

WEST TISBURY  
CONSERVATION COMMISSION  
MINUTES OF MEETING  
March 22, 2016

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

**Staff Present:** Maria McFarland

**Also present for all or part of the meeting:** Jenny Allen, Chris Alley, Linda Coutinho, Cudy Coutinho, Zack Coutinho, Michael Gately, Sr., Kris Horiuchi, Margaret Maida, Adam Moore, Ashley Medowski, Glenn Medowski ( via telephone), Matt Pelikan, and Scott Stearns

The meeting was called to order at 5:07 P.M. Tara Whiting, Chairman presiding.

**Minutes:** The minutes of the March 8 meeting were approved as revised. All in favor. Peter and Whit abstained.

**Public Hearings/Meetings:**

**James Pond/SE79-364:** continued public hearing under the requirements of G.L. Ch.131 § 40, as amended, and the West Tisbury Wetlands Protection Bylaw and regulations to consider a **Notice of Intent** filed by the West Tisbury Board of Selectmen and Herring Warden for a project proposed at James Pond and Map 6 Lots 13 and 20. The project consists of work associated with the breaching the barrier beach at James Pond including dredging the associated meander for the purpose of restoring a fish passageway, placement of fiber rolls and salt marsh plantings.

The public hearing was opened and a motion made and seconded to continue to April 26 at 5:30 PM. All in favor.

**Map 7 Lot 13/SE79- 365:** a public hearing under the requirements of G.L. Ch.131 § 40, as amended and the West Tisbury Wetlands Protection Bylaw and regulations to consider a **Notice of Intent** filed by Schofield, Barbini & Hoehn for a project to relocate an existing shed and construct a single-family dwelling, and to perform associated site work including underground utilities and site restoration in the Buffer Zone. The project is located at 367 Lambert's Cove Road, Assessors owned by Glenn O. Medowski, Trustee of the Glenn O. Medowski Revocable Trust.

Chris Alley presented the project. He began by reminding members that a pre-application site visit was done in October of 2015. Since then the location of the new house changed.

The first phase of the project is to relocate an existing shed (shown in grey outline on the project plan). The shed will be moved through the driveway to a hillside adjacent to an old woods road. This location is in the buffer zone of a wetland swale that is fed by the overflow from Seth's Pond that sometimes floods the front yard. When the overflow is significant, it runs through a culvert under the driveway and into the swale that drains to a larger bordering vegetated wetland adjacent to James pond. Due to lot line setbacks, the shed will sit 63 feet from the wetland edge and 51 feet from the lot line. The area is already disturbed. No trees need to be removed. The shed will be placed on sono tubes. There will be no electricity or running water. The family wants to save the shed because it has historic and sentimental value.

The second phase of the project is the construction of a new two bedroom house partially on the same footprint of the shed. The new foundation will be a crawl space. House plans were submitted. There will be an 8 ft. deck on the front of the house and a 4 ft. deck on the back. The new house will not be

closer to the wetland than the existing structure which is 50 feet from the wetland. The house will be connected to the existing septic system that was upgraded several years ago. At the time the septic system was upgraded, it was done with extra capacity to accommodate this proposal as well as extra capacity in case the Board of Health determined that the studio should be changed to a detached bedroom. The new septic tank and pump chamber are sited outside the buffer zone. There is no change to the leach field that sits 155 and 185 feet from the wetland at its two closest points. One large cherry tree will be removed. The site is level and will not require grading around the house. There is a proposed outdoor shower on the wetland side of the house. There is no plan to install an underground fuel storage tank.

Chris offered that the wetland area that has been mowed will no longer be mowed.

Chris said there is not an alternative location for the house. The property is within the Coastal District giving the Planning Board site review to determine the allowed ridge height. The Planning Board asked that the house be located to the north of the view line so that the house would not come into view from James Pond. With the house tucked behind the tree line, the Planning Board was able to determine that the lot was wooded and allow a 24 ft. ridge height.

Commissioners' comments/questions:

Prudy cited the performance standard for leach fields within 100 feet of a salt pond. James Pond is closed to shell fishing for the last 15 years due to impaired water quality. She said she would like to talk about an advanced treatment for this septic system.

There was a lengthy discussion about whether the second line of the performance standard in Section XI C. 3 is applicable because the leach facility for this house is more than 100 feet from the adjacent salt pond. The second sentence reads, "In the event that nutrient loading levels in a pond are found to exceed the currently acceptable level of dissolved nutrients, all new construction, or major reconstruction projects will be required to install appropriate measures to reduce septic nutrient discharge amounts."

Chris asked if nutrients are an issue in James Pond. Prudy responded that the DMF has had the pond closed to shell fishing for years.

Chris said that the house and the leach field are not within 100 feet of James Pond. Chris explained that the owner will be tying into an existing system that was constructed with extra capacity. There is no proposed change to the size or capacity of the leach field. It was constructed in anticipation of an increase in flow when the house was built. There will be a new septic tank for the new house. Chris said in order to get the biggest reduction in nitrogen it would make more sense to change the existing tank to the main house where there are more bedrooms. If you put denitrification on the existing tank and assume a 50% reduction then it would essentially be wash.

