

WEST TISBURY
CONSERVATION COMMISSION
MINUTES OF MEETING
August 24, 2021

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

Absent: Michael Turnell

Staff Present: Maria McFarland

Also present for all or part of the meeting: Robert Doane, Ben Hall, Kat Monterosso Richard Reiling, Barbara Smith, Scott Smyers, Elizabeth Thomas, Mallory Watts, and Claudia West

Whit Griswold called the meeting to order at 5:03 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 August 10, 2021 meeting were approved as revised. Roll Call Vote: Angela, Donna, John, Geraldine, Peter, and Whit voted in favor.

Public Hearings:

Map 23 Lot 3.1 and 3.2: A public hearing under the requirements of G.L. Ch.131 § 40, as amended and the West Tisbury Wetlands Protection Bylaw and regulations to consider a **Notice of Intent** filed by Vineyard Land Surveying & Engineering, Inc. on behalf of Kate and Geoffrey Lauprete and JMMoulton Realty Trust, and Harold Bartelt Realty Trust (lessees) of property located at 71 and 81 Tisbury Lane West respectively, owned by Seven Gates Farm Corporation for an Ecological Restoration Limited Project involving the removal of invasive plant species and downed trees within 8 acres of Bordering Vegetated Wetland, Buffer Zone and Riverfront Area.

Members discussed a set of draft conditions covering the following:

- Approval of a 5-year permit in order to allow the applicant to use a phased approach and the need for a one growing season monitoring period
- Time of year restrictions to protect wildlife habitat: The condition will be modified to allow for management of certain herbaceous layer plants. Claudia will submit a list of these plants. The time of year restriction will be expanded to begin March 1.
- Nesting survey to ensure protection of wildlife habitat can be done by a locally qualified person. The nesting survey is required if the applicant wants to do work during the restricted time period. It does not prohibit work from being done during this time frame if the nesting study is completed.
- Need for Licensed Arborist to supervise and/or conduct the tree work
- Monitoring protocols
- Replacement ratios for trees and shrubs to be removed.
- Progress reports to document the work being done. Each phase will follow a specific process; notice of work starting, site visits, a progress report and then an annual report with before and after photographs.

The draft conditions will be forwarded to the applicant's representative so she may review them with her client in case there are questions on the conditions prior to the issuance of the Order.

The board discussed continuing the public hearing in case there are substantial questions on the conditions after Claudia reviews them or closing the public hearing and allowing staff to review the conditions with the applicant and tweak them as necessary after that discussion. Claudia told the members she preferred not to continue the hearing again.

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

A motion was made by John, seconded by Angela, to approve the project as presented subject to the review of the special conditions by the board and the applicant's representative. Roll Call Vote, Angela – aye, Donna- aye: Geraldine -aye, John – aye, and Whit-aye. Peter abstained as he did not attend the August 10 meeting.

5:45 PM/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. Note: This application should have been filed as An After the Fact request for approval of items 2 and 3.

The public hearing was opened and immediately continued at the request of the applicant to October 12 at 5: 10 PM on a motion made by Peter and seconded by Geraldine. Roll Call Vote, Angela – aye, Donna- aye: Geraldine -aye, John – aye, Peter – aye, and Whit-aye.

New Business:

Map 31 Lot 48/ 21 New Lane/Doane/ Potential Wetlands Violation by Abutters at Map 31 Lot 68.1 41 Pond View Farm Road/ Eppel

Maria reported that she received a call [on Thursday, August 12, 2021] from Scott Smyers, an Environmental Consultant with Oxbow Associates, agent for the Doanes to report brush cutting, tree removal and pruning performed by the Eppels or their agent without permission from the Doanes on his client's property at 21 New Lane. This parcel has frontage on Town Cove on Tisbury Great Pond. According to the Doanes, the Eppels or their agent altered vegetation over a 2,365 square foot area within the Buffer Zone without permission from the Doanes, or approval from the Commission.

Mr. Smyers explained his role in the matter. On Saturday August 14, 2021 he submitted a series of photographs showing the area in question along with a 2019 Orthophotograph dated August 12, 2021 marked to show the square footage of the cleared area, the location of wetland flags placed by Mr. Smyers, the location of a cut Cherry tree and removed stump. These materials were reviewed by the board. He noted that the board did a site visit. [Site visit was done on August 18.]

