

Conservation Commission, October 17, 2011

Town of Scituate

Conservation Commission

Town Hall Selectmen's Hearing Room

Meeting Minutes

October 17, 2011

Meeting was called to order 6:15 at p.m.

Members Present: Mr. Snow, Chairman, Mr. Breitenstein, Mr. Jones, Mr. Greenbaum, Mr. Parys, Ms. Scott-Pipes, and Mr. Tufts.

Also Present: Paul Shea, Agent, Jim O'Connell, Agent, and Carol Logue, Secretary, Allan Greenberg, Associate Member

Agenda: Motion to accept the agenda Ms. Scott-Pipes. Second Mr. Jones. Motion passed by unanimous vote.

Agent's Report: Proctor, 86 Crescent Ave.

Mr. Shea: Talked with Adam Brodsky regarding Lot 57 and the 2 drainage pipes. It was his understanding he didn't have to do anything more. First suggestion was to submit an Amendment, but he didn't want to do that. He will be filing a Request for Determination application to take the 2 pipes out. Should be getting that filing soon. Cleaned out the drain at the collection system the Corp put in. Abutters don't get notified under the Request for Determination.

Harrington, 88 Country Way

Mr. Harrington was present. Brought you in and then you hired Brook Monroe to flag wetlands. Mr. Harrington has been taking care of his mother. Brook Monroe is ready to delineate the wetlands. No on-going work. No water in the wetland. Confident there are no wetlands.

Haufler, Lot 2 Peggotty Beach Road

Mr. Shea: There is an Enforcement Order on this property to remove fill. Paul Mirabito said it all revegetated and should remain. The Commission disagreed. Beginning of December called Brad Holmes. Told him to have his client remove the fill and stabilize for the winter

and plant in the spring. Commission is in favor of a fine.

Mr. O'Connell: Commission has the capability to fine \$50 a day. Mr. Jones: there are other issues on Lot 2 Peggotty Beach, the hillside. Letter went to the property owner to attend tonight. If he doesn't show up he should be fined. Mr. Bjorklund: if remember correctly, the restoration plan was voted. Wanted to leave the pile of dirt, Commission said no. Hasn't given us a plan yet. First thing would be the plan. Send a letter stating, if fill not removed by a certain date, fines will start. Motion to levy a fine daily starting today - submit a restoration plan. Once the plan comes in the fine stops. When the plan is approved he would have a certain amount of time to do the work. Mr. Greenberg: 122 Old Oaken Bucket Road. Fine should go on until the violation has ended. Mr. Shea: talked with Brad Holmes in 2010, everything was supposed to be done by now. Motion to start fining immediately Mr. Greenbaum. Second Ms. Scott-Pipes. Motion passed by unanimous vote.

Request for RDA Amendment: Anderson, 192 Clapp Road

Mr. Snow recused himself. David Anderson was present at the hearing. Request for an existing Determination to renovate an antique barn, more costly than anticipated, in order to save the barn and store in the field, cut the move across the road. Requesting to put a drain for the new addition down to the catch basin on Clapp Road. Mr. Shea: has an existing Determination approval, no problem concerning the barn in the field; temporary storage, right to the edge of the 50' buffer. Think can allow under the approved Determination. Drain coming from house, parallel to catch basin, working within 15' of the edge of the wetland can't be done without a separate Request for Determination even though it is a temporary disturbance. Being reviewed by DPW. Not stormwater runoff, actually groundwater. Moving some of the groundwater down, which goes into the BVW across the road. Mr. Greenbaum: same addition? Yes, but barn is not part of it now. Motion to approve moving of barn Ms. Scott-Pipes. Second Mr. Jones. Motion passed by unanimous vote.

