

FINAL

MARION CONSERVATION COMMISSION
MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 16, 2005

Members Present: Jeffrey W. Oakes, Chairman
Norman A. Hills, Vice Chairman
Sherman E. Briggs, Jr., Recording Secretary
Robert J. Merlino, Member

Members Absent: Janice M. Mendes, Treasurer
Horace S. Kenney, Jr., Associate Member
Joel D. Hartley, Associate Member

Secretary: Diane R. Drake

Others Present: Norman Holt, Linda M. Noble, Daniel & Mary Ann Dowd, Wendy & Kevin Carreau, Richard Charon, John Tulka, Annita Donovan, Laura DeCosta, Terry Enos, Louis Hambly, Dennis Costa, Kenneth Ferreira, Barbara Claff, Ruth & John Nicolaci, Robert & Virginia Becher, William St. Cyr, Sally Sleeper Cottrill, Anne Kirschmann, Laurel Furumoto, Susan & Gary Grosart, Peter Kirschmann, Michael Popitz, Wassim M. Chedid & his wetlands advisor who did not sign in, David M. Davignon, and others who may not have signed in.

Meeting convened at 7:00 PM Wednesday, November 16, 2005 in the main conference room of the Marion Town House, 2 Spring Street, Marion, Massachusetts. Site inspections were held on Saturday, November 12, 2005 by J. Oakes and N. Hills.

7:00 PM **NORMAN HOLT** - RFD (41D-1249) to construct a 20' x 25' detached garage at 10 Creek Road. Norman Holt and Linda Noble were present and said the sheds will be removed. J. Oakes said this is only a flood zone project. N. Hills moved to close; R. Merlino seconded; voted unanimously. J. Oakes moved to issue a Negative Determination for Box #2; N. Hills seconded; voted unanimously.

Minutes were reviewed. N. Hills moved to accept the October 19, 2005 minutes as written; R. Merlino seconded; voted unanimously. N. Hills moved to accept the November 2, 2005 minutes as written; S. Briggs seconded; voted unanimously.

7:10 PM **THOMAS HURRIE** – NOI (D.E.P. file number not assigned yet) to construct a new dwelling at Lot 119 Edgewater Lane. No one represented Mr. Hurrie. J. Oakes said a few of the wetland flags have been adjusted. N. Hills moved to continue the hearing to 7:10 PM December 7, 2005 so that another site visit can be done with the botanist, and also because the file number has not been received; S. Briggs seconded; voted unanimously.

J. Oakes described his site inspection with Dorothy Blickens at Geoffrey Neal's Lot 120 Olde Meadow Road property, in response to Mr. Neal's request for a Superseding Order of Conditions (SE041-1033). D. Blickens told J. Oakes that Zora Enterprises' Order of Conditions SE41-400 was only for the subdivision road drainage, and each house would need a Notice of Intent filing and a new wetland line (SE41-400, Special Condition #18: "...This Notice of Intent filing is for the proposed access road and related grading and drainage work. Development of individual house lots within this proposed residential subdivision that are within jurisdictional areas as set forth under the W.P.A. shall require the filing of a Request for a Determination of Applicability or Notice of Intent Application."). D. Blickens told J. Oakes that in the future, any photographs submitted to D.E.P. must also be given to the applicant and/or owner as well. D.E.P. will issue a Superseding Order of Conditions for that project.

In response to Joseph Zora's concern that dredge spoils are being placed on the railroad grade, possibly on his portion of Lot 24 without his consent, and possibly in wetlands, a site inspection was done on November 12, 2005. J. Oakes said there are no wetlands anywhere near where the spoils are being placed, and no one knows where Mr. Zora's portion of Lot 24 actually is.

7:20 PM **DANIEL DOWD** – RFD (41D-1247) to construct an egress from 13 Blackhall Court directly to Hastings Road. Mr. and Mrs. Dowd were present. Five 4"-diameter perforated pipes are proposed in the bottom of the swale. Mr. Dowd said he owns to the middle of Hastings Road, which is a private road, including the area of the swale and proposed bridge. He said there have been several occasions where Mrs. Dowd could not get out due to the narrowness of the Blackhall Court roads, and had to call the neighbors to move their vehicles. J. Oakes said his only concern is the size of the pipes; he feels they are undersized. Mr. Dowd said the water usually just sits in the ditch and rarely overflows the trap rock. S. Briggs suggested a few 8"-diameter pipes rather than five 4"-diameter pipes. J. Oakes said at the pipe should be at least 12" diameter, and he prefers using trap rock rather than crushed stone. R. Merlino said he remembers visiting the site in response to reports of erosion occurring in the marsh at the end of Hastings Road, so water obviously does flow to the marsh. D. Dowd said that erosion is due to water coming from the other side of Hastings Road. The Chairman asked for comments from the audience. John Tulca said he lives across from where this driveway is proposed, and he sees a constant flow of water over the 60'-wide access (for Hastings Road residents) to the marsh. J. Tulca said he placed haybales to try to stop the erosion. Another abutter, Kevin Carreau, said the haybales just redirect the flow, and do not solve the problem. Mr. Dowd said that right of way is 40' wide, not 60' wide, and the bridge will be on his/the Association's property. Skip Hambly said he has blueprints of the original road. J. Oakes said there are several issues that need to be addressed before this project can go forward: (1) whose property will the driveway be on; (2) the pipes need to be adequately sized so as not to overflow; and (3) property lines need to be established. J. Oakes said he feels a Notice of Intent should be filed for this project, and asked the Hastings Road residents to work with the Blackhall Court residents to resolve the marsh erosion issue. N. Hills moved to close the hearing; R. Merlino seconded; voted unanimously.

