

Conservation Commission, November 21, 2011

Town of Scituate

Conservation Commission

Town Hall Selectmen's Hearing Room

Meeting Minutes

November 21, 2011

Meeting was called to order 6:16 at p.m.

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

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

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

Request for Determination: Gill, 39 (aka 41) Surfside Road (remove portion of concrete patio/erect fence)

Tom Gill was present at the hearing. Existing patio encroaches onto his property by approximately 5.5' x 40'; remove and restore with beach stones and grass. Install privacy fence; approximately first 40' up to the AO flood zone; panels will be removed for the winter and stored in the basement. Removing concrete off site. There is a pit of beach stones along the seawall and existing railroad ties that have never moved. It is a buffer from the stones to the grass. Simply matching the rest of the area. Cedar board fence sloped to picket fence. Mr. O'Connell: obviously removing the concrete in the V zone is good, but consider removing a little more fence for the winter. How will you stabilize the existing patio so it won't be undermined? Continue with two railroad ties deep and edge the patio and the yard. Maybe install some type of membrane, don't want any seepage under the patio. Atty. Roberta Sawyer representing Ellen K. White: Asked the board if they received a copy of the easement to maintain patio in its current location. Yes. Page 2 of the agreement: Grantor gives to Mrs. White exclusive use of the encroaching patio as long as she and/or her successors own the house; expires when she no longer owns the property; take the

position that Mr. Gill has no standing to file this RDA; not enough information submitted. Last week someone came down to do the work; didn't attempt to get permission. There are numerous issues that need attention. Mr. Gill: conveniently left out the 60-day notice when selling the property and the requirement to remove within 60 days. House is listed with a real estate broker and there have been multiple open houses. Mr. Greenbaum: not in the position to determine legality of the work; Commission gives no property rights. Easement is between the property owners. He can request to do the work, but may not be able to until the easement issue is resolved. Mr. O'Connell: the town's attorney supported that we only review the work, we do not get into property rights. Ellen White: Patio is not in the best condition; lot of cracks; not in favor of railroad ties, which always end up in the street; at one point the patio was suspended, don't want that again; had to fill in underneath; haven't given him notice of selling the house, only testing the market. Motion for a negative 2 & 3 determination - Negative 2 - "The work described in the Request is within an area subject to protection under the Act, but will not remove, fill, dredge, or alter that area. Therefore, said work does not require the filing of a Notice of Intent." Negative 3 - "The work described in the Request is within the Buffer Zone, as defined in the regulations, but will not alter an Area subject to protection under the Act. Therefore, said work does not require the filing of a Notice of Intent, subject to the following conditions (if any)." Ms. Scott-Pipes. Second Mr. Jones. Motion passed by unanimous vote.

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

Frank Snow recused himself. Atty. Matt Watsky, Brad Holmes, Brad McKenzie, Joe Iantosca, and Paul Bourque were present at the hearing. Received information a week ago today and submitted additional information tonight, can't discuss this newest information. Had an on-site meeting November 14 at 9:00 a.m. Background: subject of ORAD in 2006, extension act of 2010, would have expired in September 2011. Fern purchased the property with no regulation changes. Expectation was a fairly typical redelineation. Purchase was with the understanding the ORAD was in effect. Received letter from Mr. Shea asking for additional flagging to identify a vernal pool, and

