Town of Scituate

**Conservation Commission**

**Town Hall Selectmen’s Hearing Room**

# Meeting Minutes

# January 21, 2015

Meeting was called to order at 6:17 p.m.

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

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

**Agenda:** Motion to amend the agenda to include Discussion of Beach Grass with Linda Rinta and CR’s, Ms. Scott-Pipes. Second Mr. Parys. Motion passed by unanimous vote.

**Request for Determination:** Howe, 92 Clapp Road (deck) (cont.)

Motion to continue the hearing to February 4, 2015 Ms. Scott-Pipes. Second Mr. Harding. Motion passed by unanimous vote.

**Request for Determination:** Walsh, 36 Brunswick Street (fence)\*

Joan Walsh was present at the hearing. Solid plastic fence is already installed. She called Town Hall twice and came in in person to see if she needed a permit and was told she didn’t, as long as it wasn’t over 6’. Neil knows to remind people. It is on River Street side of the property, parallel to the river. You did need to go through a full NOI to redo the house. Ms. Scott-Pipes: there are a few spots where the fence is too close to the ground, on the ocean side, up near the Brunswick extension. Could you dig it out to leave some room for any material to go under? That will also protect the fence. Yes. Mr. Snow: think you need to remember anything done on your property, if you did a hole; you need some sort of permit from Conservation because you are on a barrier beach. Motion for a negative 3 determination - “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).” A condition was added: “The applicant shall hand dig sand away from the bottom of the fence to leave a minimum of 6" between fence and ground elevation. This will allow any overwash to go under the fence.” Ms. Scott-Pipes. Second Mr. Schmid. Motion passed by unanimous vote.

Linda Rinta was present to discuss beach grass. Submitted some information. She has been growing beach grass for over 20 years and supplied it for Plymouth County Conservation District’s annual sale. They ran by grant money, and pretty much not functioning anymore. There was such a demand for some years, started growing it in our own county. There are four small growers. It requires a lot of people time; very labor intensive. Harvested in the winter and needs to be dormant when planted. End date for planting is April 15. Results are not good if planted later. The website is plymouthcountybeachgrass.com. The plant stock is sourced from USDA, Cape May, NJ. There is a lot of ornamental beach grass marketed, but our seed has been protected and required on some state beaches. We sell 300 cones in a bunch. It is cleaned off so there are no diseases. There is a lot of shore line erosion, They do need permits and consult with Conservation. Some of their projects require beach nourishment. By the time their get through their planning process, it is too late to plant. There is another source, plug grown beach grass, but it is more expensive; individual culms are rooted. That becomes difficult; it is soil based, but where we want it to grow is not soil. Amazed at what horrible places beach grass can grow. Tried irrigating, but found it is almost a detriment, non-irrigated fields do better. Do not use pesticide, but do use fertilize. We try to get 20 to 30 culms out of a single clump; then it is cleaned and stored in a dry cool place and bundled. Humbled by your responsibility with your well-developed coast line, much more than imagined; whole entire coast line is built. Mr. Snow: could the grass do much in cobble? Primarily we plant in sand. Sometimes part of a requirement when a seawall goes in is to plant sea grass in front of the wall where there is scouring. Hull and Duxbury do a tremendous job planting sea grass. It can grow in 2’ of sand. We plant it in March and harvest in February. Difficult to market because you don’t know how many orders you will receive; hard to anticipate. So far we have not had enough to meet the needs. It is difficult for people to understand that the planting window is so small. If they want to stabilize, they have to start now with the permits. Plant as soon as you can work the ground; not susceptible to frost. The later you plant the more mortality. Mr. Gallivan: what about planting in the fall? We plant the fields in the fall, it wouldn’t have the root development to survive storms unless it was well out of the over wash area. Plymouth County is struggling, but they have good resources. Beach grass is a soft solution; Scituate has a lot of hard solutions. If you can encourage people, there are a lot of damaged areas. Mr. Snow: what happens when you mow it? You can mow it high. Rosemary Dobie: are you going to have people pick up? Typically send out pick up dates, which are around April 4 and 5. Thought about delivering if the order was large enough. You can pay on line or send a check and we will have it all boxed up. Is fertilizer recommended? Sometimes, but Commissions say no. Typically, just a handful of triple 10 fertilizer is not horrible. You want to plant more culms per hole, the quicker it bunches out, the better it holds. It is disappointing when singles are planted. If you go on Sea Grant, Woods Hole site, they have recommendations. They may or may not recommend fertilizer, USDA does. We have to follow their recommendation to a T. Ms. Caisse: Do you use organic fertilizer? No. The Commission thanked Linda for coming to the meeting.

