

**Town of Scituate  
Conservation Commission  
Town Hall Selectmen's Hearing Room  
Meeting Minutes  
July 16, 2014**

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

**Members Present:** Mr. Snow, Chairman, Mr. Harding, Mr. Parys, Ms. Scott-Pipes, and Mr. Schmid.

**Also Present:** Patrick Gallivan, Agent and Carol Logue, Secretary

**Agenda:** Motion to amend the agenda to discuss Enforcement Orders and fees; RDA for 92 Clapp Road, close out previous project and issue a Certificate before finishing the Request for Determination; Petrocelli, 136 Indian Trail is coming in tonight; Walking Trail group not coming tonight and probably not the next, but will discuss anyway Ms. Scott-Pipes. Second Mr. Harding. Motion passed by unanimous vote.

**Introduction:** Chris Lucas: Handed the Commission his qualification package. Chris is going to review the Toll Brothers project and Lot 2 Glades Road for the Commission. Lot 2 Glades went through the court system and the new owner wants to move the house closer to the wetland. Could have built without impacting anything. Received a 4 page report from John Zimmer regarding the wetlands. Mr. Gallivan thought he'd sent the John Zimmer letter to the members; will do that. Mr. Zimmer states why it won't impact the wetland values.

Proving Grounds/Toll Brothers: we looked for someone who hasn't been involved. Chris has done a lot of this type of work. Will have him look at the old ANRAD and compare it to the new and walk the site in the next 2 or 3 weeks. Last night talked to abutters, there may be more wetlands. Laying out what the scope of work might be for a proposal. Should have the paperwork by the 23<sup>rd</sup>. Mr. Snow: pretty good credentials. Professional wetland scientist, certified in NH and soils scientist. Staff is all certified PWS. Have done wetland delineations and wildlife assessments; 25% municipal review. Familiar with bylaws and WPA. Worked on a variety of projects: Commercial, residential, large scale subdivisions, transportation projects, solar projects, and telecom projects. Background is Cornell and Stanford University where he got his masters in Science/Biology, and UMA Amherst to get masters in soil science; soils are crucial. Have a team of three. Have been in the business for 15 years and in business for himself for 6 years. Mr. Snow: have you dealt with coastal resources? Glades will be multiple issues, some coastal bank. Personally done coastal projects. Well versed on coastal banks; good balance working on both sides of the table. Mr. Schmid: assuming you've worked on projects with many abutters? Familiar with contention. Commission thanked Mr. Lucas for coming to introduce himself.

**Request for Determination:** Howe, 92 Clapp Road (12' x 14' deck) (cont.)

Should close out the old project and issue a Certificate of Compliance first. Motion to continue the hearing to August 20, 2014 Ms. Scott-Pipes. Second Mr. Schmid. Motion passed by unanimous vote.