He also explained why this area falls within the Commission's jurisdiction. Under Section II of the West Tisbury Bylaw no work is permitted within the No-Disturbance Zone (the first 25 feet of the Buffer Zone) is allowed. The area is shown on the Natural Heritage and Endangered Species Program because this property is mapped as being within Estimated and Priority Habitat, noting that Town Cove is habitat for the American Brook Lamprey.

He concluded by saying his client would like to restore it to a native plant community this fall. He estimated it would take about 50 shrubs would fill in the area, and be beneficial to the Buffer Zone by giving the area good diversity.

Richard Reiling identified himself as the attorney for the Trustees of the Irrevocable Living Trust of the Doane Children. Mr. Doane is one of the trustees. He is present to observe today's process. It is important to the trust to begin the restoration process as soon as possible. Mr. Doane said that as soon as he discovered the clearing, he hired Mr. Smyers.

Ben Hall Jr identified himself as the attorney for Cheryl Eppel in a lawsuit filed in the Dukes County Superior Court(Civil # 2174CV00030.) Mr. Hall sent an email to the office today with the caption name of the case. He is also representing Ms. Eppel at this meeting for the purpose of requesting a continuance of this meeting because he feels his client did not receive ample notice of the meeting having received an email on August 21. He said that he did not find out about the meeting until Monday August 23. He noted that he requested a continuance via email because his client was not prepared to attend and present their case. He is asking for a continuance in order to for his client to retain their own expert to evaluate what was submitted to the board and to come back to the board with a response.

He said that clearly there was some cutting in the buffer zone. He said that the Orthophotographs map and photos don't show the cleared paths within the Buffer Zone that have long existed on the Doane property. He said he could have pointed this out if he had been made aware of the site visit. Whit replied that that was not germane to this discussion at this moment, because at least the Doanes were doing work on their own property. Mr. Hall said his client disputes whether the Doanes have full possession of the strip of land in question or whether the Eppels have easement rights. He said there is an historic series of photographs showing clearing in front of the Eppel property to the pond.

Mr. Hall went on to say that the Eppels acquired this property in 1986 and that since then this area has grown in. He believes his client owns the property or at least has a prescriptive right of occupancy or use of this area.

Mr. Doane noted that a permit was needed. Mr. Hall agreed that there should have been a permit and that is why they recognize the authority of the board. He is concerned about the claim of a violation and wants to hire an expert to guide his client in a method to address the board's concerns. He said the area as historically been open with views across the pond.

Maria replied to Mr. Hall's comment about the paths that exist on the Doane property noting that many properties have paths and cleared areas that have historically been cleared; long before there were wetland protection regulations in place and the board addresses each site as they come before the Commission for a permit for new work.

Mr. Reiling told the board that the work was done in June 2021. He noted that Cheryl Eppel has stated [as part of the litigation] that she had the work done. He said it is clear the cutting happened without the consent of the Doane Trustees.

Mr. Hall said that if the issue is that work was done on a neighbor's land and the ownership of this land is what is germane to the litigation, then the Commission should look more broadly at the activity on the Doane property as a whole.

Whit replied that he didn't agree with Mr. Hall. He said the board is talking about a very specific area on the property and everyone acknowledges that the clearing was done.

John said is irrelevant who owns the property because it is clearly a violation that needs to be fixed. Pointing out that if the Eppels do in fact own the property then they need to fix it and if the Doanes own it, it still needs to be fixed.

Peter suggested that the Eppels come up with a restoration plan and the board continues this discussion to the September 14 meeting with the understanding that there are no further activities; cutting or planting in this area until there is a plan before the board that can be approved.

Whit responded that would be a way forward in the short term and asked the board if they would be satisfied with making a request to the Eppels to come up with a plan and explanation. John said he was willing to keep this on an informal basis until the next meeting if a restoration plan was put forth by the Eppels. If they chose not to, then he would move to an Enforcement Order. Geraldine agreed.

Mr. Smyers said that this is the Doane's land and any restoration plan put forth has to meet the satisfaction of the land owner with the approval of the Commission. If the Commission wants the work done this fall, he suggested that the board allow the Doanes to submit a restoration plan rather than wait for the Eppels to get their own expert.