Show Cause Hearing: Andrea, 147 Hollett Street (cutting)

Mr. & Mrs. Andrea were present at the hearing. Mr. Shea: work going on within the wetlands, behind house, within property line; believe

someone has been clearing out phragmites. Need approval from the Commission. Left the reeds, trimmed some vines that were strangling the trees and did a little vista pruning and dragged dead stuff out. Tried to stay away from phragmites. Because working in the resource area and buffer zone need to file a Request for Determination and tell what was done and anything you might want to do. 100' buffer zone probably out in Hollett Street. If you file a Request for Determination it could be decided that what you did or want to do is allowable, or whether you need to file a Notice of Intent if the work too invasive. In exchange for some of that maintenance work, we may ask you to eradicate some of the phragmites. They have a small dog and there is a problem with coyotes and fox. Wildlife experts basically recommend to leave them alone, certainly don't feed them.

Wetlands Hearing: Fern Properties, 214 Clapp Road (wetland delineation) (cont.)

Mr. Snow recused himself. Applicant requested a continuance, wetland scientist could not attend. Go for site visit before they come back again. Motion to continue to November 21, 2011 at 6:30 p.m. Ms. Scott-Pipes. Second Mr. Jones. Motion passed by unanimous vote.

Wetlands Hearing: McKay, 20 Ocean Front Street (install boulders to stabilize slope) (cont.)

Applicant requested a continuance, lost attorney. Motion to continue to November 7, 2011 at 6:40 p.m. Ms. Scott-Pipes. Second Mr. Jones. Motion passed by unanimous vote.

Wetlands Hearing: Morel, 22 Ocean Front Street (install boulders to stabilize slope) (cont.)

Applicant requested a continuance, lost attorney. Motion to continue to November 7, 2011 at 6:40 p.m. Ms. Scott-Pipes. Second Mr. Greenbaum. Motion passed by unanimous vote.

Mr. O'Connell: October 27, 2011 – 7:00 – 9:00: Scituate, Marshfield, and Duxbury are partnering with MAPC for a long range plan for potential effects of sea level rise, to be held at the Marshfield Senior Center, just beyond the Daniel Webster Estate.

Town Meeting is Tuesday, October 25, 2011

Wetlands Hearing: EBC Building Corp./Ellis, 18 Old Oaken Bucket Road (wetland delineation)*

Mark Manganello, from LEC and Jay Ellis were present at the hearing. Abutters notification was submitted. Consists of an existing single-family dwelling. There is additional property to the rear with frontage on Rt. 3A with an unnamed perennial stream that flows under 3A into the pond on the east side. Mr. Shea has been to the property, fairly straightforward, but has some changes to update the plan – 200' riverfront area; intermittent stream, which is just inside wetland flags 19 to 23 and across the culvert that feeds the perennial river. Supposed to show all resource areas on plan. Move flags 3, 4 and 5 about 10'. 6 about 4', 12-15 about 10' and 24 & 25 about 6'. The changes aren't radical, but need a revised plan. Also some terminology should be corrected. Agree with inland bank line. Lot is relatively tight.

Representative has been advised to fine tune changes, if possible. Would like to meet Mr. Shea out on site and clarify the line. Mr. Snow: aren't there 2 streams? Clarify as a diversionary ditch; thinks it goes around the pond and ties into the outlet. Jim Duffy, 13 Old Oaken Bucket Road: Direct abutter: long-term plan? Just delineating the wetlands now. Properties that directly border this lot are seasonally wet. Drainage is poor in heavy storms, goes to that property and sheet flows across his property and his neighbors. Concerned with potential negative drainage effects. Typically water from Walnut Tree Hill runs across Old Oaken Bucket; Cooper's garage gets flooded. Few years ago, drain from this property got plugged; whole property flooded. No topo on this plan, slopes toward 3A. Charles Haze, direct abutter across the street: Curious as to what impact there will be on his property. His property drains toward Old Oaken Bucket Road. Mr. Snow: not delineating the floodplain. On this plan establish the wetland lines in advance, so there are no surprises. No proposed work yet. Mr. Jones: Seems like wetlands are closer to Old Oaken Bucket the way the abutters are talking. Almost seems like the stream from south side runs continuously, not intermittently. Mr. Shea: What shows in the field is everything dropping down gradually northeasterly. Agree with the shape of the wetland; no evidence of any stream channel back there. Mr. Dunphy: water table is high. Probably surface water runoff. Mr.

