

WEST TISBURY
CONSERVATION COMMISSION
MINUTES OF MEETING
August 13, 2019

Present: Brian Beall, John Brannen, Whit Griswold, Donna Paulnock, Michael Turnell, and Tara Whiting-Wells

Absent: Geraldine Brooks, Binnie Ravitch and Peter Rodegast

Staff Present: Maria McFarland

Also present for all or part of the meeting: Prudence Burt, John Eisner, Maureen Eisner, Doug Hoehn, Kris Horiuchi, Chris Lyman, Al Mark, Adam Moore, Phil Regan, Tom Shockey, and Scott Stearns

The meeting was called to order at 5:00 P.M. Tara Whiting-Wells, Chairman presiding.

Minutes: The minutes of the July 23 meeting were approved as revised. All in favor.

Continued Public Hearings:

Map 39 Lot 14/SE79-404: a 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 Schofield, Barbini & Hoehn Inc., on behalf of Shampoo Beach LLC for a project located at 350 Big Homer's Pond 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 primarily located outside the Buffer Zone. A portion of the main house will alter approximately 450 feet of Land Subject to Coastal Storm Flowage (LSCSF), a resource area with no Buffer Zone.

This property abuts Big Homer Pond and is the subject of a Conservation Management Permit (CMP) issued by the Natural Heritage and Endangered Species Program (NHESP). The NHESP comment letter dated August 2, 2019 was noted for the record.

Doug Hoehn submitted a revised site plan showing the 25 and 50 foot setbacks in the Buffer Zone.

The two unresolved issues before the board are placement of the east and west wings and landscaping within the Buffer Zone.

Discussion centered on shifting the west wing to the east so that the foundation would be entirely out of the flood zone. Phil Regan, the project architect, said he spoke to the Building Inspector about whether a section of a foundation in the flood zone can be isolated so that the whole foundation doesn't have to be flood proofed, but did not get a definitive answer. Phil said they would rather avoid venting the foundation and putting the mechanicals in the attic. They would prefer to move the bedroom wing foundation on the west side of the house, but that would push the east wing closer to the Buffer Zone line.

He went on to explain that they looked at pulling the house to the north but it was too far back for the owners and would compromise more of the oak trees that they want to preserve. They also consulted with two landscapers about moving some of the trees.

The proposal before the board is to grant permission to reposition the structures so that the west wing foundation is out of the flood zone but the deck remains within the flood zone. The deck would extend 6 feet into the flood zone. The footings would be sono-tubes. The east wing deck would bump up against the buffer zone line with 16 feet of temporary disturbance in the buffer zone during construction. Footings for the deck on the east wing will be poured concrete placed every 8 feet for a total of 6 footings. Phil said he would prefer to encroach on the buffer zone and rather than place the mechanicals in the attic.

Members discussed where the most temporary and permanent impacts would be. Permeant impacts include the deck footings and the stone wall in the flood zone. Temporary impact is the disturbance to the buffer zone during demolition of the existing camp and construction of the east wing.

When asked if consideration was given to shrinking the volume of the whole house, Phil said they have reduced the overall size of the house by 8 feet.

The construction fencing will be placed to allow for maneuvering room around the east wing deck.

Kris's plan also shows the 25 and 50 foot setbacks. Phil noted that Kris's plan shows a terrace wrapping around the pool. Phil said the terrace will not wrap around the pool. Kris will need to correct her plan.

The NHESP line will be pulled to the 25 foot setback line on the east side of the house near the pool.

Restoration of the buffer zone in the area where the old house sits will provide mitigation for the approval of the deck within the flood zone.

The CMP allows the property owner to mow the conservation area (which overlaps the Buffer Zone) once a year. It is the Commission's policy not to permit mowing within the No-Disturbance Zone (first 25 feet). In addition, not mowing the first 25 feet would honor the no-cut zones established by the Conservation Commission in a 1994 Order of Conditions.

The annual mowing allowed under the CMP will be reduced by 25 feet and will be done in the second 75 feet of the buffer zone.

The NHESP boundary established by the CMP will be marked with monuments specified by NHESP as shown on a plan entitled, "Open Space for Homer Watch Trust and Gerald L. DeBlois.

