

WEST TISBURY  
CONSERVATION COMMISSION  
MINUTES OF MEETING  
September 14, 2021

**Present:** Geraldine Brooks, Whit Griswold, Donna Paulnock, Peter Rodegast, and Michael Turnell

**Absent:** John Brannon and Angela Luckey

**Staff Present:** Maria McFarland

**Also present for all or part of the meeting:** Chris Alley, Robert Doane, Cheryl Eppel, Ben Hall, John Hoff, Glenn Provost, Richard Reiling, Bill Schneider, Joan Smith, and Scott Smyers

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 24, 2021 meeting were approved as revised. Roll Call Vote: Donna, Geraldine, Michael, Peter, and Whit voted in favor.

**Public Hearings:**

**Map 7 Lots 130, 130.1 and 130.2/SE79-426:** a public hearing under the requirements of the West Tisbury Wetlands Protection Bylaw and regulations to consider a **Notice of Intent** filed by Schofield, Barbini & Hoehn Inc., for the construction of a driveway, retaining wall, placement of underground utilities and associated site work within the Buffer Zone to an isolated wetland to serve a new single-family dwelling outside the Commission's jurisdiction. The driveway will traverse portions of 64 Sumner Circle Map 7 Lot 130.2 owned by Leslie Lee, what is currently shown as 54 Sumner Circle, on Assessors Map 7 as Lot 130 owned by Margaret E. Lee, Trustee of the Kin Ping Realty Trust, and 56 Sumner Circle shown as Assessor's Map 7 Lot 130.1 owned by William F. Lee.

Members viewed the project plan while Chris explained the project proposal. The property lines were recently reconfigured. A similar proposal was approved by the Commission in 1997 for a driveway that would serve 3 lots. The new proposal will serve a single proposed house site at 56 Sumner Circle. The wetland is located along the east side of Sumner Circle. This isolated wetland is likely the result of development of Longview as it runs along the alignment of the road. The driveway will start on lot 130.2, crossing lot 103.1 at an angle across a steep slope in order to get a reasonable slope up the hill until the driveway is out of the Buffer Zone. The house, garage, well, and septic system will be located outside the Buffer Zone. For a short distance along the driveway associated utilities, drainage and retaining will also be located within the Buffer Zone. Chris described two other designs of the driveway which would have more impact within the Buffer Zone because of the slope. The hill side is wooded consisting of mostly Oak trees and one large boulder.

The plan shows a cross section of the road bed and the retaining wall. There will be 10-foot-wide road bed with 2 feet for the retaining wall with a cross slope pitching back into a retaining wall. A crushed stone French drain with perforated ADS pipe at the base of the wall will have drop inlets every 20 feet. This design requires removal of more material, but avoids the need to add a lot of fill on the downhill side. The disturbed area will be graded and seeded.

The driveway will have a 10% slope over the first 120 feet of the driveway. This is the maximum slope Chris recommends before needing to pave the driveway. He said a driveway with a 10% slope has to be maintained with diligence. Depending on how permeable the soils are they may be discharged at the end

of the collection pipe. If there is discharge at the end of the pipe, there is a low spot on the south side of the end of the driveway to act as an infiltration basin.

The applicant is not proposing an engineered retention basin at this time. They would like to see if the natural conditions can handle any discharge that comes from the pipe. If the pipe can't handle the discharge they will come back to the board.

Chris noted that the wetland as delineated in 1997 by Rusty Walton, showed the driveway crossing a 15 ft wide wetland. Chris had Doug Cooper do some test borings in the area of the beginning of the driveway that determined that the soils were not hydric. Therefore, this proposal is for a driveway partially through the Buffer Zone.

#### Commissioner's Comments/Questions:

Whit asked Chris about the need to put in some fill at the beginning of the driveway where the grade drops down because of the topography of the road. Chris replied that will fill that area in which will create the retention area.

Michael noted that 10% is pretty steep. Chris answered that the driveway will have a hardener surface, but it will not be paved.

The design contemplates that the run off will drain through the infiltrators along the driveway and will not all collect at the base of the driveway. The base of the retaining wall be on a crushed stone footing which will give some extra infiltration and then the drain along the slope. The wide bottom will help leach out the runoff.

Peter wanted to recognize that the cut and retaining wall proposal will have less impact than the cut fill design. He suggested checking the basin in a year or two, noting that undisturbed earth and root matter and vegetation will absorb runoff. Chris commented that if it floods and overflows every time it rains, they will have to revisit the drainage.