Haze: concerned about the uplands and the elevations. When they come back in November, the wetlands will be confirmed. Motion to continue the hearing to November 7, 2011 at 6:30 p.m. Ms. Scott-Pipes. Second Mr. Jones. Motion passed by unanimous vote.

Wetlands Hearing: Meehan, 16 Barry's Landing (4'x14' wooden deck to existing gangway and add 6.5' x 20' float)*

Stan Humphries was present at the hearing. Abutters notification was submitted. Positive determination a few months ago. Plans are in the format for the Chapter 91 permits. Resource areas: North River/ riverfront area, salt marsh, land subject to coastal storm flowage, coastal bank and flood zone AE with 100-year floodplain at elevation 10'. Proposed deck portion is over BVW. Division of Marine Fisheries comment: The existing pier overlying salt marsh should have a height at least as great as the width – a 1:1 ratio. Phragmites is growing through the deck. The deck portion that rests on the upland area, technically below the 100-year flood elevation, we are calling a coastal bank. The preference would be to have a stone or granite piece in the ground, so it doesn't decay, with stepping-stones, as it slopes and is difficult to walk down. Proposed float will have 6' x 12' stringers on the bottom so at low tide, it will be approximately 6" to 8" off the bottom of the mud flats. Intend to go through Chapter 91 permitting. Float has been there and gangway has been there since 2001, 2 years prior to the amendment to buffer strips in the Scituate regs. Ms. Scott-Pipes: Wants one extra float? Yes. Mr. Jones: presented to the Harbormaster? Yes. Two ways to go about this, either a 10A permit, for a fee plus the boat, but fees would surpass the cost of a Chapter 91 license. Choose to go with a Chapter 91 license. Mark Patterson doesn't have a problem with that. Can the Commission get a letter from Mark? Yes. Mr. O'Connell: has owner been before the North River Commission? No. North River Commission would like to hear from Conservation first. They would prefer no more floats in the intertidal area. Both Conservation and North River Commission have regulatory authority. Applicant will have decide to comply with one of us. All permits have to be obtained. They can always come back and amend their Orders. Motion to close the hearing Ms. Scott-Pipes. Second Mr. Jones. Motion passed by unanimous vote.

Wetlands Hearing: Brodigan, 104 Oceanside Drive (expansion of existing patio)* (After-the-fact)

Michael Brodigan, Patrick Walsh, Walsh Contracting and Bob Murphy were present at the hearing. Abutters notification was submitted. Have no doubt it happened in the manner that it did. Don't shoot the messenger. Google earth allowed him to go back in time. Gives an idea of how much concrete had been poured. As per request, a rep of the Contractor is present. Ms. Scott-Pipes: not quite sure where we are going with this? After-the-fact filing, work already done. Violation that happened June 28, were told to stop before any of the cement was poured and told they could be facing a fine. Mr. Snow: do you want to permit what was constructed or not. Voted at a previous hearing to levy fines, after we received answer from legal council, but then filed the Notice of Intent. This proposal is to maintain what they have now. Right up against the seawall, don't think Commission would have permitted that. Don't have an issue with the size, but do have an issue to the wall. Mr. Breitenstein: land subject to coastal storm flowage – not supposed to add impervious surfaces. Mr. Greenbaum: actual resource areas are not shown; flood zone not shown, don't have a complete relationship to the flood zones. How does this work comply with the WPA and the Town regulations? If you can show that, than we can proceed. There are at least 3 different resource areas not shown. Mr. O'Connell: There is a V and AO flood zone. Mr. Parys: 4" thick concrete. Mr. Jones: issue is, would it have been permitted? Mr. Tufts: If they'd stopped like they were told to, we wouldn't be here now. Mr. O'Connell: impermeable surfaces – performance standards: storm damage prevention and flood control. Usually pile supported decks are to be removed. Eliminated the land form. Requested to stop all work - they did it anyway. Mr. Snow: want to leave the concrete as it is now? Yes. Mr. Greenbaum: the concrete deck buried underneath, could stay as it was, essentially grandfathered, but it depends when it was poured. Inland regs were passed in 1968, coastal regs in 1978. No way of proving. Could look back at aerial photos. Mr. O'Connell: Comply with the regs and levy a fine. Mr. Greenbaum: When was the house built? 1920. Mr. Snow: Can close the hearing if no more information to submit. Visually it is all in a V zone. Motion to close the hearing Ms. Scott-Pipes. Second Mr. Jones. Motion passed by unanimous vote.