A motion was made to approve this project as revised subject to the following conditions:

- The foundation for the west wing shall be outside the flood zone. The deck is permitted to be placed on sono-tubes within the flood zone.
- The deck on the east wing of the main house is allowed to be place within the Buffer Zone.
- Vegetation will be restored to the FEMA line on the east side of the lot
- A construction limit of work will be constructed on the east side of the property at the Buffer Zone line. It shall consist of 4x4 posts and silt fence stapled to 2x4's backed by rigid snow fencing placed along the limit of work line/limit of Estimated and Priority Habitat Boundary as shown on the Project Plan. The silt fencing shall be placed 6" off the ground to allow for the movement of wildlife.
- Prior to the annual mowing permitted under the CMP, the applicant will have the 25 foot buffer zone line staked in the field and the commission will be notified for a site visit.
- With respect to the pool, no pumping of pool water into the buffer zone will be permitted

Map 32 Lot 31/SE79-405: a 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 John and Maureen Eisner for a project located at 62 Music Street. The project consists of the installation of a 5 bedroom Title V septic system to replace two failed cesspools. The existing cesspools will be backfilled and abandoned. The public hearing was continued to this evening to allow the Board of Health to revisit their review the project and to receive the DEP file number letter.

Reid said the Board of Health approved the 5 bedroom septic design on August 8 with the condition that the studio cannot have a kitchen and the bathroom must have a composting toilet. Trenching for a water line and waste water line will be done within the Buffer Zone and the second 100 feet of the Riverfront Area. Reid submitted a revised septic system plan.

Commissioner's Comments/ Questions: None. There was no public comment. The public hearing was closed.

Special conditions: All work will be done from the driveway.

All fill will be trucked off site. There will no stockpiling of fill.

The bordering vegetated wetland between wetland flags 2 and 3 is no longer being mowed but will be noted as a condition.

A motion was made and seconded to approve the project as presented subject to the special conditions. All in favor.

Old Business:

Map 6 Lot 2/ Rattner-Sheriff's Meadow Foundation/ Amendment to Conservation Restriction (CR): Adam Moore was back before the board to ask them to sign a municipal certification for an amended and restated conservation restriction.

This discussion was tabled at the July 23 meeting to give members time to read the proposed amended and restated CR and that portion of the appraisal that deals with the value and best uses of the land in question.

Adam explained that the revised CR will set aside more land than is currently protected. The acreage being released is 1.7 acres and 6.02 acres being added for a 5-1 ratio. The value of the two parcels is very close. He reiterated the conservation benefits as stated in detail in the July 23 minutes.

Whit asked how this document is different than the original CR. Adam explained that the 1991 document restriction identified various wetland species that are located in the area protected but that the state has changed the way these documents are written.

Tara said her concern is the changing of a conservation restriction. Tara thanked Adam for coming in voluntarily to ask the Commission to sign the Municipal Certification but she is against setting a precedent.

Whit asked what the reason for doing the 1991 CR was. Adam said Whit would have to ask the property owner as he initiated it. Adam said the purpose of a conservation restriction is stated in the "whereas" clauses of the document.

John agreed with Tara's concern about setting a precedent.

Public Comment: The comment letter from Prudy Burt dated August 13, 2019 was noted for the record.

Prudy asked what the public benefit is and how much of the land being added to the CR is wetland resource area. She went on to suggest that this change adds a total of 2.3 acres of developable land to lot 6.21. In her opinion, the public benefit is questionable and this amendment will fragment the habitat between the two sections of the CR. Adam respectfully disagreed with Prudy stating that claiming the Rattners are adding 2.3 acres is misleading.

Adam pointed out that even though conservation restrictions are perpetual, there needs to flexibility to work with property owners. Sheriff's Meadow Foundation has a policy on amendments and sometimes there is room to be flexible.

Currently, the amended and restated CR is being reviewed by EOEEA counsel. It is has already been reviewed at the staff level Adam expects that there will be some changes to the wording. If the Selectmen do not approve the change, the parties would have to renegotiate the proposal.

A motion was made and seconded not to issue a municipal certification that the amended and restated conservation restriction is in the public benefit because the value of the land is not much more than is being given up, there is not enough of an increase in the public benefit, the change will increase habitat fragmentation and approving it would set a precedent. A letter to the Board of Selectmen stating the Commission's objections will be prepared. All in favor.

Tisbury Great Pond/subcommittee: John told the board that he and Whit had a great meeting with Emily Reddington, Executive Director of the Great Ponds Foundation in Edgartown. She is ready to offer expertise and training. John and Whit went to the Riparian Owners Meeting on August 10. Chris McIsaac, one of the riparian owners told Whit and John that he is going look to establish a Tisbury Great Pond Foundation.

