

WEST TISBURY  
CONSERVATION COMMISSION  
MINUTES OF MEETING  
June 22, 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:** Tim Boland, Kristen Geagan, Geoffrey Lauprete, Kit Monterosso, Reid Silva, Elizabeth Thomas, Mallory Watts, and Claudia West

Whit Griswold called the meeting to order at 5:05 P.M. 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.

**Minutes:** The minutes of the June 8, 2021 meeting were approved as revised. Roll Call Vote: Angela, Donna, Geraldine, Peter, and Whit voted in favor. John and Michael abstained.

**New Business:**

**Map 25 lot 1.1 Agricultural Society/ Joint fundraiser for the Agricultural Society and Habitat for Humanity:** The Ag Society has obtained permission from the Building Inspector and Vineyard Conservation Society (VCS) to hold a "tag sale" as fundraiser for the Ag Society and Habitat for Humanity on July 3. Bill Roman, General Manager of the Edgartown Yacht Club, has gifted the Ag Society and Habitat for Humanity a barn-full of furniture, rugs, china and general housewares. The sale will take place in the hall. The farmer's market is also happening on that day so an additional police detail will be on site. The hours will be 9-4. The proceeds of the sale will be split 50-50 between the Ag Society and Habitat for Humanity.

Maria read an email from Brendan O'Neill of VCS which states that "from the perspective of the 1992 Ag Preservation Restriction co-granted to VCS and the town, the proposed activity appears consistent with grantor's intent to allow limited commercial activity related to the MVAS non-profit function." The event also needs a tag sale permit from the Select Board. A motion was made by Peter seconded Michael to approve this event. Roll Call Vote: Angela, Donna, Geraldine, John, Michael, Peter, and Whit voted in favor.

**MVRHS/Athletic Fields:** Geraldine requested that a letter be sent to the Martha's Vineyard Commission (MVC) ahead of the MVC meeting on this matter to be held on June 24.

Maria said she confirmed with MVC staff that the public record for comments on this DRI was closed and that it was likely the Commissioners would not see the letter.

A motion was made and seconded to send a letter to the MVC urging the Commission to take full account of the environmental concerns raised in our previous submission regarding the installation of plastic fields at MVRHS in which this Commission raised significant issues regarding the aquifer, the State forest, proliferation of decaying plastic particles and lack of recycling options. The letter will ask the Commission to approve the project conditioned on adoption of an all grass option and to urge them to make an environmentally responsible decision which is also in the best interests of student athletes. Roll Call Vote: Angela, Donna Geraldine, John, Michael, Peter, and Whit voted in favor.

**Old Business:**

### **Map 23 Lot 3.1/SE79-385: Request for a 3 -year extension and determination on Phase 2:**

The purpose of this meeting is to decide whether to approve the applicant's request for 1) an extension of the expiration date of the permit for the entire project or deny the extension, and 2) whether to require the filing of a new Notice of Intent for Phase 2 and the uncompleted utility work. If the extension request is denied, the applicant would submit a request for partial Certificate of Compliance for completed work under Phase 1. The utility work would be rolled into the new Notice of Intent along with the Phase 2 work.

Maria was asked to summarize the issues with the 2 requests.

With respect to the extension request she explained that the original expiration date of this permit was June 13, 2021, but because of the COVID -19 related Permit Extension Act of 2020 this permit is automatically extended for 45 days after the end of the State of Emergency which was June 15. Unless the State Legislature extends the tolling period beyond 45 days, this permit will now expire on August 3, 2021 unless the Commission agrees to extend the permit. Because the sequencing plan for Phase 2 shows work extending into 2026 the Commission cannot extend a permit for more than 3 years. *[note to Commission members. After the meeting, it was learned that the original permit would now automatically be extended to September 18, 2022.]*

General Condition # 4 of the Lauprete's order states in part that work authorized hereunder shall be completed within three years from the date of this Order unless the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If the Order is intended to be valid for more than three years, the extension, the date and the special circumstances warranting the extended time period are set forth as a special condition.