Geraldine suggested a monitoring condition. Donna agreed.

Michael noted that the driveway has to be put in to access the house site so the driveway will be essentially demolished by construction trucks until the project is complete. Chris said the driveway will have to be re-dressed once the project is completed. Michael said monitoring should start as soon as the road is in. Site protection will have to remain in place and be maintained until a Certificate of Compliance is issued.

Maria informed the members that a waiver of the Bylaw Buffer Zone regulations has been requested by the applicant for 1,500 square feet of work within the No-Disturbance Zone where no practicable alternative exists.

There being no public comment and no further discussion, Whit closed the public hearing.

A motion was made by Peter, seconded by Michael to grant a waiver from the No-Disturbance/No Build Zone regulations (Section IV. C. 3) to allow the alteration of 1,500 square feet within the first 25 feet of the Buffer Zone because there is no other location for the driveway, and to approve the project as presented subject to the special conditions. Special conditions will include requiring a pre-construction site visit and an inspection after the foundation is poured. Monitoring of the erosion control measures will be required by the contractors during the length of the construction project and then for one year after

completion. An inspection will be required after the foundation is poured and before the occupancy permit is issued. Roll Call Vote: Donna, Geraldine, Michael, Peter, and Whit voted in favor.

#### **New Business:**

##### **Map 5 Lot 2.3/SE79-408/Request to change the access for completion of the landscaping and final construction work:**

In accordance with Special Condition 4 of the Order, members viewed a revised site plan prepared by Vineyard Land Surveying and a written request dated September 3 and 9 submitted by Glenn Provost for change to the project plan to relocate the truck access for landscaping activities and to see if this change to the Order requires a formal amendment to the Order of Conditions. A waiver from the Buffer Zone regulations (noted above) is also required for this request. The landscape plan was approved at the August 10 meeting.

The original approved access is up a hill and difficult for trucks to manage. The new access route will continue to come in through the property leased by Livingston Taylor, over a causeway that has construction mats and silt fencing already in place, will continue over existing lawn and up the hill but where there is less slope. The section of new access within 25 feet of the wetland will be covered with construction mats and the wetland protected with silt fencing. There is no vehicular access to the cottage that is being renovated. After the project is completed, access will be by golf cart only.

Glenn told the board that this request is a change in the location from the previous approved access for the renovation of an existing camp. The renovation is almost complete. He stated that the new access goes over an existing lawn, that no trees will be removed, is temporary and will be safer. Once completed, the site will be restored.

#### **Commissioner's Comments/questions:**

Glenn suggested that a site visit be done once the erosion control measures are in order. A site visit will be part of the approval.

Maria noted that the two restoration areas will be marked as required in the order and shown on the as-built plan when they submit the request for a Certificate of Compliance.

Peter asked if during the construction did all the materials and excavated materials go up and down the original access. Glenn said he didn't personally observe the route the trucks used, but he was told that when the septic system was installed and during construction the approved route was used.

A motion was made by and seconded to approve the waiver request and new access route as being a de minimis change that does not require a formal amendment to the Order of Conditions. A site visit with the landscaper is required once the additional erosion control measures are put in place before this access route may be used. Any damage along the access route will be restored in accordance with the Order. Roll Call Vote: Donna, Geraldine, Michael, Peter, and Whit voted in favor.

#### **Old 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/ Ratification of Enforcement Order (EO)/ Formal hearing on restoration plan:**

Whit asked Maria to explain where this matter stands.

Maria explained that the board approved the EO at their last meeting on August 24. The state regulations (310 CMR 10.08) allows the EO to be signed outside the public meeting ( It was signed via DocuSign.) It was emailed to everyone on September 1 and sent out by certified mail, return receipt requested on the same date.

In addition to the printed DEP form, the EO contains a chronological history of what has transpired so far, references to the board's jurisdiction under the state and local wetlands regulations, a map showing the location and photos of the site submitted by Scott Smyers of Oxbow Associates, the Doane's agent.

The following corrections are required:

- Under section C check the box that states, 'the property owner, his agents, permittees, and all others shall immediately cease and desist from any activity affection the Buffer Zone and/or resource areas.
- Change Tiah's Cove to Town Cove

The board should vote to ratify these changes and the issuance of the EO.