raised issue in front area - isolated land subject to flooding under the local bylaw. Addressed 3 issues September 8: ILSF question under state or local regs., gave definition of ILSF and provided the state regulations - 1 quarter acre = 6" average depth. Then he changed course, questioned whether it was BVW or isolated wetland. Brad McKenzie: ILSF – regulated in WPA CMR 10.57, has to contain one-quarter acre foot at least once a year. With the hydrological analysis we submitted a sketched plan that basically outlined the limit of the depression. Results of analysis show the site clearly is not capable of holding a quarter acre. Calculated the volume from a 1-year storm event? No. Large 10-year event, the water passes over the top of the road. Brad Holmes: Involvement was originally the vernal pool and BVW. All other resource areas have been agreed upon. ILSF characteristic is an engineering determination. Mr. Jones: you say there are no calcs to come up with 7400 hundred cu ft. Capable of holding a max of 7400 hundred cu ft, if more it would flow over the road and to the culvert. Worried about the term "a 1-year storm event." Calc shows the largest amount of water that would be held there. It is less than the regs. Mr. Greenbaum: did some of his own calcs. Have to be real confident that it first goes to the culvert before it goes over the road. 1 year event = 2" of rainfall for 1 year. What happens when runoff from watershed builds up and passes toward the culvert? Mr. Shea: when the pooling area in the front to the east of the driveway and north of Clapp fills up with water it will flow to the east to the culvert, then isn't it attached to the BVW? In a greater storm event it will overflow. Mr. Greenbaum: the 1-year event is a critical piece; may have to have an engineer review. Mr. Shea acknowledged it wouldn't overflow in a 1-year event. If your agent has already determined it is isolated and it doesn't overflow . . . We need to make our own decisions. Atty. Watsky: if this area overflowed often, there would be a defined channel; historic culvert has been there since the road was first built, may still be under the road. Investigated the historic mapping for the road, and the site. Brad McKenzie: Submission 10/6, culvert present at one time. Researched the Registry of Deeds and DPW. All they could find about culverts was a plan prepared for Mr. Snow in 1986 by BSC. DPW plan, hand-sketched in existing drainpipes at the location they were found. Pipe 200' down the road to the east, in front of 214, flows into a drainage easement. No sketch or mention of a pipe

anywhere else. Also heard from Mr. Snow, who owned property for about 30 years, and did not recall a culvert into the wetland on his property. Brad Holmes: as far as looking for a culvert – pipe would be non-functioning. Dug along the base of the wall found nothing. Did not find any ferns or sedges you might find in a wet meadow. Lawn grasses with lawn weeds. Any herbaceous plants in the mowed area? No. Lawn is 50% to 60% lawn weeds; upland lawn. Mr. Shea: Regulated as an area that is disturbed. Brad McKenzie: It is not disturbed. Consulted various sources attempting to show ground cover at site. 1957 aerial from USGS archives, 1960 photo showed front lawn area as being maintained, 1965 aerial, 2008 from mass GIS. All photos show maintained lawn. Submitted 11/14 two affidavits, Paul Bourque works for Fern properties, conversation with real estate broker who had conversations with the property owner Mrs. Roberts and her daughter and they expressed a clear memory of the existing front lawn being a grassy field when they lived there in 1965. Mr. Iantosca spoke to Seaside Design Landscape Co. which stated no pesticides or herbicides had been used over the last 5 years. Area mowed as a lawn. Been in this condition prior to 1960 - prior to WPA and local regs. An Adjudicatory decision – lawn/grass mowing is not considered an alteration. 100% upland, has been like this for 5 decades. Mr. O'Connell: Evaluation of soils – soils are irrelevant unless you are looking at what is disturbed. Do not need soils, if you have a wetland present, and you have a question of where the wetlands are. Do not use soils independent of vegetation. Ms. Scott-Pipes: More than puddles; have seen water right up to the top; soil samples do matter. Can't even start to make a decision, until an engineer is hired. Commission has had this filing since July. Why haven't you done this before? Didn't know relevancy. Mr. Greenbaum: in last report hydric soils were found in part of that area. Paul is not a certified soil scientist. Rod Gaskell is a soil evaluator, completely different. Brad Holmes did some limited work, augured, found non-hydric soils. Near Paul Shea's location, borderline hydric soil. Rod Gaskell came out – his opinion closest to the road was unable to make a clear distinction. Soils are reviewed when determination has been made that there has been an alteration. If you want that taken into account, we have to have time to review. Ms. Scott-Pipes: can't make a valid judgment, not ready to close. Mr. Breitenstein: how was it going to drain? In a much larger

