

WEST TISBURY
CONSERVATION COMMISSION
MINUTES OF MEETING
December 14, 2021

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

Staff Present: Maria McFarland

Also present for all or part of the meeting: Rob Aryee, Fred Barron, Edmund Cottle, Sean Dougherty, Cheryl Eppel, Doug Finn, Ben Hall, Kris Horiuchi, Janet Johnson, John Previant, Phil Reagan, Barbara Smith, Reid Silva, and Ben and Thorunn Zimmerman

Whit Griswold called the meeting to order at 4:36 P.M.

Minutes:

- The minutes of October 12 were amended to included language stated in the motion but missing from the written minutes approved on November 9. A motion was made and seconded to correct the motion on Map 31 Lot 48 as indicated in the minutes. Roll Call Vote: Angela -aye, Donna-aye, Geraldine – aye, John – aye, Michael-aye, Peter-aye, and Whit – aye.
- The minutes of the November 9 meeting were approved as written. Roll Call Vote: Angela -aye, Donna- aye, Geraldine – aye, John – aye, Michael-aye, Peter-aye, and Whit – aye.
- The minutes of the November 17 meeting were approved as revised. Roll Call Vote:
- The minutes of the October 26 meeting were approved as revised. Roll Call Vote: Angela -aye, Donna- aye, Geraldine – aye, John – aye, Michael-aye, Peter-aye, and Whit – aye.

New Public Hearing:

Map 35 Lot 6.15: a public hearing under the West Tisbury Wetlands Protection Bylaw and regulations to consider a **Notice of Intent** filed by Vineyard Land Surveying & Engineering, Inc. on behalf of Jon McNeill for a project at 160 Plum Bush Point Road, owned by Kathryn R. Ham, Trustee of Sanke Realty Trust. The project consists of the construction of a guest house, pool, pool house and associated landscaping within Estimated Habitat and the Buffer Zone to Land Subject to Coastal Storm Flowage. The Applicant’s representative notified the Commission by email on December 7 that the Applicant wished to withdraw the Notice of Intent. No action was taken.

Continued Public Hearings:

Map 7 Lots 162 and 171/ SE79-424: a public hearing under the requirements of the West Tisbury Wetlands Protection Bylaw and regulations to consider a **Notice of Intent** filed by Douglas Finn, for a project to 1) demolish and reconstruct a single-family dwelling on the existing foundation, 2) construct an accessory deck within the Buffer Zone to a Bordering Vegetated Wetland adjacent to Seth’s Pond, 3) replace an existing plank footbridge over a wetland, and 4) associated site work. The project location is 16 Scotty’s Lane. The entire property is within the Buffer Zone to a Bordering Vegetated Wetland. Noted for the record is a new project plan prepared by Vineyard Land Surveying dated November 1, 2021 and copy of a code violation letter on the deck issued today by the Building Inspector.

This public hearing was continued to tonight to allow the Finns to have the wetlands delineation updated, and to have a surveyed plan prepared showing the deck and distances of all the structures on the property to the edge of the wetland, and to show all existing fencing and retaining walls.

Doug began his presentation by stating that he would like to withdraw his request to replace an unpermitted foot bridge constructed over the wetland. The foot bridge has since been removed. (The initial Notice of Intent did not indicate that the applicant was seeking after the fact approval of the deck and foot bridge.)

At the first hearing, Doug stated that he didn't think he needed a building permit or a permit from the Commission for the deck. He misread Section 10.02 (2)(b)2e of the state regulations which states that decks are an exempt accessory structure; provided they are more than 50 feet from a wetland, and erosion control measures are put in place prior to construction. They are not exempt under the local bylaw. The existing deck is 12' x 22 and sits 33' from the edge of the wetland. Doug submitted an after-the-fact building permit application for the deck in October but nothing happened with the application until today.

The issues before the board are approval of the demolition of the house and reconstruction and whether to grant after-the-fact approval of the existing deck or require it to be removed and new plans submitted for a smaller deck with one set of stairs.