The utility pole work approved under Phase 1 has not been completed because of scheduling difficulties with Eversource. The rest of the work in Phase 1, (which included the construction of a foot bridge over the stream and creation of access paths within 3,920 square feet of work in BVW and 5,160 square feet in Riverfront Area to access areas of the property for the removal of invasive species the extent of which would be approved under Phase 2,) has been completed.

With respect to an amendment to approve the Phase 2 work, When the Lauprete's landscape architect has submitted the Phase 2 revised narrative and project sequencing plan, it showed that Phase 2 would take longer and was more extensive than originally understood by staff and members of the Commission, three of whom have since retired. While the narratives from the original filing and the second Phase filing are similar, the project plans show work over 8 acres of resource area and buffer zone.

Maria told the meeting that she consulted the Circuit Rider staff at DEP and was told that amendments are intended only to fix minor administrative issues in an Order that's been issued. They're not meant to be used to permit any additional work. Also, there is no requirement for the Commission to act on any request to amend. It's solely at the Commission's discretion. Based on the wording of the DEP policy on amendments, an Order set to order that was set to expire cannot be amended.

If the Commission agrees to consider approving Phase 2 as an amendment, the applicant will still be required to notify abutters, a new legal ad must be published and posted, and a public hearing conducted. A new NOI will require the filing of a new Appendix A for the project to continue to considered an Ecological Restoration project.

Reid asked that the Commission approve the Extension Permit for only the utility work. He does not want the utility work to be held up if for any reason it can be done before a new Order of Conditions for

Phase 2 is completed. Mallory Watts said she has spoken to the electrician who will do this work and he gave her a time frame of this fall or the winter of 2022.

Commissioners Comments/ Questions:

John asked for an explanation on the difference between an extension and an amendment. An extension is for a permit that is set to expire, but work isn't completed. There should be no proposed changes or new information submitted as part of the extension request.

The State regulations don't allow for amendments to Orders so DEP issued a policy in 1992. Amendments are for the purpose of addressing unforeseen circumstances that require minor changes to the approved project. The policy states that it is up to the Commission to decide whether the requested change is great enough to warrant the filing of a new Notice of Intent or whether it is relatively minor. In this instance, the scope of the project has increased. The Laupretes are requesting both a 3-year extension and an amendment.

Maria recommended that rather than issue an extension permit and an amendment to the Order, the Commission deny the extension request, ask them to file a request for a partial Certificate of Compliance for the Phase one work that was completed (access path installation and boardwalk) and roll the utility work into a new Notice of Intent for Phase 2. An amendment requires the same notice to abutters and public hearing process as a new filing, minus the filing fee.

Peter said that he was ok with extending the permit but that the description of the project is changed enough that a new Notice of Intent makes sense.

Geraldine asked if there was invasive removal work outside the Commission's jurisdiction that could be done. Claudia said there was not.

Reid said the paths were done but the utility work was held up by Eversource. He asked the Commission to extend the order just for the utility work. The original was approved with a Phase 2 but the extent of Phase 2 (how far it would go into the resource areas, how much was to be removed) is the issue. Because of COVID, Phase 1 took longer.

Mallory said that according the electrician, the work will be done in the fall of 2021 or winter of 2022. Seven Gates doesn't allow work in the summer. Maria also noted that she was told by the Seven Gates manager that they have not seen the new Phase 2 proposal. Claudia replied that they received the original one and the response was positive.

Claudia thanked the Commission for attending the site visit and supporting the project. The reason for 2 Phases was because the invasive species are so thick that until they are able get into the areas the paths have given them access to, they won't be able to tell how much planting and overseeding they need. There remain many areas of dense thick vegetation where they still don't know what they will find. She continued that they have been working with Kristen Geagan of Sherriff's Meadow Foundation and with Tim Boland and Elizabeth Thomas of Polly Hill. (Tim and Elizabeth were present at the request of the Commission. Elizabeth participated in the site visit and she and Tim reviewed the Phase 2 plant list and identified several species of plants that are not native to the Vineyard.)