Peter said he isn't in favor of a big planting effort as the vegetation may come back on its own. Geraldine noted that there was a Cherry tree that needs to be replaced. She also said if there is a risk of runoff, planting sooner rather than later might be the judicious thing to do.

Mr. Smyers noted that if nothing is done the invasives plants will take it over. They would like to plant some high bush blueberry, sweet pepperbush, and northern arrowwood that were present in that area.

Mr. Hall again said he requested at least a 30-day continuance to try and find experts. He has telephoned two experts and was told it would be at least 90 days.

Geraldine said she was starting to feel like the board should move to issuing an enforcement order rather than let it drag on. Mr. Hall claimed that there has been an unfair opportunity for the other side to present something. He commented that there was no evidence that a Cherry tree had been cut. He has been to the site and said there is no indication that there are high bush blueberry bushes in this area.

Mr. Reiling said that the vegetation that was removed has been identified by the Doane's representative. He said the Doanes have tried to get the Eppels involved in discussing this matter with the insurance company to figure out what happened. He stated that the clearing happened in June and questioned why the Eppels are just starting to look for an expert. As far as the Trust is concerned that is not reasonable.

John said there doesn't seem to be agreement about how to move forward and recommended that the board move to an Enforcement Order. He said he wants the land fixed. Peter agreed.

Maria explained the mechanics of an Enforcement Order. It is a printed DEP form that names the violator, the property owner and includes a narrative describing the situation and what needs to be done next and who is responsible for doing it.

Mr. Smyers asked if the Enforcement Order could be issued to the Doanes. Maria said it could, but based on what Mr. Reiling told the board, the Eppels have acknowledged that they did the work.

Mr. Doane said they want to make sure it gets done quickly and to the satisfaction of the board. If the Commission issues the Enforcement Order to both parties there will be a dispute as to what the plan should look like.

Angela asked if the violator is named in the order. Maria explained that the Eppels will be named as the violator and the Doanes named as the property owner. Under the section on restoration plans, it could

state that the Doanes will prepare and submit the restoration plan for the September 14 meeting. At which time, the board will determine the next steps.

Mr. Hall asked that his client be allowed to come up with their own restoration plan that may be different in scope. He went on to say that the Eppels recognize that the violation is somewhat their responsibility but because the ownership of the property is being disputed, the board should take that into consideration.

Geraldine replied that if they Eppels find out that they do own the property, they can apply to the Commission for a project in this area as they should have done in the first place.

Geraldine made a motion, seconded by John to issue an Enforcement Order naming Cheryl Eppel and the owner of the Eppel property (as listed in the Assessors records) as the violator, the Doane Trust as the property owner with a restoration plan to be submitted by the Doanes. The Enforcement Order will also state that the Eppels may submit a restoration plan if they chose to.

Discussion on the motion.

Whit told Mr. Hall that if the Eppels can submit a restoration plan to the board for the 14th it would give his client a stronger voice. Mr. Hall replied was only made aware of this meeting yesterday and needs time to find an expert. Whit acknowledged that but said his client has 3 weeks to make a good faith effort to submit something if they choose to. Roll Call Vote on the motion: . Roll Call Vote, Angela – aye, Donna- aye: Geraldine -aye, John – aye, Peter – aye, and Whit-aye.

Old Business:

Map 7 Lot 28 /Cottles/Blackwater Brook Farm: No update
Map 7 Lot 28.2/ Johnson/driveway: No update
Map 3 Lot 72/ Cottle’s Lumberyard: No update
Tisbury Great Pond/Parrot Feather infestation removal: No update

Administrative:

In: Email from Oxbow Associates re: 21 New Lane
Email from Jane Brody re: 62 Ophelia Way
Emails from Ben Zimmerman re: Map 7 Lots 162 and 171 dated August
Map 7 Lots 162 & 171/Request for continuance
Emails from Attorney Ben Hall dated 8/23 and 8/24 regarding Map 31 Lot 48

Out: Letter to Select Board re: TestMV

There being no further business to conduct, the meeting adjourned at 6:45 PM.

Respectfully submitted,

Maria McFarland
Board Administrator
APPROVED
SEPTEMBER 14, 2021