[Note: The leach field and septic system were upgraded in 2009. The approval was for the existing 6 bedroom house, to be renovated to 5 bed rooms, an existing art studio and a future 2 bedroom guest house. At that time the CC approved the septic upgrade under an RDA. The new system was designed with increased capacity in anticipation of this project.]

Glenn Medowski asked if a composting toilet was an option. Chris said it is, but it would require changing the crawl space to a full basement and that the state does not give any credits for nitrogen reduction for composting toilets. A basement would be an added cost to the applicant.

Glenn said there are 6 bedrooms in the main house. He said that he was considering combining a couple of the bedrooms to reduce the total number. Chris said they could do a deed restriction that there not be a bedroom in the studio.

Peter asked if you can add denitrification to an existing tank. Peter said he was asking about what kind of burden was being put on the applicant. Chris answered that an existing tank can be replaced with a different type of tank. Prudy responded that the tank for the new house is not in. Chris said if you looking for net reduction in nitrogen or no net increase than you would denitrify the septic tank for the larger house that has more bedrooms.

The Board of Health has already approved the new tank and pump chamber.

Maria said she would like to see what the board required at the house Chris Morse is building that is closer to the pond and to see if there are has been other new construction around the pond that is outside the board's jurisdiction.

Prudy said that just because no one thought to read the regulations closely enough the last time, doesn't mean the board can't apply them from now on. We have a learning curve going on all the time. If something was missed a year or 5 years ago, doesn't mean it is disregarded in the future.

Whit said that all this conversation indicates that we need to look into this further. He added that he wasn't sure he would read the performance standard that way it, if it hadn't been brought it up. He continued by saying that the wording of the performance standard is murky and asked what an "appropriate measure" is. He asked Chris if he could suggest a couple of mitigating measures that might be appropriate that could satisfy this condition.

Chris will submit a narrative on different options on nitrogen mitigation.

Mike asked about grading and gutters. Chris said the site is level and won't require a lot of grading. Chris said they could put dry wells outside the buffer zone unless the board thinks recharge isn't important. If recharge is a consideration, the runoff could be directed to the wetland.

Mike also asked if there were any plans to relocate the driveway to extend it to the new house. Ashley said no.

Tara asked about landscaping. Ashley said she wasn't planning to do any landscaping they will let the wetland grow back. Prudy suggested requiring permanent markers to delineate the edge of the 25 ft. No-disturbance zone.

Public comment:

An unidentified member of the audience asked about the relocation of the shed. She asked if a shed is different from a detached bedroom. The shed will be 51 feet from the lot line so it meets the zoning setback.

An abutter asked if the new house would be visible from Lambert's Cove Road and if houses are often built in the buffer zone. The house will not be seen from the road and houses are allowed to be constructed in the second 50 ft. of the buffer zone only after review and the issuance of an Order of Conditions.

With the agreement of the applicant, a motion was made and seconded to continue this public hearing to April 26 at 5:20 PM. All in favor.

**Map 13, Lot 8/SE79-363:** continued public hearing under the requirements of G.L. Ch.131 § 40, as amended, and the West Tisbury Wetlands Protection Bylaw and regulations, to consider a **Notice of Intent** filed by Schofield, Barbini & Hoehn for a project to build a stone wall along a property line within the Buffer Zone and to perform associated site work at 64 Ephraim Allen Road owned by Ephraim Road, LLC.

Chris Alley and Scott Stearns presented a revised project proposal. Scott said he revisited the site and did find the remnants of an old stone wall in the area of the proposed wall. There is a set of base stones. He submitted photos to the board. They would like to amend the application to gain permission to rebuild an existing stone wall. The wall will stop 40 ft. away from the edge of the wetland and 20 feet away from the edge of the property line. Minimal clearing would be done. There is one Holly tree that they would like to preserve.

On the other course, the abandoned well will be filled in by hand. Scott said that in order to access the well they would have to cut some brush.

Commissioners' Comments/Questions:

Prudy said she walked the site closely and she did not see base stones in this area. Scott replied he wouldn't submit pictures of something that was not there.

Prudy asked why they didn't bring pictures of the old base course of stone wall to the first meeting. Chris responded that they did not think that a proposal for a dry laid stone wall in the buffer zone would rise to the level of needing a Notice of Intent and that they thought it could be done under an RDA.

Scott said that the bylaw does allow existing stone walls to be rebuilt.

Prudy said the bylaw requires the applicant to demonstrate that there is no practicable alternative and she didn't think the proposed revision was a practicable alternative. Scott said it was greatly modified. They found an existing stone wall; they propose keeping it 20 feet back. The well work can be done by hand.

Binnie asked if they could stay another 10 ft. from the wetland so that the alteration is in the outer buffer zone and 30 ft. from the property line. After discussion Chris and Scott agreed that they would place the stone wall 50 ft. from the wetland edge.

The revised plan would be to bring a machine up to the edge of clearing at the top of the hill. Stones would be rolled down the hill and the work to build a new wall 50 ft. from the wetland edge using the existing base stones. There would not be a gravel footing and the base course would not be trenched in.