Discussion of fines: Noticed by a Commission member that concrete was going to be poured. When Ms. Scott-Pipes got to the site, she told the contractor not to pour or they could be subject to a fine. Was told the concrete was coming and being poured. She told both the contractor and wife not to pour. The wife said July 4th is coming. Ms. Scott-Pipes felt threatened, went to the Police Station, and happened on Mr. Bjorklund at the town hall. When the police Ms. Scott-Pipes and Mr. Bjorklund went back they had just started to pour. Again were told to stop and could be fined up to \$300 a day. It was June 28, 2011. Mr. Walsh said he wasn't sending the concrete trucks away, both cautioned again about the fines. He said FINE ME. He went so far as to say; this cement is \$1700 worth. By Monday he will be fined \$1800 and he said he didn't care. Can fine \$50 per day, per violation. Motion to fine both Walsh Construction and Brodigan from June 28, 2011 until it is removed Ms. Scott-Pipes. Second Mr. Jones. Motion passed by unanimous vote.

Discussion: Moses, Lot 1 Heritage Trail (fence)

Heather Moses, brother Mr. Sills. Seeking an appeal of a 15' buffer zone from 2008. The pool was something the previous owner wanted. It is a 4.18 acre lot. Submitted what the back yard looked like. Looking to push fence back for more green space for back yard. Mr. Snow: the reason the fence is there is because it is a wetlands and buffer in order to stop encroachment. Open space was to be preserved in the back. To make sure that didn't change, the fences were required. There was a violation, clearing the buffer zone. There was a determination where the fence should go. Ms. Scott-Pipes read the orders. Should be fence, signage on the fence, and concrete bounds. Did you ever read the Order of Conditions? Some of the orders are attached forever. This is a no disturb zone. Mr. Shea: Not the problem. There is a Restrictive Covenant basically says what Penny read in the Orders and was recorded by Mr. Ohrenberger. Covenant rides with the property. The Leary's agreed to restrictive covenant. Typically picked up when doing title searches. They cleared the 50' buffer zone. Not planning on the pool and want fence to go in. Mr. Greenbaum: The last owner may have already tired your hands. Mr. Bjorklund: by the time the houses were constructed 25' buffer zone was 50'. Originally denied by the

Commission, went to DEP and received a Superceding Order. The Commission wanted them to plant a tremendous amount of plantings. Then agreed on just the fence and do not plant. Mr. Shea: Read it could be amended. Mr. Snow: piecing together a lot of different things. Need a clear plan, if the Commission is actually going to vote on this. Get a plan that shows the property, the house, fence, etc. If what Paul read can be changed, we maybe could look at. Not fair you have more of a hardship than neighbors. Mr. Shea: want to move the fence away from the house, however, what if the fence was moved 25' or 30' to enhance a real buffer zone. Mr. Snow: If the buffer zone for everyone else is 25', then that should be kept. Need existing wetland line.

Allan Greenberg: how we are going to look at continuing orders. Cut them back to really important and sensitive sites. Very rarely checked; that's what happened on 54 Border Street.

Mr. Snow: have a lot going on, need to prioritize when people are allowed to work in sensitive areas. Unless someone makes the Commission aware, don't know how they would be prioritized. In certain areas where mitigation plantings are required, maybe those should be checked further. Thinks it is important. Also want to be careful; people have rights that own the property. Need to find a way, instead of trouncing through back yards. Contact people before looking at the property, some will be receptive, some won't respond. How often? Check at least every 2 years. The engineers are setting up and reminding applicants they need to file for Certificate of Compliance. Maybe we need Town Counsel's interpretation of continuing conditions? Mr. Shea: No. Continuing conditions always lose in court. DEP doesn't like continuing conditions. Mr. Jones: Seems covenants can be overcome easier.