**Discussion:** Morse, 7 Barry's Landing (pesticide order)

Greg Morse was present. Basically here on an informal basis to discuss one of the conditions, looking for input, then if it warrants, maybe apply for an Amendment. #34. No chemical fertilizer . . . The property owner has some problems with this. He can't apply any type of pesticides for ticks, treat his house for mold, or termites, or fertilize the lawn. Understand the intent, but this condition doesn't say it just includes the buffer zone, it includes his whole property, plus he is several hundred feet from the river. In doing the research looked at the North River Commission and spoke to DEP. Judy Grecco from North River Commission said they don't allow pesticides within the 100' corridor or within 100' of the natural bank, except for normal residential use, as long as the rules and regs of state pesticide board are followed. They allow fertilizers for residential lawn use. Proposing to ask for an amended condition to allow the use in the 100' buffer zone in accordance with the Department of Agricultural Resources; could require certified professionals to apply. Mr. Gallivan: wording of the condition is very broad, might be an issue; goes way back in the regulations; maybe DEP has some other guidelines. Don't know if that means a change in our regs; could run it by legal counsel. We want to protect wetlands, but there should be a delineation. There are pesticide regs under the Department of Agricultural Resources; state laws that licensed people apply. Mr. Gallivan: Under your suggestion they would need to be licensed; need surety that the intent of the regs are followed, but not necessarily prohibit, but appropriately. Mr. Schmid: Not only would we change the regs, but right now the condition includes the whole site; don't know if we want to cover the entire site. Mr. Gallivan: should apply to the buffer. DEP language refers to the Department of Agricultural Resources and the State Herbicide and Pesticide Board. Ms. Caisse: could we consider something more organic. There are natural items that can take care of all sorts of things. Vinegar is the best way to change the PH. Mr. Gallivan: would think DEP or MACC would have guidelines. Mr. Snow: wouldn't want to be restricted for termites, but a lot of the companies are now treating with different chemicals; not spraying so much. Mr. Schmid: further define the company to be licensed, the types of chemicals, and the area. That would seem to get us to where we want to be. Mr. Morse: condition affects anyone who wants to spray for ticks; however, you want them to be aware of pesticides. Mr. Snow: never interrupted it that way. We have had hearings where folks explained the whole treatment process of invasives. Mr. Gallivan: talked about what needs to be changed in the regs, maybe that is an area, possibly allow certain chemicals, but some people over apply. Mr. Snow: would like a bit more information from DEP. Can forward more information from the Department of Agriculture. Mr. Gallivan: will talk to Board of Health, DEP, and MACC; take it up again August 20. Look for conditions on types of fertilizers. Mr. Harding: do they restrict the area of concern?

**Wetlands Hearing:** O'Donoghue, 44 Crescent Ave. (raze/rebuild)

Greg Morse, Morse Engineering and Mr. & Mrs. O'Donoghue were present at the hearing. Abutters' notification was submitted. Plan shows property line in bold; light gray shows 11,246 sq. ft. of resource area of which is primarily the Atlantic Ocean, in a velocity zone with an armored stone embankment; top of coastal bank in blue determined by first observed break in slope. Red line is the 50' buffer, green line is the 100'. Majority of lot has been developed to the fence. Proposed dwelling will sit mainly in the same location, shaded in orange. Existing dwelling is 45.5' from coastal bank, proposed 53.5'; existing deck is 28.9', new 29.5'. Existing structure within the 50' buffer is 446 sq. ft.,

proposed 428 sq. ft., just deck area. Driveway, municipal water and sewer stay the same. Added drywells to handle roof runoff. No change in topo within the 50' buffer remains existing lawn. Split rail fence provides no encroachment to the bank or revetment. Ms. Scott-Pipes: deck sitting on the ground? 1<sup>st</sup> floor deck on sonotubes. Mr. Schmid: disturbing less of the 50' buffer and coastal bank area. Mr. Gallivan: retaining wall perpendicular to the bank? Will stay along the edge of the driveway. New deck seems to be closer to the top of bank. It is a 29.5'. Where the porch is now becomes deck area and is no closer to the bank. The dwelling is approximately 12' closer to the street. Increase of impervious surface is 300 sq. ft. Added 4 roof drywells that don't exist today. Do you have an area for stockpile, or dumpster? You can put that in the order. Mr. Snow: using a silt sock? Silt fence that raps the limit of work. Area is fully vegetated with lush lawn. Stability of the bank won't be compromised. Motion to close the hearing Ms. Scott-Pipes. Second Mr. Schmid. Motion passed by unanimous vote.

