

FINAL

**MARION CONSERVATION COMMISSION**  
MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 17, 2004

Members Present: Jeffrey W. Oakes, Chairman (absent from 7:00-7:37 PM)  
Norman A. Hills, Vice Chairman  
Janice M. Mendes, Treasurer (left at 7:40 PM)  
Sherman E. Briggs, Jr., Recording Secretary  
Robert J. Merlino, Member

Members Absent: Horace S. Kenney, Jr., Associate Member  
Joel D. Hartley, Associate Member

Secretary: Diane R. Drake

Others Present: Dr. Martha Stark, David Davignon, James & Kathy Tripp, Kathleen Giles & Robert H. Nakashian, Paul S. Kohout, Michael Thompson, Mary Curran, Laura DeCosta, Terry Enos, George Ayoub & Fadi Heneine.

Meeting convened at 7:00 PM Wednesday, November 17, 2004 in the main conference room of the Marion Town House, 2 Spring Street, Marion, Massachusetts. Site inspections were held on Saturday, November 13, 2004 by J. Oakes, N. Hills and R. Merlino.

7:00 PM **KATHLEEN GILES** - RFD (41D-1204) to construct a 24' x 28' detached garage at 42 Tucker Lane (continued). Homeowners Kathleen Giles and Robert H. Nakashian were present and presented Richard Audette's version of the present wetland line, which is now closer to the house due to soil samples. Mrs. Giles said they have no other spot to put the garage and asked for permission to build within the 30' "no build" zone, specifically, 12' from the wetland line. Mrs. Giles said Mr. Audette told her State Law allows structures to be built right up to a wetland line. R. Merlino said the Commission would like an engineer's drawing showing the new wetland line and where the garage is proposed. Permanent fences, walls, etc. to discourage activity in the wetlands was discussed; Mrs. Giles said she would be agreeable to putting up a fence. J. Mendes moved to continue the hearing, with the Applicant's consent, to 7:20 PM December 1, 2004; R. Merlino seconded; voted unanimously.

7:10 PM **DR. MARTHA STARK** –Amendment to Order of Conditions (SE41-900) for house renovations at 4 West Avenue, Planting Island (continued). Dr. Stark was present with her Engineer, David Davignon, who asked the Commission to rescind their November 3rd vote requiring a new Notice of Intent for the proposed work, based on the downsizing of the project as shown on the revised plans submitted tonight. R. Merlino asked if this was an appointment for discussion; D. Davignon said no, it was a continuation of the November 3rd hearing. D. Drake explained that the Commission did not close the

hearing on November 3rd, and the Board of Selectmen Chairman, David Pierce, said if the hearing was not closed, then it is still open and would be continued to the next meeting. R. Merlino referred to the draft November 3, 2004 minutes. R. Merlino said the prior Amendment was denied, but Dr. Stark can request another Amendment for the downsized work. D. Davignon said because the last hearing wasn't closed, he thought a revised plan could still be submitted. R. Merlino said he would prefer that the downsized plan for the Amendment be treated as a new Amendment filing. Dr. Stark questioned why Associate Member Horace Kenney was allowed to sit at the table and participate in her November 3rd hearing, as he had spoken against this project during her Zoning Board of Appeals hearing, as noted in the Z.B.A.'s minutes; R. Merlino and N. Hills said that will not be allowed to happen again. R. Merlino moved to close the hearing; J. Mendes seconded; voted unanimously. A new hearing for a revised third Amendment will be held on December 1, 2004 at 7:30 PM.

7:30 PM **BARBARA DeCOSTA** – NOI (SE41-1019) to extend the driveway at 2 Washburn Park Road an additional 650 feet (approximately) (continued). Michael Thompson represented Ms. DeCosta. Natural Heritage responded that the project is near but not within the area of concern, but they do not want the project to take place during May or June. M. Thompson explained that the Light Company does not want the replication to be in their easement, which the driveway crosses, so the plan has been revised to relocate the replication to the other side of the driveway which is outside of the easement. J. Mendes moved to close the hearing; R. Merlino seconded; voted unanimously.