storm event, would flow to culvert. Intermittent stream that runs from north to south, culvert takes it across the road. Mr. Parys: several people have asked the question – it would be interesting to see the 1-year event volume. Reasonable request. Mr. Greenbaum: Agree that the hydrology exists here that would be part of a BVW, water is somewhere within 1 or 2 feet; there is a channel of water coming off this property; three pieces to a wetland: hydric soils, water, and vegetation; hydrology and water are present, but no indicator plants; there is potential for hydrology that would qualify as some type of ISLF or BVW. Atty. Watsky: Not bordering anything; if the vegetation is there then you look for hydrology, or hydric soils; given the hydrology, plants seen are all upland, possibly an isolated wet meadow; under the regs hydrology is not sufficient to have a wetland plant community. Mr. Greenbaum: Interested in the drainage calcs, critical for the determination. If the Commission closes, no new information can be accepted. Can close and accept the portions that we agree with. Desire to have 1-year storm event considered, applicant will agree to continue for that and the Commission will only question that portion. Allan Greenberg: 122 Old Oaken Bucket Road: Next hearing will only involve questions on the latest issue? If other questions arise or if they have questions on the info received, may lead to other concerns. Can question the report from Gaskell. The intent is to deal with drainage calcs. Not going to limit the scope. Motion to continue the hearing to December 5, 2011 at 6:40 p.m. Ms. Scott-Pipes. Second Mr. Parys. Motion passed by unanimous vote.

Wetlands Hearing: MacDonald, First Parish Road (new build) (cont.) Brendan Sullivan, Cavanaro Consulting, was present at the hearing. Last hearing was asked to move the house. Setback to septic reserve area determined the house location. Took all work out of the 50' buffer, with house 54' +/- away. Have been in contact with DPW about the catch basin replacement. Mr. Shea: Discussed with DPW, culvert under road is in very bad shape; pipe needs replacing. Came up with a proposal tied to DPW work, owner is giving \$6,800.00 as mitigation in relation to the catch basin, which is considered off-site mitigation. Will make the document part of the Order of Conditions. Stormwater permit has been approved, no increase of stormwater toward the culvert. Mr. Snow: could not move house at all? Moved the deck more toward the

back of the garage. Atty. Christopher Humphry for Susan & Gill Ryan: One issue that was raised was stormwater. Could build now and fix catch basin later when DPW was ready. David Turner, 519 First Parish - \$6,800 will be paid by the applicant to DPW? Yes. The town will hold the money. Ask Mr. Bangert for a letter of when this work might be done. Nancy Turner: how long will it be? Are we talking a year or 10 years? Alternative would be plantings around the house. Trading some plantings for the catch basin. They are cleaning up street water, which isn't their water. That back yard is flooded every winter. Seems the better solution would be the catch basin to remove pollutants. Allan Greenberg: their concern is whether this construction will have an adverse effect on their property since they are down gradient. There will be no additional runoff from this property. Street drainage is a separate issue. Atty. Humphry: Unless there is a date certain, could go on and on. If this isn't repaired, what other type of mitigation would be expected? Orders are good for 3 years. Will not issue a Certificate of Compliance unless that catch basin is installed. DPW has committed to repair. Motion to close the hearing Ms. Scott-Pipes. Second Mr. Parys. Motion passed by unanimous vote.

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

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

Heard these two projects together.

Rick Grady, Grady Consulting, and Mr. McKay were present at the hearing. At the conclusion of the last hearing set up a site walk and met with Mr. O'Connell and a few members. Early in the project proposing stone between vertical concrete wall to the south and various revetments to the north. This project has two 50' frontage lots with passageway. Don't think the dune is functioning as a dune, if looked at as a whole. The revetment isn't detrimental to the dune because of all the revetments. Don't think it is fair when all the other properties are armored. Mr. O'Connell: that's the only argument he could come up with as well, but don't think it is valid; have struggled with this as well. Look at sites, look at regs, clearly coastal dune. Does it meet the regs for storm damage and flood control? It does. Armoring the dune will reduce its function. Significantly diminished, but it

provides sediments during storm events and meets the performance standards. Armoring this property doesn't meet the performance standards. If it is functioning or partially functioning, unless there are extenuating circumstances, we can take the coastal dunes regs and throw them away. If this is permitted, it will open up the whole town to similar actions. Met with Mr. Grady twice and attorney twice. Willing to compromise, possibly cobble stone dune, covered with sand and snow fence. Martins were just approved 6 months ago. Impacted by that. Huge financial burden to keep replacing sand; have to rebuild every 2 or 3 years. Ms. Scott-Pipes: Martin's revetment was done incorrectly; Commission is pursuing. Mr. Parys: DEP seems to change their position often. Mr. O'Connell: DEP generally doesn't want to provide guidance. Unless approve under the Bylaw and deny under the Act, then appeal to DEP for their decision. There was a recent state decision to remove a house on Plum Island and an ENF was required for Wellfleet. Don't have either the Conservation or DEP's decision. Sounded like they were approved. Mr. Snow: Seems you feel the decision is unfair; there are many different remedies for protection in Humarock; have had multiple discussions about your project; last storm we didn't have the benefit of having Jim here; may have overstepped our bounds. Jim's technical opinion is that it is a coastal dune and it is functioning. Motion to close the hearing Ms. Scott-Pipes. Second Mr. Greenbaum. Motion passed by unanimous vote.

