. He suggested that Reid and James go back to their client to see if they can get the owner to pull the structures back. The board usually requires a 25 foot no cut zone along the wetland edge in accordance with the Bylaw provisions covering work in the Buffer Zone.

Donna noted that the smaller of the two paths has a lot of invasive species and might be good to clear that area.

Reid offered that 5 years ago the board approved a pool at the edge of the Buffer Zone at the Tree's property that caused much more disturbance than is proposed. The response was that every project is different and that this is a different board.

A motion was made and seconded to continue this public hearing to October 22 at 6: 15 PM. All in favor.

Geraldine and Peter left the meeting at this time.

#### **Old Business:**

**Map 39 Lot 7, 9, 10 and 11/ SE79 344 and 354:** Maria updated the board on site conditions at 208 and 234 Middle Point Road. She met with Seth Wilkinson on site on October 3. The restoration work for 208 is nearly complete after two full growing seasons. There are a few areas that will take another season but overall, the vegetation has taken hold. The driveway relocation is completed. Huckleberry mat was successfully transplanted from another Eden property in the location of the original driveway and the driveway area immediately adjacent to the bank is in better shape but still subject to run off. The driveway between 208 and 234 Middle Point Road is now a path and will be used for equipment access for beach nourishment at 234 Middle Point Road.

The triggers for nourishment established by NHESP are different for each of the properties except that nourishment is permitted at any time when erosion is caused by a particular storm event in consultation with NHESP. Seth Wilkinson is planning to ask the NHESP if they will agree to revise their monitoring conditions to be the same for both properties. Seth will submit a proposal to the board after he talks with NHESP and before requesting Certificates of Compliance. No action was taken.

## **Map 6 Lot 2: Rattner-Sheriff's Meadow Foundation/Amendment to Conservation Restriction**

Kristen Geagan, Director of Stewardship for Sheriff's Meadow Foundation was present to update the board.

The State has approved the amended and restated CR. After the last meeting with this board Adam talked with Steve Rattner. Kristen presented a proposal by Mr. Rattner to put a deed restriction on the 1.7 acres being taken out of the CR and the adjacent upland (totaling 2.3 acres) that would restrict any structures except a tennis court and shed. The deed restriction would be in addition to the additional land being covered by the amended CR. It was noted that there is no application before the board for a tennis court at this location so it is hard to say where exactly a tennis court might go and whether it would be approved or not. The board questioned how the deed restriction works if accessory structures are allowed.

The board's primary objection to the CR continues to be the precedent of approving amendments. Kristen responded to that objection by informing that board that the Town has amended the CR for Nat's Farm and the Peter Goethals's CR on the Strecker/ Sutula properties both held by Sheriff's Meadow. She added that while the Conservation Commission doesn't have to sign off on the CR, Sheriff's Meadow Foundation would like the board to be happy with it. She also commented that Sheriff's Meadow holds a CR where a tennis court is allowed within the protected area. It was decided to table this discussion to the November 12 meeting. No action was taken.

## **Map 39 Lot 2.1/ SE79-392: 147 Middle Point Road/ Approval of View channel**

Under special condition 8 of the Order of Conditions, the width and location of the proposed view channels shown on the View Channel Plan were not approved at the time the project was approved. No trees were allowed to be cut or pruned within the view channels until the house is framed and windows and doors are in their final location. An as-built foundation plan, signed and stamped by a RPE or Land Surveyor, showing the location of the new foundation for the addition to the main house and the guest house, together with the actual distances from all wetland resource and Buffer Zone boundaries was required to be submitted to the Commission. Once done, the Applicant can submit a proposed landscaping plan showing the view channels, the number, and species of trees to be pruned or cut down, and any other landscaping work within the Buffer Zone. The approval of the view channels and the waiver request will be determined at that time and set forth in an amendment to this Order of Conditions.

A site visit was conducted on October 3. Greg Milne presented the landscape plan prepared by Richard Johnson Landscape Architect dated 9-04-19.

Work in the southern view channel consists of the following:

0-25' zone: remove of two trees in the first 25 feet and limb 7 trees  
25-50' zone: remove 3 oaks and limb 2 trees  
50'-100' remove 13 oaks, limb 2 trees  
All of the Buffer Zone: Prune shrubs to 4-5 feet in height.

Work in the northern view channel consists of the following:

0- 25' Zone – remove 4 oaks and limb 4 trees  
25-50' Zone -remove 2 Oaks and limb 2 trees  
All of the Buffer Zone Prune shrubs to 4-5 ft. in height.

It was noted that several of the trees to be removed are dead or diseased.

Michael said that sweet pepper bush grows taller than the huckleberry. Greg confirmed that they are asking to prune and maintain all vegetation in the Buffer Zone to a height for 4-5 feet.

A motion was made and seconded to approve the landscaping plan subject to the following conditions:

- No pruning is allowed within the wetland.
- No vegetation that is less than 5 feet in height shall be pruned at any time and no pruning is approved within the first 25 feet of the Buffer Zone.
- Pruning will be done by hand so that the vegetation unguates.
- Trees will be flush cut and removed or left in place. The work will be done by hand. No heavy equipment is allowed to be used.
- No brush cutting of the understory is permitted.

Maintenance of vegetation pruning shall be permitted every two years upon written notice to the Commission. All in favor.

**Water Quality Planning Meeting/update:** Whit, Donna, and Maria attended the meeting led by Adam Turner of the MVC. Donna updated the board. Adam asked the attendees for suggestions on how to use the money that DEP has committed to designing a plan for the up island towns. Donna observed that while Adam was looking for concrete steps that could be taken, certain people spoke about issue close to the heart and continued to reiterate those concerns throughout the meeting. Kent Healy said that the groundwater needs to be tested. He and several others questioned whether septic systems are the source of nitrogen in the pond to the extent that the Mass Estuary Project report says it is.

Two suggestions were made; installation of shallow or deep monitoring wells to test the groundwater and an inventory of septic systems around the pond particularly around the coves that are known have water quality issues. Another meeting will be held in a couple of weeks.

**Administrative:**

**Site Visit Day:** Members agreed to change the standing site visit day to the first and third Wednesday of each month.

- **Correspondence:**
  - In:** Notice of Intent applications: 209 Obed Daggett Road and 60 Indian Hill Road  
Request for an amendment: SE79-396/ 371 Indian Hill Road
  - Out:** Map 1 Lots 26, 28 and 29/SE370: Extension Permit  
Letter dated September 29, 2019 to Chilmark TA, CC, and Shellfish re: Ponds Committee

There being no further business to conduct, the meeting adjourned at 6:30 P.M.

Respectfully submitted,

Maria McFarland  
Board Administrator  
APPROVED