House: There was agreement that the house demolition and reconstruction in the existing footprint is permissible.

Deck: The house predates zoning and the local bylaw. The deck, which was built in 2019, is subject to the local wetlands' bylaw regulations. The discussion focused on whether the deck should be removed and rebuilt or allowed to be altered to bring it up to code. The posts for the deck are not pressure treated wood but the rest of the deck is. Usually, the board would not allow any pressure treated wood to be used. The board was not in favor of giving the applicant after the fact approval of the deck. The deck should be removed and a new plan submitted, with a smaller footprint to pull it as far back from the wetland as practicable.

Construction Drawings Doug said the wait time for plans is at least 18 months. A condition could be written into the permit to require construction and/or architectural drawing to be submitted to the Commission for approval before a building permit is issued.

Geraldine said she is very uneasy about approving the aspects of this project that were done without review and approval. The deck is not up to code and is probably larger than the commission would have approved had it been brought to the board before construction.

John agreed with concerns expressed by the abutters that a lot of unpermitted work has happened on this property that the owners are now seeking forgiveness for.

Whit summarized that with respect to the deck, the board probably would not have approved the size of the deck and is not comfortable approving it retroactively given the number of code violations.

While the abutters were not happy about the fencing, the fencing would have been approved as it does not present a barrier to wildlife and is not pressure treated wood.

Public Comment:

Ben Zimmerman said that a lot of what is on the plan has been put up in the last 4 years. He thought the abutters should be able to see the architectural plans for the house before it is approved. Maria explained that as long as the house is being rebuilt in the exact footprint, the Commission doesn't have authority to review the height, style or materials being used. Ben noted that the newest split rail fence was put in just a few weeks ago.

Barbara Smith said they are concerned with the unpermitted activity that has happened including the decks that were added to the existing sheds. At the site visit Becky Finn said the decking was put up to help stop erosion that was happening. According to the abutters the sheds have been renovated and converted to habitable dwellings. If that is the case, the building inspector should be made aware.

John Previant spoke to his concerns with the process of approving a deck with so many code violations and not whether they are allowed to rebuild the house. He mentioned that the sheds have been converted into habitable space. (This is an issue for the building and health departments.)

When Doug did not respond to the discussion, it was realized that he must have lost his internet connection. The board decided to continue the discussion in his absence.

Peter suggested that approval of the house be conditioned on the submittal of construction plans prior to the submittal to the Building Department so that we can review it for things such as the pitch of the roof as it relates to runoff. He also suggested that the applicant submit a new after-the-fact application for the unpermitted decks attached to the sheds that are not part of this application before construction can begin.

The public hearing was closed.

Peter made a motion, seconded by Michael to approve the demolition and reconstruction of the house in the existing footprint subject to conditions. Roll Call Vote: Angela -aye, Donna- aye, Geraldine – aye, John – aye, Peter-aye and Whit – aye. Michael abstained.

Conditions will include: submittal of engineered construction drawing for the new house prior to the issuance of a building permit; roof run off directed into drywells, preconstruction site visit, removal of the unpermitted deck accessory to the house. If the applicant wants a new deck, a new plan shall be submitted to the board for review and approval prior to construction. A new Notice of Intent will not be required. A motion was made and seconded to approve the special conditions. Angela -aye, Donna- aye, Geraldine – aye, John – aye, Michael-aye, Peter-aye and Whit – aye.

Map 43 Lot 1/SE79-427: A 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 Joanne Cheng and Watcha Club LLC for a project to demolish and remove an existing single-family dwelling and to construct a new dwelling, guesthouse, garage, pool and perform associated site work and landscaping within the Buffer Zone to Land Subject to Coastal Storm Flowage (LSCSF) and the Buffer Zone to a Bordering Vegetated Wetland along Watcha Pond. The project location is 100 Watcha Club Road owned by Watcha Club LLC.

Correspondence received: Letter dated December 3, 2021, from NHESP stating that the proposed project will not result in a "Take" of Priority Habitat.