**Wetlands Hearing:** Stewart, 160 Chief Justice Cushing Hwy. (raze/rebuild) (cont.)

Application has to be through Zoning. Motion to continue the hearing to February 18, 2015 at 6:30 p.m. Ms. Scott-Pipes. Second Mr. Schmid. Motion passed by unanimous vote.

**Amendment:** Drinkwater, 7 Barry’s Landing (Order #34 p pesticides) (cont.)

Greg Morse from Morse Engineering and David & Mary Ellen Drinkwater were present at the hearing. Specifically here for an amendment to Condition #34 regarding pesticide use on the entire property. The requested order language: “The homeowner shall limit the application and amounts of pesticides and herbicides applied within the wetland buffer zone as outlined in the Scituate Conservation Rules & Regulations. The homeowner shall limit the application of fertilizer within the wetland buffer zone to products allowed by the Scituate Conservation Commission Rules & Regulations.” At looking at original condition we understand that you want to make them aware of sensitive areas and regulate what was put on the site. A good way to cover restrictions in the buffer zone is to put them in the regulations; this would also direct applicants to the rules and regs. It would be a good approach, not only for this property, but it would regulate all properties that have buffer zones. Mr. Gallivan: we want the buffer zone kept clean. Should discuss with the Water Resource Committee and look town-wide as to what makes sense. Wording might limit or prohibit, or at some point not allow any. In this case, restricting the whole property is a reach. Mr. Schmid: North River Commission regulates this property. They state no use of pesticides or herbicides within 100’ to the natural bank. We may look for a qualified applicator. Mr. Harding: seems like we are being redundant in this case. Outside the 100’ buffer we shouldn’t regulate at all. Wouldn’t it be possible to put in a stipulation that they will need to comply with the North River regs? Mr. Gallivan: word the condition the way we’d like to; it is a case by case basis. Don’t want to tie our hands; there may be vernal pools in some instances. Mr. Schmid: needs to be looked at, but should reach a compromise and move on. Mr. Parys: don’t like it applying to the whole property. Need to fix the order and look at the regs. Ms. Caisse: if using organic, could be a lot more flexible; adhere to the 50’ buffer. Motion to accept the proposed amended condition Ms. Scott-Pipes. Second Mr. Harding. Motion passed by unanimous vote. Mr. Morse: also requested removing #35, which has to do with following the Water Department regulations. Ms. Scott-Pipes: Not imposing anything different. It is out of your purview to follow someone else’s regs. We are protecting our water supply. Mr. Snow: orders are supposed to be on site. How many times have people not read the orders? Not sure this guarantees things will be done right. Most times during a hearing, we reiterate what should be done. Maybe redundant, but often times pieces are already in the state regulations; looking for clarification. Ms. Scott-Pipes: leave it the way it is. See no harm in reminding people or having some redundancy. Mr. Gallivan: we do have an order that states to comply with all conditions and related statutes and other regulatory measures. Mrs. Drinkwater: Making us different from everybody else. This was the easy one; odd requirement; brought up at the last meeting and it was agreed to take it out. Mr. Snow: looking for an order that states you need to follow other boards’ regs. It states: Obtain all other permits, doesn’t talk about regs of other departments. Add some type of advisor to respect other departments’ rules and regs. Mr. Snow: the idea is all pertinent rules and regs of the town are to be followed. Every new project is different and done differently. For example, to build a house now is different than 10 years ago. I have to build my house differently than somebody had to or will have to. That is always going to be the case. Mr. Gallivan: this is a good example why we have to look at the regs. Motion to strike Order #35 Mr. Schmid. Second Mr. Harding. Motion passed by a 4 to 2 vote.

**Enforcement:**

White, 181 Edward Foster Road (restoration/mitigation)

Atty. Adam Brodsky and Tim White were present. Commission seemed to like the mitigation plan. The question is whether the work could be done under the Enforcement letter, which is permissible under the regulations or file a new Notice of Intent. Mr. Gallivan: have an open order, more of a revision to a planting plan; don’t think we need a new Notice. Mr. Brodsky will draft a letter so there is something in the file that shows the Commission allowed the planting plan. Mr. Snow: when do you think you will start the planting? April or so; will talk to Brad. Motion to approve the wetlands restoration plan Ms. Scott-Pipes. Second Ms. Caisse. Motion passed by unanimous vote.