**Enforcement:** Bongarzone, 277 Chief Justice Cushing Hwy. (removal vegetation)

Peter Bongarzone was present. This is actually #275. Mr. Gallivan: Order of Conditions was issued a couple of years ago for two houses. A stormwater basin is on this lot. It is a tight area within bordering vegetated wetland and riverfront area. Plantings were required at the 50' and the 200' buffer, which didn't leave much area for lawn. Some plantings were put in. Met with Peter, it appears the lawn infringes into the buffer. Order calls for no impact to the 50' buffer. Spoke to Jay Ellis and he said plants were put in at the 50' buffer and between the properties, but not around the basin because that wasn't done yet. The plantings are no longer there and the basin is a wet basin. Jay Ellis went back with the surveyor and marked where conservation posts were to go; might have had stakes so he knew where the plants should go, but no posts. Mr. Snow: Believe it should be the responsibility of the original applicant, since he didn't request a Certificate of Compliance. Ms. Scott-Pipes: gone into the buffer zone with grass, that is a no, no. Mr. Bongarzone: There were never any plantings/blueberry bushes on his lot; nothing else planted. Jay Ellis is trying to say there was. Wasn't revealed to him that there was a no touch zone. Didn't even know he had a retention basin. In November you requested another parking area, we gave you permission, but only on the grass, not in the buffer zone. Have to look at the original Orders and plans. Have to put in the proper plantings and take out sod. Didn't know where the buffer zone started or ended. Took out poison ivy and put grass in. Grass is not acceptable in the buffer zone. Mr. Schmid: buffer zone infringement, plantings not complete, posts not in. Is the existing basin the way it is supposed to be? Once the property is sold, there should be BMPs for the basin. Don't know why that didn't happen. Mr. Parys: if you had an attorney, they should have found the Orders. Mr. Snow: go back to paperwork; see who was supposed to do what. Jay Ellis was the builder, not the owner. Shouldn't be the Commission's responsibility to chase someone. We won't issue a Certificate of Compliance until it is corrected. Would like to see it resolved soon. Don't want to see anymore encroachment; this is a sensitive site and close to the reservoir. Think the homeowner should know what they have; ignorance is not an excuse; want to see it corrected. Think it will take a little time to correct. Mr. Gallivan: Need BMPs for the basin. Tricky spot for herbicides/pesticides, overflow will go into the street and hopefully not the reservoir. Can you come back with information by August 20? Get a copy of the Orders.

**Enforcement:** Moskowitz, 158 Border Street (pipe)

Blockage of a pipe, impacting abutting properties. Met Mr. Moskowitz in the office this week. There was an Enforcement Order issued in 2009 requiring an engineering plan for the pipe. Contractor just put it in. Spoke to the contractor; could not go any lower because of ledge. It may not be at the right elevation; didn't meet stream crossing regs at the time. The files we have referred to Bob Crawford. He did septic plans, didn't remember the pipe. No Order of Conditions. Susan Campbell, 162 Border and Helen Butler, 163 Border were present. Ms. Campbell: Had this situation 30 years at 150 Border; that stream is gone now, 162 had a tiny stream, but it now floods the yard; have lost trees, some 50 or 60 years old. Everyone speaks about the ledge, but the water flowed through the ledge with no problem. Early they put down additional mulch; pipe is 1.5' above the ledge; it does nothing. Believe flooding was caused by the fill and the widening of the driveway. Her septic has failed because the water table has risen; Butlers have the same situation. Have some photos, there were gardens and kids' swing sets; now surrounded by bamboo and a lot of dead trees. Mr. Gallivan: he said he was told just put the pipe in. The Enforcement Order called for a restoration plan and an engineer. Originally thought there was an Order of Conditions, but it was a violation, with no follow through. At a minimum an engineer should be involved and then file. Ms. Scott-Pipes: did he give you the impression that he would work with us? He had reasons it was like that. Mr. Snow: send a letter, say all the things that are missing and give a timeline. We know there is a problem; we can issue an Enforcement Order and give some direction, but it takes a very long time. Ms. Campbell: In 2009 the reason for the Enforcement Order was a letter we sent. There is no Order and every year more mulch is put down. In the process of selling the house. Ms. Scott-Pipes: don't believe there was ever a formal hearing, however, it was discussed. Mr. Snow: give him a time to come in with information and have him come to the 20<sup>th</sup> meeting; if not issue another Enforcement Order.