Reid explained the revisions to the project plan. Regrading within the last 25 feet of the buffer zone to the wetland and pool and guest house within the buffer zone to LSCSF.

Members viewed a plan prepared by Kris Horiuchi comparing the setbacks of the structures from the original plan to the revised plan.

The guest house has been moved outside the Buffer Zone to LSCSF. The pool has been moved out of the No Build Zone. . The pool is at elevation 15 (16) and the flood elevation is 11. In Reid's opinion the pool is not at risk.

Phil Reagan stated that the garage has been relocated outside the Buffer Zone to LSCF. The new house has been rotated counter clockwise and moved to the northwest so that the house will be outside the Buffer Zone to the BVW. Currently, the southeast corner of the house is within the Buffer Zone.

The limit of work line takes into consideration the need to regrade the area where the retaining wall is now. The guest house has been moved outside of regulated areas. Relocation of the guest house was dictated by the location of an existing well and overhead utility lines. The guest house has not been designed yet so the view channel has not been set. This will come back to the Commission for review. By altering the location of the house, the mean grade calculation has been altered and will avoid the need to go to the ZBA for height relief in order to avoid groundwater.

Kris said there is less grading work involved now that the house is outside the Buffer Zone with the exception of a small area where the existing terrace is.

Commissioner's Comments//Questions

Peter said it seems like there is less impact and the revised plan is big improvement.

Geraldine asked about plans to replace trees being removed. Kris responded that they haven't done a detailed landscape plan fore guest house area yet. The tree removal is necessitated by the need to get the footprint of the guest house in place. The guest house footprint is outside the Commission's jurisdiction.

John asked if trees and shrubs in the Buffer Zone need to come out for the view channel. Phil replied that that will be determined once the guest house is constructed.

Maria asked the board if they wanted to discuss the width of the clearing toward the pond that narrows to a path. It is shown on the project plan as edge of clearing. Reid asked if this could be resolved when they come back for the view channel. Phil said the cleared area narrows to a path where the grasses are high and where kayaks are stored. The Chengs haven't maintained the narrow path. One 3-4-foot path is usually allowed for access to the pond. It was agreed that the applicant will come back with a new plan showing the view channel and path to the pond.

There being no public comment, the public hearing was closed.

A motion made by John, seconded by Peter to approved the revised project as presented subject to a condition that a new plan be submitted showing the final location of the view channel from the guest house and the path to the pond. Constructions plans will be submitted, pre-construction review Conditions will include: submittal of engineered construction drawing for the new house prior to the issuance of a building permit; roof run off directed into drywells, preconstruction site visit, removal

Roll Call Vote: Angela -aye, Donna- aye, Geraldine – aye, John – aye, Michael -aye and Peter-aye. Whit abstained.

New Business:

Artificial Turf: Geraldine asked the board to send a letter to the Oak Bluffs Board of Health in support of their proposed regulation to ban the use of artificial turf in Oak Bluffs. Angela made a motion, seconded by John to send said letter.

Tour of Polly Hill: Angela told the board that Tim Boland has offered to give the Commission members a tour of Polly Hill with an eye to how to assess the health of trees and best practices for pruning. Maria will arrange this.

Old Business:

Informal meeting with Edmund Cottle, and Janet Johnson: Blackwater Brook Farm
Ed Cottle and Janet Johnson requested a meeting with the Commission to air their complaints about the following issues at Blackwater Brook Farm run by their brother Alan Cottle on land owned by their deceased mother, Elizabeth Cottle. In advance of this meeting, Mr. Cottle submitted a series of photographs.

Ed Cottle listed the following complaints.