Wetlands Hearing: Greenip/Scituate Yacht Club, 84 Jericho Road (modification to foundation)

Paul Mirabito, and members from the Yacht Club, and landscape architect were present at the hearing. Abutters notification was submitted. Two changes: pool house on concrete footings with continuous footing with cross bars. Change for snack bar required 5 additional sonotubes with footings. Those are the 2 changes. Submitted plans that were also submitted to the Building Dept. Mr. Breitenstein: pool foundation was already poured. They should have come to us before the work was done. Mr. Greenbaum: met out there with everyone. It is important that the Commission doesn't get left out of the loop. Mr. Shea: met at the site, felt there was no significant impact. Discussed possible mitigation to be off-site at the Spit. Second part of project: landscaping. Separate letter, which was read later.

Suggested preliminary site plan, which shows about 600 or 700 sq. ft around the pool, around street, and plantings along parking lot. Submitted for review. Discussed edge of parking lot and amount of stone or crushed shells with a narrow 5' wide planting bed. Should be less stone, more plantings. Why reducing the amount of vegetation? They have been given a sample of salt tolerant plants. Want to see a good mitigation package. Use a combination of salt tolerant plants. No design yet, or specification of plant species. This is a great area to be creative. Other piece of outside mitigation: Working with junior program regarding signage for the plovers. Meeting with Audubon next week. Mr. O'Connell: They are cooperating with us in the education part regarding the Spit and the importance of the resource – maybe can print some educational pieces. Hopefully not just Scituate Yacht Club, hopefully all marinas. There is an issue with the monitors for the threatened species, maybe contribute for the monitors out at the Spit. Took different plan to the building department, which is not good. Mr. Greenberg: this is nothing new, same plan should be signed by all the departments; could be dealt with internally. Should have come back to ConCom, before, not after the concrete was poured. Motion to close the hearing Ms. Scott-Pipes. Second Mr. Parys. Motion passed by unanimous vote.

Wetland Hearing: Doherty, 89 Edward Foster Road (wetland delineation)

Paul Mirabito, Ross Engineering, and Padraic Doherty were present at hearing. Abutters notification was submitted. This is a 2.1 acres parcel. Yellow on plan is the perimeter of the property; orange is wetland line. Believe Paul Shea walked the property. Purpose is to get resource areas identified. Scituate Harbor to the north. 2 wetlands in field: BVW and salt marsh, Town of Scituate 10' contour not shown. 100-year flood zone on site. LSCSF, FEMA AE flood zone, elevation 11. The wetland line closest to the harbor is pretty much disturbed. Wetland line drops off from Edward Foster Road – wooded swamp on hillside. Need testing to south of flags A1-A15 and A100-A107 to see if line moves either way. Overall agree. Need more data and data sheets. Should show the 50' and 100' buffer zone lines, 11' contour, and sample between 11' and existing line. Sometimes ANRADS show topography. Motion to continue the hearing to December 5, 2011 at

6:40 p.m. Ms. Scott-Pipes. Second Mr. Greenbaum. Motion passed by unanimous vote.

Agents Report: Mr. Shea: Harrington, 88 Country Way: have heard nothing. Bring him into the next meeting. Why bring him in again? It is time to start fining. Multiple letters have gone out to him. Motion to fine \$50 a day starting today until area is repaired Mr. Greenbaum. Second Ms. Scott-Pipes. Motion passed by unanimous vote.

56 Moorland Road: Received a letter from Sally Cole. Produced a letter and plan November 4th regarding removal of 8 hazard trees. It appears there is one tree near the house that could have an impact. The other trees are within the 50' buffer to the salt marsh. Letter stated taking trees down today, meaning November 4. Should bring her in for a Show Cause Hearing. Mr. Greenbaum: Bring in the arborist and homeowner too. Mr. Parys: but she prevailed, because the trees are gone.