As required by the EO, Oxbow Associates has submitted a proposed narrative of a restoration plan for the members consideration. The EO also stated that the Eppels may submit their own restoration plan but it was not a requirement. She noted that a site plan was not submitted along with the written narrative.

Maria suggested that the board accept the submittal of the restoration plan this evening for consideration without any discussion of the proposed restoration plan this evening, and in order to make the Eppels more comfortable, to make this a more formal proceeding by holding a public hearing ( posting, advertising and notifying abutters).

Whit asked for a motion to approve the changes and to ratify the Order.

A motion was made by Peter, seconded by Michael to make the stated changes to the EO and to ratify the vote taken the Commission's August 24 meeting:

Discussion on the motion:

Calling it a point of order, Ben Hall requested that the date of the cover letter transmitting the EO and the date it was mailed be noted on the document as September 1. Maria explained that the EO was written stating the date is " as of August 24,2021" because that is the date the board voted to issue the EO.

Ben would like it to be changed to the date it was approved by the board in order to protect his client's due process rights and in case he needs to add the Commission to the Superior Court lawsuit. Maria said this wasn't necessary but could do it as a courtesy to the Eppels. By way of example, Maria explained the relevant dates in an Order of Conditions is the date the Notice of Intent was filed, the date the public hearing closed and the date of issuance which is the date the permit is sent out by certified mail or hand-delivered. The EO does not provide for this. Maria could revise the EO to include the date the cover letter was dated and mailed ( September 1), but that the August 24 date would remain.

The members agreed to add this change to the motion. There was no further discussion on the motion.

Roll Call Vote: Donna, Geraldine, Michael, Peter, and Whit voted in favor.

Maria asked the parties if they wanted the ratified order sent certified mail. Mr. Reiling said email service was fine. Ben asked for mail service.

Attorney Bill Schneider of Morris and Mahoney has been retained to represent Nancy Eppel in the pending civil litigation related to the subject matter of the EO.

Nancy Eppel, Trustee is the record owner of the property. Cheryl Eppel, Nancy Eppel's daughter was present.

When asked why there were three lawyers present, Ben explained that because of the civil litigation, the insurance companies have asked the three lawyers are present to monitor the proceedings.

Mr. Schneider explained that both of the Eppels have been sued by the Doanes over the subject matter of the EO. He is present to get up to speed on this matter.

Geraldine said she would like to end any further discussion tonight, in view of the future planned hearing. Maria explained that she isn't clear that the board needs to take this step but given that there are 3 lawyers are involved it would be prudent and will complete the Commission record on this matter. The board is looking for restoration of the land that was altered, no fines have been issued to either party and the Eppels have not been required to submit any paperwork to the board.

The next available date for this hearing is October 12, 2021. Maria said given that the violation occurred sometime in June, there has been ample time for both parties to retain experts. The board has not issued a fine and the EO was not issued to be punitive but to gain compliance with the state and local regulations.

Ben explained the difficulties he has retaining an expert to do a wetland delineation and report for submittal. He thought they had one lined up today but that fell through. He also mentioned the need to deal with the Eppels insurance companies. Whit told Ben that the board would like to expedite this matter and hold a public hearing in a month.

Geraldine said the concerns of the lawsuit are not the concern of the board. The board is concerned with this wetland violation that has been admitted and the remediation which is required. Ben replied that the board will be sitting as a quasi-judicial board, and his client is entitled to fair process. Whit said the board is going to schedule the hearing and Mr. Ben can work to convince the board why the process needs to postponed or continued.

Peter made a motion, seconded by Geraldine to address this matter ( the proposed restoration plan and the EO ) in a public hearing on October 12 at a time to be determined. There was no discussion on the motion. Roll Call Vote: Donna, Geraldine, Michael, Peter, and Whit voted in favor.

Scott Smyers informed the board that this client is waiting for a survey. Maria explained a surveyed plan showing the wetland delineation and all other relevant information that is needed. Oxbow's wetland declination should be put on a surveyed plan.

Ms. Eppel asked if this was an extension of the time for them to submit a plan. Maria explained that there are no deadlines for the Eppels as they were not required to submit a restoration plan. The Doanes were required to submit one and the Eppels may submit one if they chose to. The formal process includes a legal in the newspaper, posting in town hall and notice to abutters within 300 feet.

**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: The pond was opened over the weekend. We haven't heard anything from SOLitude lake management.

**Administrative:**

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

Respectfully submitted,

Maria McFarland  
Board Administrator  
APPROVED  
SEPTEMBER 28, 2021