**Informal: Livingstone/Brodsky, access over 3A Conservation Property to 40B**

Adam Brodsky, Jack Livingstone, Steve Callahan were present. Mr. Snow: This is an informal discussion regarding a potential 40B proposal and possible access over 3A Conservation Commission property. This is not a hearing; it is an opportunity for the applicants to share information. Typically we would have the proponent explain; the Commission and Agent ask questions, then the audience. Mr. Schmid: scope of the Conservation is narrow and we can only speak as to what the Commission has jurisdiction over. Other aspects are discussed at Planning and Zoning. Atty. Brodsky: Project is to develop a 40B on a 24 acre undeveloped parcel off Booth Hill Road. Board of Selectmen requested us to have informal meetings with Conservation and Planning to give some insight into what is coming down the road. No permit applications are in front of this board or any board. We meet tomorrow night with the Planning Board and we are planning a public information night, maybe February 21 to solicit public comments. This is a conceptual design, not the actual permit plan. Met with Mass Housing with a this conceptual plan and received a favorable response. The first step in the process is to submit an application to Mass Housing for eligibility, preparing that application and will be submitted in the next few weeks. Once that is submitted the town will have an opportunity to comment. Only after receiving an eligibility letter will we come back to the town. If work is within jurisdiction of the Commission we will file a Notice of Intent. An Order of Resource Area Delineation was set in March of 2013. The location of the project was explained. The Town Forest is not the access location. Access from Booth Hill Road with a doubled barreled entrance; two 16’ wide entrance drives with a 4’ medium in between, allowing for emergency vehicles. Between 127 & 133. Access way is approximately 900’ long, crossing wetlands in two location and filling approximately 2,490 sq. ft. of wetlands and requires a stream crossing. Less than 5,000 sq. ft. of BVW altered; proposing replication; only real wetland impacts associated with the project. Any alterations would be more than 50’ from the wetlands, including any stormwater BMPs, which comply with management standards. Eight buildings associated with the proposal and at the most 252 units; number of units depends on the size of the wastewater treatment facility. Haven’t completed percs so don’t know the size yet. Once we complete the analysis of the septic we can determine how many 1, 2 or 3 bedroom units there will be. These will be rental units. Buildings will be 3 stories, with 24 or 36 units, 378 parking spaces and 15 small garages; 1.7 spaces per unit. Also proposing clubhouse and pool. Will be providing public amenities such as recreational trails. Detailed landscape plans will be submitted. Have done a preliminary traffic study for Booth Hill Road; will not compromise existing traffic. Concept meets the 40B design guidelines. Showed architectural style. Board of Selectmen are considering an article for town meeting in the spring regarding the land swap over 3A, which would eliminate Booth Hill Road access and eliminate any wetland crossing. Timing wasn’t appropriate for the STM in the fall. Divide town parcel to create a 1.8 acre parcel for access off Rte. 3A and site distances are better. Required to give back equal value, but in exchange for the 1.8 acres, will donate 16 acres with frontage on Clapp Road, which has substantial uplands; conceptually could be used for another significant project in town. Believe the Selectmen think it would be appropriate for ball fields. In addition Whitcomb Pines is proposing to deed two parcels that are under a conservation restriction, which if the town owned restriction could be modified in the future. Conveying a total of 27 acres to the town. Creates a complete corridor all the way to Clapp Road. Stormwater issues will probably be under Zoning since it is a Comprehensive Permit. Conservation and Zoning will have the ability to weigh in. How do the 40B regs affect the wetland regs and the local bylaws? Zoning can waive wetland bylaws, but it is not automatic. Under 40B don’t have to follow bylaws, but have to follow state regs. We are already protecting the 50’ buffer zone. Who delineated the wetlands? John Zimmer. Line was approved by the Commission. Town hired a consultant and they agreed on the wetland line of the BVW. One egress is sufficient. Don’t want to alter more land than we need to. Proposed access from 3A is significantly shorter. Green area on the plan shows the delineated wetlands. Ms. Caisse: out of the 16 acres how many are wetlands? 