

WEST TISBURY
CONSERVATION COMMISSION
MINUTES OF MEETING
November 27, 2018

Present: John Brannen, Prudy Burt, Whit Griswold, Binnie Ravitch, Peter Rodegast, Michael Turnell and Tara Whiting

Staff Present: Maria McFarland

Also present for all or part of the meeting: Deb Hancock, Carlos Teles Filho, James Rebello and Reid Silva

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

Continued Public Hearings:

Map 35 Lot 6.15: 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 Jon McNeill for a project at 160 Plum Bush Point Road owned by Philip W. Spalding, Trustee of Spalding Investment Realty Trust. The project consists of landscaping and creation of view channels within the Buffer Zone accessory to a new single family dwelling to be constructed outside the Buffer Zone, construction of a 34' raised boardwalk through a Bordering Vegetated Wetland and an 80' long seasonal pier with fixed pilings and seasonal ramp and float.

Members reviewed 3 proposals from the following consultants. The scope of services includes review of the wetland delineation in the field, analysis or resource area values; review of the Notice of Intent for gaps in needed information and for compliance with the performance standards of WPA and the local bylaw to assist the board in determining if the project can be conditioned to meet the performance standards or if it should be denied.

- LEC Environmental: \$3,200. Cost to attend one public hearing is \$750. We have used LEC in the past.
- Paul Shea/ Independent Environmental Consultant - \$3, 400.
- BSC Group - \$ 5,400 reduced to \$4,500 if no supplemental review. Cost to attend a public hearing is \$900.

Prudy made a motion to hire LEC Environmental as the consultant for a third party peer review of this project. Discussion on the motion followed.

Maria read the section of the bylaw regulations describing the purpose of hiring a consultant and how it relates to this application. She identified discrepancies in the Notice of Intent with respect to the wetland delineation as to where the salt marsh ends and the bordering vegetated wetland begins. A consultant would help the Commission determine if a boardwalk through 34 feet of salt marsh and an 80 foot dock will have an adverse impact on the salt marsh, land under a salt marsh and land subject to coastal storm flowage and if there are any cumulative impacts of adding another dock in this cove.

Peter said that before there is a vote on hiring a consultant, the board should decide if it can approve the dock based on the performance standard that does not allow a dock on a lot without a primary structure on it. If the board isn't going to approve a dock, the consultant may not be necessary.

Binnie said the board can either vote on Prudy's motion or someone could make a motion to have the vote taken at the last meeting reconsidered.

Whit said he thinks the issue is murky language in the bylaw. For example, he asked what seasonal means. The bylaw defines "seasonal use" to mean docks and floats cannot be installed prior to May 1 and must be removed before December 1. Maria said DEP Waterways told her they would treat this as a seasonal dock.

Prudy said the suggestion to hire a consultant was her attempt to get the board to focus on the issues this application presents. She added that the board should either decide to not hear the application because a dock is not permitted under the bylaw unless there is a house on the lot, or hear it and hire a consultant.

Maria reminded members that at the last meeting there was a discussion about how the dock could be conditioned to comply with the bylaw, either by making it a condition that the dock could not be built until the Certificate of Occupancy for the house is issued or that if the sale of this property does not go through, the Order of Conditions shall be null and void.

Tara said she thinks the board may still want to hire a consultant to address other concerns even if the applicant withdrew their request for a dock. They might file a new Notice of Intent after the house was built and the board might want a consultant to review it.

Reid argued against hiring a consultant. He said he didn't think the wetland line would change and that it is a matter of interpretation. He asked whether it was more appropriate to consult with Town Counsel. He continued that the decision on whether or not the board is going to entertain isn't the role of a consultant to determine if the board can proceed with reviewing the dock if the bylaw says a dock can't be permitted. Maria replied that this review does not rise to the level of needing Town Counsel. Consultants are hired to assist the board with review of projects when the board lacks the needed expertise.