She said she would like to see the project go forward seamlessly as this project will benefit the whole island.

John said he was sympathetic to Reid's argument for extending the original order for only the Eversource work and requiring a new Notice of Intent for the Phase 2 work. Conceptually, it makes sense to him.

Claudia said that the approach and goal is the same as in the first narrative. Whit responded that he appreciates that, but the project itself and the procedural issues are complex, and there are new Commission members that were not involved in the first round of permitting.

Geoffroy Lauprete said that Phase 1 and particularly the Eversource part has taken much longer than expected in part due to COVID. They remain committed to the project but understand the need for the right permits and hopes to find a path to move forward.

Geraldine asked Maria to recommend the best course of action to get this thing moving forward as soon as possible.

Maria recommended that the Commission deny the request for an extension and instead ask the applicant to submit a request for a partial Certificate of Compliance for the board walk and access paths. The Certificate would state that the utility work and Phase 2 was not done within the original timeframe of the permit. A new Appendix A and Notice of Intent would be filed for the utility work and Phase 2 under a new permit with a longer duration than 3 years to allow the Phased sequencing that is projected to run into 2026. She noted that the current permit is automatically extended for 45 days from June 13 but it is doubtful that Eversource will get the utility work done in the next 45 days.

Reid noted that because the time frame involved in doing a new Appendix A for the ecological restoration project will take weeks before they can file the new NOI.

Angela asked Mallory when Seven Gates would allow the utility work to be done. After the summer.

The Commission offered, as a compromise with the applicant, to approve the request for a 2-year extension of the original order just for the utility work.

Claudia asked the Commission if they approve of the ecological work or if they have concerns. She would like to know the level of support for the overall project. Whit replied that the Commission is sympathetic to the project conceptually but the Commission is hung up on the procedural issues with the permits.

Claudia asked for they could do a demonstration section within project area so the Commission could see what they plan to do. There is no upland location for this to happen so the answer is no.

Michael said this was a good compromise and would like to see the project proceed.

A motion was made by John, seconded by Peter to extend Order of Conditions SE79-385 for 2 years from June 13, 2021 for the sole purpose of completing the work to remove the utility poles within the Commission's jurisdiction. New utilities will be put underground. The request for consideration of the approval of Phase 2 requires the filing of a new Appendix A and Notice of Intent.

Discussion on the motion:

Geraldine said it seems like this is the best the Commission can do. She echoed the sentiment that the Commission wants to see this project go forward but for the procedural problems.

Michael said the 2-year extension is a good compromise and he wants to see the project proceed.

Donna agreed it was complicated.

Angela said it will be helpful to get more details on Phase 2 but this is a good compromise.

Whit assured the applicant that the Commission will move this along as quickly as possible. Geraldine was disconnected from the meeting so her vote in favor was not recorded. Roll Call Vote: Angela, Donna, John, Michael, Peter, and Whit voted in favor.

**Airport Capital Improvement Plan/ Final Environmental Impact Report/ Environmental Assessment for Capital Improvement Plan EEA # 15964/Project Change Notice:** Whit thanked Geraldine for drafting this letter. After a brief discussion and some minor revisions, a motion was made and seconded to approve a letter to the Executive Office of Energy and Environmental Affairs drafted by Geraldine.: Roll Call Vote: Angela, Donna, John, Geraldine, Michael, Peter, and Whit voted in favor.

**Map 7 Lot 28 /Cottles/Blackwater Brook Farm, Map 7 Lot 28.2/ Johnson/driveway and Map 3 Lot 72/ Cottle's Lumberyard:** In deference to the families of Elizabeth Cottle who passed away on June 17, no action will be taken on these matters at this time.

**Administrative:**

There being no further business to conduct, the meeting adjourned at 6:20 PM.

Respectfully submitted,

Maria McFarland  
Commission Administrator  
APPROVED  
July 13, 2021