

WEST TISBURY
CONSERVATION COMMISSION
MINUTES OF MEETING
March 12, 2019

Present: Geraldine Brooks, Whit Griswold, Peter Rodegast, and Tara Whiting-Wells

Absent: John Brannen, Mike Turnell and Binnie Ravitch

Staff Present: Maria McFarland

Also present for all or part of the meeting: Brian Athearn, Brian Beall, Connor Bettencourt, Prudy Burt, Becky Cournoyer, Alan Healy, Kent Healy, Cynthia Mitchell, Donna Paulnock, Beckie Scotten-Finn, David Steere, and Eunice Youmans

The meeting was called to order at 5:05 P.M. Tara Whiting-Wells, Chairman presiding.

Approval of the minutes of the February 19 meeting was tabled to the next meeting.

Public Hearings:

The board held a public hearing on a proposed water withdrawal bylaw that will be voted on at the April 9, 2019 Annual Town Meeting. The purpose of this hearing was to hear comments and answers questions in advance of town meeting.

Tara explained that the proposed bylaw is based on recommendations set out in the Mill Brook Watershed Study Committee report. The proposed bylaw has been reviewed by Town Counsel and discussed with the Attorney General's office.

Public Comment:

Kent Healy presented a letter to the Board with two comments on the bylaw. The letter states that the bylaw is too general and would be difficult to enforce without clearly defined allowed withdrawal conditions. Permits to withdraw from streams should be given for withdrawals that would have no significant (less than 10%) effect on stream flow rates as measured by the Conservation Commission.

Kent then questioned how the Town could regulate rainfall on private property. He went on to say that he and Bill Austin measure the flow at Priestler's Pond and at the Mill Pond During the watershed study flow in the brook was monitored.

Cynthia Mitchell said that the Board of Selectmen has an article for Community Preservation Act funding for \$80,000 over the next two years to purchase equipment for this purpose.

Tara explained that if the bylaw passes, the Conservation Commission would be charged with promulgating rules and regulations such as determining the threshold for needing a permit.

Brian Athearn asked if this bylaw would supersede the state agricultural regulations. Tara said it would. Beckie Scotten-Finn said she thinks the bylaw is completely restrictive and asked if people would be prohibited from taking a bucket of water from a pond or brook to flush a toilet after a storm knocked out the power. Tara replied that the bylaw is not intended to be that restrictive. The purpose of the bylaw is to get a handle on how much water is being withdrawn for irrigation and other purposes.

Prudy Burt spoke in favor of the bylaw. She stated that the goal of the bylaw is not to prevent people from taking water from a pond or stream, but rather to provide a process by which the Conservation

Commission and the Town can get a better handle on the types of withdrawals that are taking place and at what time of year. The town needs more data on water flow and impacts to water flow. She said she was against putting a flat number on what is considered negligible.

Prudy described landscapers pumping water into tanks for landscaping and fertilizing.

David Steere asked how this would impact farmers with cattle that graze near the brook.

Tara replied that board has worked with farmers in the past and is happy to work with farmers in the future to keep livestock out of the brook. Prudy added that Bill Wilcox of the Dukes Conservation District is available to help farmers find alternative means of watering livestock in order to keep them out of the brook.

Alan Healy asked who knows how much water can be taken out of the brook. Tara acknowledged that no one knows and that is why this bylaw is being proposed.

Alan asked what the permission would be based on. It seems arbitrary to him. Prudy described how she envisions this process working: a farmer would call and explain that they need to pump x number of gallons for a specific period of time at a certain time of year. This will provide data on the demand for water withdrawals. As permits are issued, this data will be compiled to better understand usage and the potential impact of withdrawals.

Alan said Kent has been monitoring flow for years. Cindy responded that we haven't been monitoring the withdrawals.

Brian Athearn said it was premature to propose this bylaw. He wanted to know why the Town hasn't talked to the farmers and worked with them before putting a bylaw in place. He went on to say that requiring farmers to get permission for irrigation is much different than water being withdrawn for commercial purposes such as landscaping.

Geraldine asked if anyone has reached out to farmers to inform them about grant opportunities for funding wells. Prudy and Tara both said there is assistance available from the USDA and the Dukes Conservation District. The Agricultural Society and many farmers are aware of this opportunity.

It was confirmed that existing diversions and pump houses structures would be exempt.