7:35 PM **STEPHEN CLARK** – RFD (41D-1201) to place a line of boulders and to level and reseed an existing lawn at 713 Mill Street (continued). Mr. Clark was not present. Another site inspection was done on November 11, 2004. The boulders had not yet been placed where the wetlands had been fixed. Also, there had been additional filling by the garage which will need to be removed. R. Merlino moved to continue the hearing to 7:40 PM December 1, 2004; J. Mendes seconded; voted unanimously.

7:40 PM J. Oakes arrived from his meeting in Wareham. J. Mendes left to attend the Housing Task Force meeting.

7:40 PM **MICHAEL & MARY CURRAN** – NOI (SE41-1017) to expand the lawn area at 38 Point Road (continued). Mrs. Curran and her representative, David Davignon, were present and asked to withdraw this filing, as this work is included as a part of the seawall reconstruction project (SE41-1020). R. Merlino moved to withdraw the Notice of Intent; N. Hills seconded; voted unanimously.

7:41 PM **MICHAEL & MARY CURRAN** – NOI (SE41-1020) to expand the lawn area and reconstruct an existing seawall at 38 Point Road. Mrs. Curran and her representative, David Davignon, were present. D. Davignon explained the project and responded to D.E.P.'s comments as follows: The filing fee is the new fee. No work will be done two hours before to two hours after low tide. There is no evidence that the existing seawall is licensed. The sand for the beach will be above mean high water. Some stones below mean high water need to be removed, and he will check further to see if any other permits

may be necessary for that, but if Regulations prohibit removing rocks below mean high water, then the D.E.P. file number would not have been assigned. The width of the wall is doubling, and the slope will be two-to-one due to the limited area. J. Oakes said that Paul Lelito's report verified that the area to be turned into lawn is not a bordering vegetated wetland based on soil samples. R. Merlino moved to close the hearing; N. Hills seconded; voted unanimously.

8:10 PM **VICTOR BRIER** – RFD (41D-1206) to upgrade a septic system at 163 County Road. S. Briggs left the table. David Davignon represented Mr. Brier and explained that this filing is due solely because the F.E.M.A. map incorrectly shows the area as being below 15' elevation, but actual site elevations prove it is above 15' elevation. R. Merlino said this work might be in the buffer zone to the pond on the abutting property, at least 50' away. R. Merlino moved to close the hearing; N. Hills seconded; voted unanimously. S. Briggs returned to the table.

8:15 PM **FADI HENEINE** – RFD (41D-1207) to construct a single-family dwelling and septic system at 694A Mill Street, also known as Lot 11 Giffords Lane. Mr. Heneine was present with his Engineer, George Ayoub. J. Oakes said the Commission agrees that the bordering vegetated wetland is across the road, not on this property. G. Ayoub said about 4' of fill will be necessary due to the high water table, but no Board of Health variances are needed. R. Merlino moved to close the hearing; N. Hills seconded; voted unanimously.

8:17 PM **ARTHUR & CHERYL WALKER** – RFD (41D-1208) to upgrade a septic system and verify resource areas delineations at 587 Front Street. Denis Seguin said he was present on behalf of Mr. and Mrs. Walker. He submitted a larger scale plan and described the work, which is upgrading the septic system to Title 5 Standards. He said the system is out of the buffer zone. He asked the Commission to lift the Enforcement Order; the Commission denied that request. J. Oakes said Mrs. Walker promised an ENSR report, which has not yet been received; D. Seguin said he did not realize the Commission did not have it, and submitted his copy to be photocopied. D. Seguin said he is here for the septic system project, and does not want to get in the middle of any wetland delineation problems. He asked if there were any problems with the septic system part of the project; J. Oakes said no, that part is fine. D. Seguin said "good" and left the building. J. Oakes said he would like to continue the hearing so that he can visit the site to verify the ENSR report. N. Hills said he will contact Ed Burke of the D.E.P. Strike Force (REACT Team) to coordinate a site visit. R. Merlino moved to continue the hearing to 7:50 PM December 1, 2004; N. Hills seconded; voted unanimously.