**Enforcement:** Chamberlain, Glades (marsh)

Believe you all received photos. Disturbance in the past, mosquito control was involved, but they were allowed to reroute some of the marsh areas to flow away from the protected birds. The owner was told not to do anything without a permit. Recently dug the channel, dumped salt marsh hay and soils onto the barrier beach where the birds were nesting. Natural Heritage and Mass Audubon are involved. When the property owner was contacted Pat told him we will have to issue an Enforcement Order and we will have to determine how much marsh was disturbed. Contacted two wetland people. Martha Rhinehart, PWS specializes in salt marsh restoration is coming up, and they are going to pay for it. It is a mess; it will be hard to figure out. We will get her estimate. Three people from DEP have called on this. She can get out there as soon as she sets it up with him. Don't know what they do for restoration. Ms. Scott-Pipes: why did they do this? They were doing their own mosquito ditching. Mosquito control had a permit; they originally called the office about the problem. Mr. Snow: probably give them some deadlines. Get estimate by next meeting. Natural Heritage had strict conditions on this area. Do we know who did the work? No.

Paul Petrocelli, 136 Indian Trail was present. Sent a letter, slope was steeper than it appeared to be when proposed by Lou Seoane. Tried to get down as low as we could. Can't take anything more away it will ruin the integrity of the slope. When Grady was here, they proposed to maintain the existing slope and Pat Brennan said it looked good, but thought it might erode. Came back with a planting plan and in addition, Lou Seoane proposed to flatten the slope. Grady said it didn't need to be flattened. The plan the way it stands will work. There has been no erosion at all. Today took pictures; no erosion. Down at the toe there is still some ledge and boulders. Installed a 2' x 2' swale with piping that goes to the rain garden; cut slope back; working great. Mr. Snow: know that Penny and Pat went out, and I went out last Thursday, stopped and got the plan of Lou Seoane's. Different look, steeper slope. Grady came up with a trench/swale at the top of the hill. Issue was how to plant the slope and the landscaper came back with this plan, not engineered, but now we have something somewhere in the middle. Don't disagree it would be difficult to start at the bottom of the hill. From the ditch/swale, goes out and down 6' to 10', but no longer like a cliff. Mr. Seoane contends he can plant the slope and it will hold. Don't know if we need someone else to check. Check it out a year from now. Mr. Schmid: what is going on with the neighbor's water? Didn't see any siltation and there is no grass or plants yet. Ms. Scott-Pipes: Henry Yeh seems concerned that it so high. Impression was it was going to be what Lou Seoane brought in and Mr. Yeh was given a copy? Mr. Harding: at this point, get the plantings in and give it a chance. Mr. Gallivan: agree when Lou left last time, felt more comfortable. Haven't been told it

will work this way; maybe have Pat Brennen look at any new calcs. Mr. Snow: the difference is the swale to the property line, doesn't have the same contour. Paul should talk to Grady and have the consulting engineer take a look at. Will have Grady talk to Brennan. If they can tell us this will work, it would be a mistake at this stage to dig it all up. Ms. Caisse: have Brennan sign off and send a letter to Pat. Ms. Scott-Pipes: it has to be stabilized. Going to put mesh down and then plant.

**Order of Conditions:** Pratt, 180 Central Ave. (footings for deck) (NO DEP File #)  
No DEP #. Should send an Enforcement Order. Is the work done? Yes.

**Minutes:** June 18, 2014 & July 2, 2014

Motion to accept the minutes of June 18, 2014 Ms. Scott-Pipes. Second Mr. Schmid. Motion passed by unanimous vote.

Motion to accept the minutes of July 2, 2014 Ms. Scott-Pipes. Second Mr. Harding. Motion passed by unanimous vote.

**Agent's Report:**

Toll Brothers informal meeting at the Community Building: 120 people showed up. Next meeting will be our hearing at the GAR Hall. Really need to direct the public toward just the wetland issues; keep it very focused.