Order of Conditions: EBC Building Corp./Ellis, 18 Old Oaken Bucket Road (wetland delineation)

Motion to accept the wetland delineation Ms. Scott-Pipes. Second Mr. Greenbaum. Motion passed by unanimous vote.

Mr. Snow: Approach to issues like the Yacht Club, and 104 Oceanside Drive

When we suspect a violation, should have some idea of what our role is. Personally should put the burden on the person who has committed the violation. Approach this person by saying I don't think you are building this correctly, you may have to take this out, even if you do know it wasn't what was on the plan. Then it becomes their decision whether to stop. Ask to see the Order and the plans that are required to be on site. See if what is being done is other than what is on the approved plan. In most cases if you say I believe you are in violation, things go more smoothly. Mr. O'Connell: For 104 Oceanside Dr, the attorney called and asked if you forgot to leave the search warrant? Received an opinion from Town Counsel. Does the Commission have the right to enter private property? If you see something that will alter a resource area at the time, then yes. If you do not have that evidence,

there is a gray area. If you can see from the street and it is eminent, then yes and/or take pictures.

Brian Stewart wants to give to the town a piece of property in the south swamp.

Minutes: Oct. 17, 2011

Motion to accept the minutes of Oct. 17, 2011 Ms. Scott-Pipes. Second Mr. Parys. Motion passed by unanimous vote.

CORRESPONDENCE

November 8, 2011 – November 21, 2011

1. Board of Health re: 63 Glades Road – 2 years to upgrade a failed system – directed to complete upgrade by 5/15/12.
2. Board of Health re: 27 Town Way Ext – partial exposure of septic system. Need Title 5 inspection within 45 days
3. Request to continue hearing for 20 Oceanfront from November 7 to November 21 (in file)
4. Request to continue hearing for 22 Oceanfront from November 7 to November 21 (in file)
5. Recording of Order of Conditions for 68-2369 – Burns, 47 Ocean Drive (in file)
6. Recording of Order of Conditions for 68-2373 - Morris-Hipkins, 222 Central Ave. (in file)
7. Request for Certificate of Compliance for 138 Oceanside Drive – 68-2224 (in file)
8. Removal of trees at 56 Moorland Road – 1 River Birch; 5 Cherry trees, 2 Magnolia
9. Recording of Extension for 68-2023 – Lot 2 Dreamwold Road (in file)
10. DEP 68-2372 – Order 2 & 3 - TK O'Malley's, 194 Front Street. Supervisor Geoffrey A. Lake of Sea & Shore Contracting; starting work Wed., Nov. 16, 2011 – inform of date for preconstruction (in file)
11. DEP 68-2372 – Order 4 – TK O'Malley's, 194 Front Street. Construction sequence (in file)
12. Tibbetts Engineering Corp, re: Scituate Marine Park Winter Shut-Down – Met November 18, 2011 – discussed 6 items to be completed before shut down. (in file)
13. Scituate Harbor Yacht Club – 68-2304 – Progress report (in file)

14. Revised plans for 68-2374 - MacDonald, First Parish Road – revised November 11, 2011 (in file)
15. Revised plans for 68-2377 18 Old Oaken Bucket Road – revised November 20, 2011 (in file)
16. Williamson Environmental LLC re: 68-2216 – Goulston, 137 Hatherly Road – Notification of Public Comment for A-2 Response Action Outcome Statement – information repository at the Scituate Town Library.
17. Recording of Extension of OofC for 68-2023 – Hogan, Lot 2 Dreamwold Road (in file)
18. Request for a CofC re: 24 Riverview Place (in file)
19. Stormwater Magazine
20. Recording of OofC for 68-1991 – 45 Surfside Road
21. Request for CofC for 68-1507 – White, 138 Oceanside Drive (in file)
22. Request for CofC for 7 Wood Island Road (in file)
23. MassWildlife Magazine
24. Report – Independent Environmental Consultants re: Doherty, 89 Edward Foster Road (in file)
25. Planning Board Agenda for November 22, 2011

Meeting adjourned 9:40 p.m.

Respectfully submitted,

Carol Logue, Secretary