Whit explained that the 1904 Act of the Legislature that established the rights of riparian owners in Dukes County to open great ponds for the purpose of draining the low lands and meadows, specifically excluded Edgartown Great

Pond. The Town of Edgartown funds the openings of the pond, not the riparian owners. John said the Town of Edgartown has a Ponds Committee made up various town boards. The foundation owns a dredge; they do a more sophisticated opening because they can dredge. The benefit of the foundation is paid staff dedicated to sampling and testing water quality in Edgartown Great Pond

Next steps: Whit said that during their meeting with the Riparian owners he told them there are a lot of good intentions but the efforts are uncoordinated. Whit asked how the town and riparian owners can work better and that better communication would help. John said he thinks across town committee like a ponds committee. The process of creating a committee is to submit a proposal to the committee outlining the makeup and mission of the committee. The Selectmen would have to approve the mission of this committee, advertise for interested members of the community, and select the members. Appropriate Town boards would be asked to choose an appointee to this committee. John and Whit will work on a mission statement for the next meeting.

Maria reported that the EPA has issued the final Total Daily Nitrogen Load Report. She has an email into Brian Dudley at DEP as to what the next steps are. John said that his reading of the report is that the recommendation is to reduce the agricultural nitrogen load contribution by 10% and wastewater by 20%.

Board of Health: Tara said she and Peter plan to work on a proposed Board of Health regulation for enhanced denitrifying septic systems to present to the Board of Health for their consideration sometime this fall. No action was taken.

Map 43/ Lot 2/ SE79-381/130 Watcha Club Road: Tara and Maria met with met with Jude Villa and Mrs. Edmundson on July 30 approval of additional selective view channel clearing. Members reviewed pictures taken at a site visit.

Under Special condition # 12 of the Order of Conditions requires the filing of a request for an amendment to the permit for permission to perform addition pruning work within the Inner Buffer Zone.

A motion was made and seconded that the amount of additional clearing being requested is minimal and does not require an amendment to the Order. The work listed below is approved within the No- Build Zone to further open up the view around the Oak tree. All in favor. A letter will be sent to the Edmundsons.

- Cut back the leggy shrubs that Ms. Villa identified as Viburnum
- Cut dead branches on and around the Oak
- Any additional clearing within the second fifty feet of the Buffer Zone is already permitted
- No work is permitted in the first 25 feet of the Buffer Zone
- All work shall be done by hand and debris removed from the Buffer Zone

Tara noted that Mrs. Edmundson said they had decided to stop mowing to the edge of the Buffer Zone in order to create an additional buffer strip between the lawn and the pond.

Administrative:

Map 35 Lot 1.9/99 Pond View Farm Road/ SE 79-394: Maria reported that she received an email dated August 12 from DEP staff at the southeast regional office of DEP regarding a complaint about the construction project at this location. Wes Nagy called DEP to say that a huge foundation is being built below sea level, trees were being removed, and he was concerned about water quality. The complaint noted that the DEP file number sign was not posted. Maria contacted Reid Silva and Teles Landscaping who are the property owners' representatives. She did a site visit on August 12. The DEP sign was posted but not in a location visible from the road. The contractor failed to request the required pre-construction site visit, but the erosion controls measures were in place. Vineyard Land Surveying verified that the location of the foundation and the erosion control measures were placed in accordance with the project plans. Maria also met with the builder, Lawrence Clancy. Currently, there is no violation of the Order. No action is needed.

Correspondence:

- In:** Map 43 Lot 2/ NHESP letter dated August 2, 2019
Oyster Restoration and Water Quality mid-summer update from MVAS
Tisbury Great Pond Water Quality Data Report 2017-2018
Letter from EPA dated July 31, 2019 transmitting the approved Final Tisbury Great Pond TMDL
Final TMDL document and EPA New England's TMDL review
Email from Jude Villa Working Earth Organic Gardening re: Map 43 Lot 2
Map 32 Lot 31/SE79-405
Comment letter from Prudy Burt regarding Map 6 Lot 2.1
Email dated August 12 from DEP regarding complaint at 99 Pond View Farm Road
- Out:** Map 43 Lot 4/ Letter regarding paths and structure in coastal resource areas

There being no further business to conduct, the meeting adjourned at 6: 50 P.M.

Respectfully submitted,

Maria McFarland
Board Administrator
APPROVED