After a lengthy discussion the public hearing was closed. Binnie made a motion to approve this application with the amendments discussed, including that the stone wall on both sides will come no closer than 50 feet to the wetlands, that no brush cutting will be done except for the immediate purpose of placing the stones for the wall. Prudy seconded the motion. The vote on the motion was 2-yes and two abstentions. Whit and Peter are not eligible to vote.

There was a disagreement as to whether the vote approved the project or not.

Tara suggested the hearing be continued to find out whether this valid vote or proceed under the assumption that it is a valid vote.

Scott Stearn said he was uncomfortable with the entire process. He said he and his clients are trying to do the right thing and that most people wouldn't even bring this project to the board for approval.

Peter asked what the purpose of the wall is. Scott said the wall is to delineate the property line.

Chris Alley stepped out of the meeting and contacted Jim Reynolds and Rob McCarron about the vote. Chris said that both Jim and Rob said it was a no vote.

Prudy said the Commission should get its own answer from the town administrator or town counsel.

Chris suggested withdrawing the current application and reapplying if the Commission would waive the filing fee. That way the whole board could vote on the matter. Maria said repairing stone walls is an exempt activity under the state regulations so they would only have to re-file under the bylaw.

Chris decided to withdraw the application.

A motion was made and seconded to accept the withdrawal of the NOI. All in favor. Maria will notify DEP of the withdrawal.

#### **New Business:**

**Map 32 Lot 48/DeBraganca/ Administrative Review/ Prune one apple tree:** Maria presented photos of the tree to be pruned. Prudy requested that there be a conversation with the property owner regarding the mowing down to the edge of and into the bordering vegetated wetland adjacent to the eastern diversion of the Mill Brook. Maria will follow up with the property owner.

**Maps 2& 8 Lot Lots 9.1 and 39/SE79-227 Certificate of Compliance/Black Water Brook Reservation:** A motion was made and seconded to sign off on this project. All in favor.

#### **Old Business:**

**Map 39 Lot 39/SE79-356:** Kris Horiuchi presented a plan showing the placement of a split rail fence along the property line ending at the top of the bank on both the east and west side of the Pil property on Thumb Point Road. A Gravelly would be used to clear a path just wide enough to put the fencing in. The post holes will be dug by hand. No new fill will be brought in and any excess fill will be removed from the site. Prudy asked whether NHESP was contacted. Maria said she didn't think it would be necessary because NHESP signed off on the bigger project with no conditions. It is less than an acre of disturbance and it might be an exempt activity but that would have to be confirmed. A motion was made and seconded to approve this request under an administrative review. All in favor.

**Map 13 Lots 4, 5 & 6.1/SE 79-362:** Adam Moore was present to answer any questions regarding the remove removal of 6 oak trees in the outer buffer zone to open up a public view from the trail per special Condition # 8 of the Order of Conditions. The route to remove all the downed trees has been changed. There was no special condition covering the route or method of removal of the trees.

A motion was made and seconded to approve this work under the current order with no additional conditions. All in favor.

**Administrative:**

**Map 11 Lot 109.1/Ross:** Maria reported that an abutter to this property notified the Commission about a potential violation. A new house outside Commission jurisdiction, but within Priority Habitat under NHESP, is being built at this location. The Commission approved the construction of a driveway within the buffer zone to an isolated wetland under an RDA.

Silt fencing to create a limit of work was required by NHESP to help keep Eastern Box Turtles out of the construction zone. The only requirement placed on the driveway project by the Commission was that construction fencing be placed on west side of the driveway and that no clearing be done in the area between the construction fencing and the turtle fencing. The construction fencing is in place. There is no violation of the conditions of the RDA.

The complaint was read for the record. Members reviewed photos submitted with the complaint and also photos taken by staff at a site visit with the architect.

Binnie said she has also had several discussions with the abutter. Prudy asked if we should report this to NHESP. Maria said she suggested to the abutter that if they wanted to file a complaint, they could call NHESP. No action was taken.

**Brandy Brow:** At the March 8 meeting Rez Williams asked the Commission to relocate the entrance to the path over Brandy Brow that will connect to the trail easement between the Land Bank and Rod Welles. Members conducted a site visit on March 18 to view the flags that Rez placed at the lower entrance of the path and at the Welles driveway.

Maria mentioned that she and Matthew Dix of the Land Bank also looked at the proposed location change. Matthew thought it was problematic because of its proximity to a storm drain.

It was suggested that some fill be placed in the path where there is dip, but otherwise members were not in favor or relocating the path entrance to the location proposed by Rez.

It was suggested that the board wait until the Land Bank does the easement installation on the Welles property before doing any work on to open up a new path to Brandy Brow at the top of the hill.

Tara said that in deference to the Woods family she would like to do as little as possible. Peter said he would like the minutes to reflect that the board appreciates Rez's efforts. No vote was taken.

There being no new business to conduct, the meeting adjourned at 7: 00 PM.

Respectfully submitted,

Maria McFarland  
Board Administrator  
APPROVED