J. Oakes drafted a second Enforcement Order to Arthur and Cheryl Walker due to unpermitted cutting occurring in wetlands, filling a potential intermittent stream in wetlands with brush and tree limbs, and constructing animal pens in the buffer zone to wetlands and possibly within wetlands. R. Merlino moved to issue the Enforcement Order as written, to be hand delivered by a Police officer; N. Hills seconded; voted unanimously. A copy of the Enforcement Order will be faxed to Ed Burke and sent to Jim Simmons of the New Bedford

River Watershed Program ("Hands-Across-the-River"), who recently complained to Ed Burke about illegal activities taking place at the Walkers' property.

8:40 PM **PAUL F. SHAMON** – RFD (41D-1205) to determine what resources are present at Lot 8 off Creek Road, and verify the delineation(s) shown on the plan (continued). This hearing was continued because the Commission did not agree with Andrew Ashley's wetlands delineation, and had asked for soil samples to support the flagged line. Mr. Shamon, by letter today, requested an indefinite continuation of this hearing. R. Merlino moved to continue this hearing indefinitely, at the Applicant's request; N. Hills seconded; voted unanimously.

Jeffrey and Paula Tosca's request for a Certificate of Compliance for their new house at 167 Cross Neck Road was discussed (SE41-861). Another inspection was done on November 13, 2004. The washouts are still not fixed well enough. Mrs. Tosca will notify the Commission in the spring when she is ready for a final inspection.

R. Merlino moved to issue a Negative Determination for Box #1 to Victor Brier for his septic repair project at 163 County Road (41D-1206); N. Hills seconded; voted by majority with S. Briggs abstaining.

R. Merlino moved to issue a Negative Determination for Box #3 to Fadi Heneine for constructing a home and septic system at 694C Mill Street (41D-1207); N. Hills seconded; voted unanimously.

R. Merlino moved to issue a Full Certificate of Compliance for Box #1 to the Estate of Richard Butler for configuring the anchor pilings and floats at 168 Allens Point Road (SE41-459); N. Hills seconded; voted unanimously.

N. Hills drafted a denial of Dr. Martha Stark's requested third Amendment for house renovations at 4 West Avenue, Planting Island (SE41-900), and moved to issue it as written; R. Merlino seconded; voted unanimously.

R. Merlino moved to issue a Full Certificate of Compliance for Box #1 for Ronald Donley's inground pool/spa and timber steps to the shore at 174 Point Road (SE41-182); N. Hills seconded; voted by majority with S. Briggs abstaining.

R. Merlino moved to issue a third three-year Extension Permit to The Town of Marion to clear obstructions from the Sippican River in order to allow unobstructed passage for herring (SE41-693); N. Hills seconded; voted by majority with J. Oakes abstaining because he is Marion's Assistant Herring Inspector. R. Merlino moved to approve paying \$77.00 to record the Extension Permit at the Plymouth Registry of Deeds; N. Hills seconded; voted by majority with J. Oakes abstaining.

R. Merlino drafted Michael and Mary Curran's Order of Conditions for their reconstructed seawall and lawn expansion at 38 Point Road (SE41-1020), and moved to issue it as written; N. Hills seconded; voted unanimously.

J. Oakes drafted Barbara DeCosta's Order of Conditions to extend her driveway at 2 Washburn Park Road an additional 650 feet (approximately) (SE41-1019), and moved to issue it as written; R. Merlino seconded; voted unanimously.

Meeting adjourned at 9:30 PM.

---

Diane R. Drake, Secretary

Approved December 15, 2004