Order of Conditions: Klein, 73 Kent Street (circular drive/deck/lawn/ plantings)

Motion to condition the project Ms. Scott-Pipes. Second Mr. Jones. Motion passed by unanimous vote.

Order of Conditions: Simmons, 47 Ocean Drive (raze/rebuild/septic)

Motion to condition the project Ms. Scott-Pipes. Second Mr. Jones. Motion passed by unanimous vote.

Order of Conditions: Duxbury Construction/Boynton, 5 Irving Street (septic)

Motion to condition the project Ms. Scott-Pipes. Second Mr. Jones.

Motion passed by unanimous vote.

Order of Conditions: TK O'Malley's/Collins, Tr., 190-194 Front Street (22+/- slip marina)

Motion to condition the project Ms. Scott-Pipes. Second Mr. Jones.

Motion passed by unanimous vote.

Order of Conditions: Morris-Hipkins, 222 Central Ave. (maintain existing pier/extend pier/new float & skidoo rack)

Work cannot begin without written approval from the Harbormaster.

Motion to condition the project as amended. Ms. Scott-Pipes. Second Mr. Jones. Motion passed by unanimous vote.

CORRESPONDENCE

October 4, 2011 – October 17, 2011

1. Contractor for Akerblom, 228 Central Ave (mailing address change: 23401 SW Arrowroot Street, Indiantown, FL 34956– Steve Lynch (781) 331-8122 (in file)

2. Office of Appeals & Dispute Resolution re: Wannop, 68-2290 – Lot 2 Glades Road (in file)

3. Revised plans & Report 68-2354 – 214 Clapp Road (in file)

4. Recording of CofC for 68-2232 – 28 Dartmouth Street (in file)

5. DEP File #68-2372 – Collins, 194 Front Street (in file)

6. DEP File #68-2373 – Morris-Hipkins, 222 Central Ave. (in file)

7. DEP File #68-2374 – MacDonald, First Parish Road (in file)

8. Planning Board Agenda for October 13, 2011

9. Notification to abutters re: 18 Old Oaken Bucket Road (in file)

10. Request for CofC for 35 Tilden Road - received check (in file)

11. Request to continue hearing for MacDonald, First Parish Road from October 31, 2011 (in file)

12. Stormwater Magazine

13. Atty. Marzelli re: Assessors Parcel 20-6-14 – possible CPC application.

14. The Beacon

15. Revised Site Plan 10/7/11 for MacDonald, First Parish Road (in file)
16. Merrill Associates for Cohasset Planning Board re: Horne, 1004 CJCH (in file)
17. Mass Audubon re: 2011 Summary Report
18. Recorded OofC for Patterson, 117 & 119 Edward Foster Road (in file)
19. Insurance Services Office re: 2011 CRS Completed Recertification
20. Hatherly Country Club - Operation & Maintenance Plan 5, 11th, 12th & 14th Fairways (in file)
21. Request for CofC for 486 Hatherly Road – 68-2113 – Engineer’s letter, as-built, check (in file)
22. Request for a Full CofC for 161 Summer Street – 68-2286 – Engineer’s letter, as-built, check (in file)
23. Request to continue Fern Properties, Inc, 214 Thomas Clapp – wetlands professional has a conflict (in file)
24. Allan Greenberg’s report re: MACC Fall Meeting
25. Marine Fisheries re: 16 Barry’s Landing – lies within mapped shellfish habitat for blue mussel (afforded protection). Pier should be a height as least of 1:1 and grating rather than planking. (in file)
26. Request for Amendment of RDA for 192 Clapp Road (in file)
27. Request to continue McKay, 20 Ocean Front Street
28. Request to continue Morel, 22 Ocean Front Street
29. Request for Public Records re: Horne, Scituate Racquet Club (no other info to copy)
30. DEP Reply to Motion to Dismiss – Agrees with the Trust’s motion to dismiss the Petitioner’s appeal. (in file)

Meeting adjourned 9:00 p.m.

Respectfully submitted,

Carol Logue, Secretary