6 acres. Mr. Gallivan: is this done under a limited project? It is access to uplands over wetlands, but you don’t need to call it a limited project because we are not altering more 5,000 sq. ft. Mr. Snow: The town has bylaws regarding isolated wetlands and different buffer zones, typically it is the state regs followed for stormwater, but functionally the same as the towns. There are no isolated vegetated wetlands on the property. Wetlands are regulated by state regs; we are already designing under the bylaw. If wetlands can be avoided, they should be avoided. We will be looking for them to follow regs as best they can. Many concerns from residents and abutters at Merritt Woods and Booth Hill Road regarding traffic, will add 200 to 400 more cars; how many people and school children; water table and runoff, but applicant will have to prove their detention areas will hold the water; and wildlife, there is no mapped priority habitat. Entrance on 3A is approximately 700’ from Merritt Woods and about 1500’ from Mann Lot Road. Have to provide a traffic study and town will review. Also concerned about buffers from buildings to existing homes. We are required to have a buffer to the buildings; will only take trees that are required for the project. There will be extensive mature vegetation for a buffer. Will have detailed landscaping plans. Sensitive to preserving vegetation. If this swap is not pursued, what is your intention? Will access over Booth Hill Road. Mr. Snow: We look at the impact on the wetland areas, resources, and concern for the forest and open space. Developer has a right to develop his property. We ask for mitigation, less impervious surface, less impact on the open space, and encourage the applicant to do as many environmental pieces as possible. When someone comes before us for consideration by allowing certain type of development, we look for more open space; have to be concerned at how it is protected. If this swap were entertained, what would be the betterment? Many abutters believe this project is completely out of line for the Town of Scituate. Obviously on 22 acres there will be a significant number of trees removed abutting the town forest, and Conservation land. Where does all the wildlife go? Not clearing 22 acres. But a substantial number of trees will be gone. Project is consistent with what housing is needed in Scituate. The area is saturated. When Merritt Woods was built water increased by 100 fold; this is a huge impact. Can’t put this concentration on a saturated area. What is this project going to do for the town of Scituate? There should be no net increase of water moving off this property. Mr. Snow: hopefully there are responsible people working on this and abutters will be protected. Once things are changed, you can’t put them back. There are state laws that allow these projects. All we can do is get as much information as we can. Going to have water and people problem. This project will dramatically hurt that end of town. Who holds the developer responsible? Any validation of tests done? Mr. Snow: ConCom, Planning, BOH, Zoning all work as a team to review these and hire engineers to review; it will be looked at carefully. Mr. Gallivan: as the project is being constructed an engineer will monitor. They have to come back to the Commission for a Certificate of Compliance. If Booth Hill is deemed unsafe there is no viable entrance. There is access from Clapp Road. The least impact to the environment is access from 3A; overwhelming fewer environmental impacts. We have a constant water band, what will this do to the water levels. Don’t have the answer. Not in the Water Resource Area; not regulated under Zoning. Under a 40B, Zoning requirements are relaxed to encourage projects like this. Vast majority of the citizens are opposed to this development. Town can buy any land it wants for fields instead of bribing folks. Has an EIR been prepared? Unclear at this time whether this permit would trigger MEPA review. That is a statute that requires comprehensive reviews. There is also the Merritt Cemetery off of Clapp. Residents are concerned about all the different boards and hearings to attend. Wondered if one of the consultants could be a residents’ representative? Mr. Snow: each board has different issues to cover. Not the easiest thing to follow. Maybe concerned folks could join together and go to different meetings; foam a coalition. If the project roadblocks, size of the project too large for the environment, would the developer make a more balanced mix of low income and owned units? It seems like a very one sided project, which is not consistent with the nature of the town. Did the developer look at this? There is misconceptions about affordable housing. This is a rental project because that is what is needed. Marketing need that has been identified, or are marginal. A portion is affordable, vast majority is market rate. What percentages? 10% affordable, 90% market rate. If it is rejected by the Selectmen if the swap is rejected, does that send a signal? Goal of the town is more owned property, rather than a rental property. Stop the development altogether, want to conserve this land. We have to save our town forests. Mr. Gallivan: there is another large project off Hatherly Road. For this one, it is Zoning Board and Conservation. Talked about getting something on the website to keep people in the loop. Conservation hearing will be put in the newspaper. Overcrowded town with nontax paying citizens.