Maria explained that if the board votes to hire LEC Environmental Consultants, a letter will be sent to the applicant. They have 10 days to either pay the fee or withdraw the Notice of Intent.

Debby Hancock she would like Reid to ask for a continuance so that she and Reid can have a conference call with their client and possibly to have them come to the next meeting.

Reid asked the board to make a decision about whether they will entertain approving the dock even if they don't hire a consultant.

Peter replied that he would rather have the applicant ask for a continuance. Peter then asked if the application should have been accepted because of the performance standard that prohibits a dock without a house. Maria explained that the application was complete and the board is required to hear the application within 21 days. It is up to the board to approve or deny an application based on whether it meets the performance standards out right of it the project can be conditioned to meet the performance standards.

Whit asked if the vote at the last meeting obligated the board to hire a consultant. It does not. He said he is not in favor of hiring a consultant.

Tara said the will of board seems to be that if the board was to vote on this project, the dock would be denied. The board could still approve other parts of the project.

Prudy withdrew her motion. Members tabled their decision to hire a consultant. Prudy reminded everyone that the consultant's proposals are good until the end of December.

At the request of the applicant, a motion was made and seconded to continue the public hearing on this application to December 11 at 6: 15 PM. All in favor.

Map 35 Lot 9/SE79-389: 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 Teles Landscaping on behalf of Blue Heron Farm LLC for a project located at 99 Pond View Farm Road. The project consists of the removal of invasive vines from Eastern Red Cedars at the top of the coastal bank and the relocation of Eastern Red Cedars from the Buffer Zone to other locations onsite.

James submitted a revised plan showing the No-Disturbance and No- Build Zones together with a request for a waiver of the provision of the Bylaw regulations.

The applicant is asking permission to relocate between 40 and 50 trees within the first 25 feet of the buffer zone. Maria noted that a large number of the trees are within the jurisdiction of NHESP. NHESP has not issued their comment letter.

James said the trees are in an odd row and seem out of place. He doesn't think the removal will alter the coastal bank.

There are a few cedar trees on the bank that are covered with multi-flora rose and/or bitter sweet. James said he wanted to clarify that they are only asking to remove the vines out of the trees.

Carlos said that removing these trees will not necessarily open up the view because some of the trees on the bank are taller than the cedars they propose to move.

James said not fill will be brought in. A tree spade creates a divot where the first tree will go and the soil removed is used to fill in successive holes.

Commissioner's Comments/Questions:

Members discussed the plan submitted to the Planning Board that shows significant grade changes outside the Buffer Zone that extend into the Outer Buffer Zone.

Prudy said the board has approved flush cutting of trees in the first 50 feet of the buffer zone, but not removal of roots or disturbance of soils.

Tara said she wouldn't vote for any tree removal, but that she was ok with the vine removal. She would potentially entertain flush cutting the trees.

In light of the fact that we have a copy of the house plan submitted to the Planning Board showing significant grade changes, Prudy said she would like to review this project as a whole. John agreed.

A motion was made and seconded to continue this public hearing to January 22 at 5:10 PM in order to give the applicant time to submit a Notice of Intent for any grade changes to the Buffer Zone.

New Business:

FY 2020 Budget: Maria reported that she level funded the operating expense budget. Monies were moved around to cover a 2% increase in the MACC dues.

A motion was made and seconded to approve the FY 2020 budget and budget submission sheet. All in favor.

Old Business:

MV Agricultural Society/APR: meeting with Board of Selectmen: Maria, Prudy and Tara will attend this meeting. Tara recapped the following concerns:

Adequate notice of events

Authority of this board to sign off on beer and wine licenses.

Administrative:

The board will meet on December 12 at the Library to discuss meeting procedures and policies.

Correspondence:

There being no further business to conduct, the meeting adjourned at 6:35PM.

Respectfully submitted,

Maria McFarland
Board Administrator
APPROVED