- Beach closures due to high bacteria counts
- Fencing that runs through the wetlands to the brook.
- Signage; The farm placed a sign on top of the lumberyard sign without a permit. (The lumberyard sign is permitted.) . Disputes over signs are a matter for the Building Inspector
- Horse burial within 50 feet of Blackwater Brook: Maria explained that both she and the Board of Health did extensive research for regulations that would prohibit it and there are none. The Board of Health Agent has proposed a regulation to his board to adopt a town regulation prohibiting this.
- Bridge placed over the brook between Map 7 Lot 28 and Map 3 Lot 71 (the lumberyard property)
- Green Hay stored in the boat house causing mold growth on the walls and a boat.
- Storage of hay wagons and placement of a shed in the pasture over a leach field on land owned by his mother that he farms. : Hay wagons do not need a permit from the Commission. If there is an issue storing or driving vehicles over a leach field, it is a matter for the Board of Health.
- Farm Stand: The Board of Health should be contacted for a complaint about conditions in the Farm Stand and the Building Inspector if there are questions about permitting.
- Second floor addition and indoor pool in existing structure: A second story addition may not have needed a permit from the Commission because there would not have been a new alteration of land within the Buffer Zone. The Commission has no jurisdiction over the inside of structures.

It was strongly suggested to Ed and Janet that they lodge formal written complaints to the Building Inspector and the Board of the Health for matters within those departments' purview. With respect to the problem of site conditions associated with farming operation; manure piles, proximity of livestock to wetlands, fencing and water quality issues in Blackwater Brook, the Commission will follow up with another letter to Alan Cottle.

Ed said their primary concern is the pollution of the brook. Janice said they have talked to the Building Inspector but haven't gotten anywhere. Maria responded that she spoke to the Building Inspector, who told her that he needs to have a formal written complaint submitted.

Whit said the condition of the pasture is the Commission's concern. He also noted that Alan has pointed out to him several complaints Alan has about the lumberyard. Whit said he understands there is a lot of family conflict. Whit asked Ed and Janet to submit a formal written complaint to the board. Maria

explained the board has sent Alan at least one letter encouraging him to reach out to US Department of Agriculture Natural resource conservation Service for help with instituting best farming management practices. Ed replied that the lumberyard will no longer push snow into the brook and that they have installed a berm and that they are no longer storing materials in the back of the building near the brook.

Geraldine commented that it was the Commission's understanding that Alan was being prohibited from making any changes because the land the farm is on is owned by Betty Cottle. Janet said the estate is still being probated. Geraldine suggested the board send another letter. Maria and Whit will work on drafting a letter to Alan.

Map 31 Lot 48: Approval of Doane restoration plan. Maria updated the board. She and Whit wrote the approval letter which was issued today and sent certified mail or email depending on the type of service requested by the parties involved.

The Commission received a letter from Ben Hall today claiming that the public hearing is still open. Maria explained that it was the intention of the board to close the public hearing but Whit forgot to say the words, "the hearing is closed." The board approved the final restoration plan as discussed and did not need to see it again before issuing approval letter. The final changes were approved on November 29. The narrative only needed to be edited to reflect the final approved plan. Cheryl Eppel said she was pleased that the plan has been approved in spite of the fact that she wishes they could have had a chance to submit another plan. The board thanked her for her comment.

Administrative:

New Member Interview: Members interviewed Fred Barron to replace John Brannen who will resign effective January 15, 2022. A motion was made and seconded to recommend Mr. Barron to the Select Board for appointment to the Commission to fill out the term being vacated by John effective January 15, 2022. Roll Call Vote: Angela -aye, Donna- aye, Geraldine – aye, John – aye, Michael-aye, Peter-aye and Whit – aye.

CPC Committee: A motion was made and seconded to appoint Angela as the Commissions appointee to the CPC. Roll Call Vote: Angela -aye, Donna- aye, Geraldine – aye, John – aye, Michael-aye, Peter-aye and Whit – aye.

FY2023 Budget: A motion was made by Geraldine, seconded by Michael to approve the budget as presented. Roll Call Vote: Angela -aye, Donna- aye, Geraldine – aye, John – aye, Michael-aye, Peter-aye and Whit – aye.

There being no further business discuss, the meeting adjourned at 6:55 PM.

Respectfully Submitted,

Maria McFarland
Board Administrator
APPROVED
JANUARY 11, 2022