**Order of Conditions:** DPW, Glades Road (after-the-fact revetment repair)

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

**Other Administrative Items:**

Peggotty Beach update: Plymouth County Mosquito Control will help when trench gets clogged up. Walked area where it washes over.

Stockbridge update: DEP has to review our appeal. Worked out some things on the site; John Chessia did a great job.

Bulrush Farm: spoke to owner; will draft letter; will meet at site.

DEP On-Site/Appeal: 30 Inner Harbor Road – February 5, 2015 at 3:00 p.m.

Monticello update: believe they will appeal. Don’t know how many days they have.

Moskowitz, 158 Border Street: have been back and forth; requested a continuance. Sent to DEP. Why don’t we handle it? Not thrilled with any options. Could file an after-the-fact Notice of Intent, follow old Enforcement Order, or bring to the court system. DEP would prefer to have them follow the old Enforcement Order; not a new filing.

Glades Marsh update: they want to work with us. It is a tough spot. Army Corp, Mosquito Control, and Martha Rhinehardt were present at the on-site. Think this one will work out. They would like to get this problem solved. They are going to hire Martha.

Greenfield violations: failed septic, flows into the storm drain into a wetland. Board of Health issue, but going to the wetlands.

Toll Brothers: last night at the Selectmen’s meeting. Heard from water and sewer departments; they say there is enough capacity, if there isn’t along the way they will have to help.

Ayer, Gardiner Road: talked to Liz Kouloheras from DEP. She interrupted that the lawyer was willing to work with the town. He is not willing to work with us.

Duffy, 271 Central Ave.: sent letter to her son at another address: Ms. Caisse: Seems like it is the homeowner’s obligation to provide the most up-to-date address. Dumpster and construction debris is still there. Send an e-mail to Neil Duggan tomorrow for Zoning Enforcement. Ms. Caisse picked up a few things and threw away; the rubbish was in the marsh and didn’t belong there.

Haufler, Peggotty Beach Road (fill): Draft letter. Sent out Enforcement Order which was returned to us. Talking to DEP and Jim Toomey if DEP doesn’t want to do anything.

Akerblom, 228 Central Ave.: spoke to them a couple of weeks ago. Going to receive a notice about clearing the over wash on Central Ave., Cliff Road and Beach Way. They want to keep the wall; sent in a video. Hit the cobble that the town put there. She feels she is protecting her property. Asked for an amendment. See how the next hearing goes with the town, regarding cutting into paper streets toward the south river. Mr. Parys: then cobble will go in the river. Ms. Caisse: if they go through the trouble of plowing the streets, why don’t they put it back on the beach? Current policy is they are not going to touch.

Cote, Atlantic (update) (requested a continuance): Paul Mirabito couldn’t attend tonight. They are coming in with a Notice of Intent for restoration of dune, and what type of project can be approved.

Trowbridge, 392 Tilden Road (update): Went out to site with a couple of members. There was no cutting in the wetland; all in the buffer. Need to get wetland delineated in the spring. Mr. Trowbridge was very nice about it.

Adam, 147-149 Jericho Road (update): anonymous report about a pile of hard packed material that was already spread. They went too far; will be pulled out. Property is across from the Malone’s.

North River Marine, 12 Chief Justice Cushing Hwy – project changed. Old Set of plans and a new set of plans. Trying to clean up the final Certificate.

Mr. Gallivan: GZA will be filing a Notice of Intent for DPW regarding cleaning streets in Humarock and opening ditches in the paper streets to allow the water to get to the river. Rosemary Dobie: public hearings? Yes. His proposal will only cover what is necessary. As of now it is right beyond Duffy. Could be approved, denied or appealed.

**Minutes:**

Motion to accept the minutes of January 7, 2015 Ms. Scott-Pipes. Second Mr. Schmid. Motion passed by unanimous vote.

CORRESPONDENCE

January 7, 2014 – January 21, 2014

1. Division of Marine Fisheries re: Glades Road – revetment repair (in file)

2. MACC re: Annual Environmental Conference 2015

3. DEP File # 68-2528 – Knight, 24 Bittersweet Drive (already in file)

4. Request for Partial CofC for 68-2469 Farkas, 7 Oliver St. – Engineer’s letter, photos, as-built, and check (in file)

5. Request for Partial CofC for 68-2391 – Devine, 117 River Street – Engineers letter, photos, as-built and check (in file)

6. DEP re: 68-2521 & 68-2524, Mazzola, 30 Inner Harbor Road – Rescheduled On-site Thursday, February 5 at 3:00 p.m. (in file)

7. DEP re: Wetland Poster

8. 129 Turner Road – Jeffrey W. Lind (Woodlind Construction) is the contractor. Starting Monday, January 19th – FEMA elevation grant (in file)

9. Recording of OofC 68-2528 – Knight, 24 Bittersweet Drive (in file)

10. Planning Board Agenda for January 22, 2015

11. Request for CofC for 68-900 - North River Marine/Zarella, 12 Chief Justice Cushing Hwy. Engineer’s letter, as-built and check (in file)

12. Recording of CofC for 68-2069 – McNamara, 23 Dartmouth – Bk 45152 p 19 (in file)

13. Morse Engineering re: 68-2509 Drinkwater, 7 Barry’s Landing – Request for Amended OofC for #34. (in file)

14. Recording of CofC – DEP - 68-2222 – Grable, 43 Oceanside Drive (in file)

15. Cote, 38 Atlantic Drive letter re: test pit excavated on January 6, 2015. Filing a NOI to address previous work and evaluate alternatives.

Need to work on some of the CRs for the acquired open space, maybe in March.

Meeting adjourned 9:00 p.m.

Respectfully submitted,

Carol Logue, Secretary