Becky Cournoyer asked if there are concerns about irrigation wells causing saline to be drawn into the aquifer. Prudy replied that according to Bill Wilcox, there is not.

Becky also said that she thinks this bylaw would infringe of private owners water rights.

Peter asked if it was too late to change the wording of the bylaw. It is. Any changes would have to be proposed as an amendment at town meeting.

Becky said she looked at the Town of Lancaster's bylaw. Tara explained that we used Lancaster bylaw as a model.

Whit said he thought that the bylaw needs to be amended to include great ponds as he thinks Seth's is a Great Pond. Prudy said Town Counsel spoke to the Attorney General's office and was told that we have to exclude great ponds. Maria will check to confirm that Seth's and Priester's ponds are not designated Great Ponds by the Commonwealth.

Members discussed who would present the bylaw and be available to answer questions at town meeting. Tara said she would ask Cindy Mitchell if she would present it. Board members agreed that someone from the Commission should present it. After the public hearing was over, Peter suggested that if proposed amendments started to get complicated it might be wise to ask to postpone consideration. No action was taken.

New Business:

Map 3 Lot 9.1/ Maria reported on project for a new house that has been started at 40 Bartimus Luce Road. The site plan initially reviewed by the Building Inspector showed the house set slightly more than 100 feet from a bordering vegetated wetland. Upon further review by the building inspector, it was revealed that this project is within 200 feet of what is shown as a perennial stream on the USGS map. The regulations for determining whether a stream is perennial or intermittent were reviewed in detail. The applicant's representative submitted a letter detailing his field observations. The letter states that based on his field observation (done for one day instead of the required 4 days) the stream is intermittent.

Maria sent this letter to DEP and MACC. Both said that the field work was insufficient and the Streamstats are not reliable for the Vineyard.

At Maria's request the builder installed construction and silt fencing five feet off the 100 foot buffer zone line. A site visit was done. The board reviewed photos of the site. The site has long been a field and there is a stone wall that runs along the edge of the resource area.

A motion made and seconded to ask them to file an after-the-fact Notice of Intent. All in favor.

Old Business:

Map 25 Lot 1.1/MVAS/ APR: In their capacity as co-holder of the Agricultural Preservation Restriction with Vineyard Conservation Society, members reviewed the 2019 event list. Tara detailed her concerns about the "Fresh off the Farm" event.

Peter asked if the abutters have commented on this list. Tara replied that while abutters are not part of determining what is allowed, some of them have attended Selectmen's meetings on this matter.

After discussion, a motion was made and seconded to approve the list but to indicate that the "Fresh off the Farm" event should be treated as an "incidental" event in 2020 as the benefit to the Agricultural Society is minimal. All in favor.

Map 30 Lot 11.1/85 Red Pond Road / Red Pony Farm/ Manure Pile: Tara recapped the Board joint efforts with the Board of Health to get Karen Magid, the former owner of the farm, to improve the management of horse manure at this property. Now that the property has been sold, Tara would like the Board to address this matter with the new owners.

A motion was made and seconded to send a letter to the new owners of Red Pony Farm to let them know that the Commission is available to work with them on this issue. All in favor.

Administrative

Associate Members: The board met informally with Donna Paulnock and Brian Beall who submitted letters expressing interest in serving on the board as Associate Members. A third letter was received by Carina Koury- Jones who was not present. Ms. Paulnock and Mr. Beall were invited to attend another

meeting when the rest of the board will be present and there are public hearings on projects that would help inform their decision. No action was taken.

Map 39 Lot 2.1/147 Middle Point Road/Administrative Review: The property owner would like to re-establish an old path from Middle Point Road to Middle Point Cove. The road divides the property. Maintenance of existing paths is exempt under both the state and local regulations. The path will be less than 30 inches wide, will meander toward the pond and no trees will be cut down. No action was needed.

Correspondence

- In:** Copy of resignation letter from Prudy Burt to the Board of Selectmen dated February 18, 2019
New member inquiries from Brian Beall, Carina Koury-Jones, and Donna Paulnock
Letter dated March 12, 2019 from Kent Healy re: proposed bylaw
- Out:** Map 5 Lot 3/ SE79-397/ Order of Conditions/ 175 Obed Daggett Road
Map 12 Lot 13/SE79-396/Order of Conditions/371 Indian Hill Road

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

Respectfully submitted,

Maria McFarland
Board Administrator
APPROVED