The Glenn: Fiore Brothers are starting at 89 Summer Street. Turtle sweep going on this week. Laying out erosion controls today.

Mr. Schmid: at some point introduce a discussion about putting more teeth into our Enforcement Orders. Issue letter, Enforcement Order, then we can issue a fine; a minimal fine and it doesn't seem to have much consequence. Introduce harder fines, under the bylaw. Fees have to go through the Board of Selectmen; some fines can go through the WPA. Will find out. Ms. Caisse: according to Wetland Enforcement Manual fines cannot be imposed under an Enforcement Order. Can impose fines under the WPA only after going to court and getting a final judgment. Have to be specific with fines under the bylaw. The bylaw fine is \$50.00. Bill will work with Pat. Mr. Snow: the reality is limited resources to actually get to court and to get a judge that even cares if they threw debris into the wetlands; it is difficult.

Walden Woods: pretty wet, it wasn't pouring when he got there. Basin wasn't overtopping. Going over to Satuit Brook last night.

Are we good with the signs for the Requests for Determinations? Yes. Secretary is sending out with the Determinations.

Put off a bunch of enforcements: 271 Central, 244 Central, a few of those that never responded to the letter. Ms. Scott-Pipes: for the meeting of Toll Bros. August 6, even if we get our wetland person on board, they won't have made site visit. At the first meeting there are not many questions or answers, basically just a presentation. Really nothing without our consultant's report. Mr. Gallivan: Could have Chris go out with the old ORAD first, come to the meeting and hear people's concerns and then go out again after their presentation. Mr. Snow: hard to get people to understand it is just delineation, but it is important, it needs to be done right. Making sure all the existing conditions on the site are properly documented. Our people will have to concur with theirs. Probably our person and their person will go out together. Mr. Bjorklund: as far as the public is concerned have Toll Brothers show what was done previously; somehow superimpose what was done 5 years ago and what is considered wetlands now. Mr. Snow: some people think it will be the proposal. Different approach before when it was a 40B. Stricter regarding the buffer zones and isolated wetlands.

Rosemary: have gotten comments asking why you ask if I have any questions.

**CORRESPONDENCE**  
**July 3, 2014 – July 16, 2014**

1. Planning Board report re: MIT Sea Grant Program Climate Change Symposium – Sustaining Coastal Cities
2. Division of Fisheries – August 2007 letter re: Glades Mosquito Control Project – 3 conditions (e-mailed to members) (in file with enforcement letter)
3. Planning Board Agenda for Thursday, July 10, 2014
4. Zoning Board of Appeals Agenda for July 17, 2014
5. Zoning Board of Appeals – Request for Special Permits/Findings – 6 Mitchell Ave. & 529 & 531 Country Way-7/2/14
6. Zoning Board of Appeals – Special Permit – Granted for 19 Mary's Lane
7. Planning Board Amended Agenda for July 10, 2014
8. Toll Brothers neighborhood meeting – July 15, 6:00 p.m. – Scituate Harbor Community Building – call by July 11.
9. MassWildlife Magazine
10. Recordings for: OofC for 68-2474 – 214 Clapp Road; Planning Board conditions; Conservation & Management Permit; the Deed for Parcel D, 388,602 sq. ft. more or less; Certificate of Action; Covenant; and Declaration of Homeowners Association Trust and Supplemental Covenant.(in file)
11. Revised Planning Board plans for 214 Clapp Road (in file)
12. Recording of CofC for 68-2034 – Pritchard, 98 Crescent Ave. (in file)
13. New Coastal Resources Officer – Nancy Durfee
14. Concerned citizens re: Summer & Cedar guardrail and lack of vegetation to protect the wetlands – want to discuss.
15. NOI for Restoration of Damons Point Revetment, Marshfield
16. Endorsed subdivision plan for 305 Country Way (in file)

Meeting adjourned 8:06 p.m.  
Respectfully submitted,

Carol Logue, Secretary