7:45 PM **COLE DAUGHTERS REALTY TRUST** – NOI (SE041-1037) to construct a new dwelling at Lot 11 Delano Road (continued). Richard Charon of Charon Associates, Inc. represented the Trust and submitted a revised plan showing wetland flags 5 and 6 moved approximately 28' further toward the road, and flags 7 and 8 moved approximately 40' closer to the road, based on soil samples rather than existing vegetation. R. Charon said the house has been downsized to a 26' x 38' Cape style with a drive-under garage and a walk-out basement to reduce the amount of fill in the back yard. R. Merlino asked if the uplands/wetlands ratio applies to this lot; R. Charon said he does not think so. J. Oakes said there is only 5' to 8' from the house to the B.V.W. line, instead of the Commission's normal 30' no build policy. J. Oakes said some lots just aren't big enough for a house. R. Merlino moved to close the hearing; N. Hills seconded; voted unanimously.

7:53 PM **LAURA DeCOSTA** – RFD (41D-1248) to construct a house, driveway and septic system at Lot 18, Subdivision Lot 2, off Washburn Park Road. David Davignon of N. Douglas Schneider & Associates, Inc. represented Ms. DeCosta and said the wetland line shown on the plan was approved under the Order of Conditions for the driveway. D. Davignon said there is a 50' no-disturb zone from the wetlands, rather than the Commission's required 15'. D. Davignon said the leaching field is located in the buffer zone because it has to be at least 100' from the well. R. Merlino moved to close the hearing; N. Hills seconded; voted unanimously.

8:00 PM **LAWRENCE DORMAN** – Appointment for discussion regarding Order of Conditions SE041-1024 to construct a pier at 166 Allens Point Road. David Davignon showed a photograph of the pier and said he has filed with Waterways for a "minor project adjustment" -- building cantilevered benches at the sides of the last 10' of the pier -- and he needs a letter from the Commission saying an Amended Order of Conditions will not be needed. The Commission Members agreed that an Amended Order is unnecessary and will send him a letter to that effect.

8:02 PM **PETER JONES & SUZANNE MOOT** – Appointment for discussion regarding Order of Conditions SE41-881 to construct a pier at 118 Bullivant Farm Road. David Davignon said he has filed with Waterways for a "minor project adjustment" -- building cantilevered benches at the sides of the last 12' of the pier -- and he needs a letter from the Commission saying an Amended Order of Conditions will not be needed. He said the area is all mud, with no eelgrass. The Commission Members agreed that an Amended Order is unnecessary and will send him a letter to that effect.

8:05 PM **DENNISON MAKEPEACE** – RFD (41D-1250) to construct a 14' x 20' deck at 92 Front Street, rebuild an existing deck, pave a portion of the existing driveway, and general landscaping. Mr. Makepeace's contractor, Dennis Costa, was present and described the proposed work. J. Oakes said all work appears to be outside the 15' no-touch zone, and the silt fence (or snow fence) line will delineate the limit of work. R. Merlino moved to close the hearing; N. Hills seconded; voted unanimously.

8:10 PM **RONALD A. & PAMELA L. CORNELL** – RFD (41D-1251) to verify the delineation of the Bordering Vegetated Wetlands at Lot 123 Indian Cove Road, and allow the wetlands to be crossed in order to do percolation tests in the uplands portion of the lot. Kenneth Ferreira of Kenneth Ferreira Engineering represented the Cornells and submitted revised drawings showing the wetland line adjusted by adding Flags 7A and 8A, and revising the 100' buffer zone line. J. Oakes said Flags 11 and 12 were not seen on the site; K. Ferreira said he does not know why that flags were missing. N. Hills asked if the upland/wetlands ratio has been calculated for that lot; Mr. Ferreira said that does not apply because this is a grandfathered lot in a 1971 subdivision. Mr. Ferreira said a rubber tire backhoe would be used to cross the wetlands at their narrowest point and do the percolation tests above the 100' buffer zone line shown on the plan. N. Hills asked K. Ferreira whether the applicant requested permission from neighbors to access the upland portion of the lot by way of abutting property, rather than going through wetlands; K. Ferreira said no. K. Ferreira said sketches have been done to place a house in the upland, and the 30' no-build zone will not be encroached. N. Hills said some trees will need to be cut to get access to do the percolation tests; K. Ferreira said the machine needs a 6'-wide path, and can zig zag around trees. J. Oakes asked for public comment. Peter Kirschmann said he is the abutter to the right of Cornell's lot and he is upset that a 3'-wide swath was cut on his land three years ago, without his permission, to access the Cornell land; K. Ferreira said he only recently became involved in this lot, so it was not his survey crew that trespassed. Dr. Michael Popitz, the abutter to the left of the Cornell lot, said he is concerned that a beautiful stone wall is on that property and would have to be broken for access to the uplands, and drainage from the St. Cyr lot run through the Cornell lot. Susan Grosart asked how the occupants would access the house, by filling wetlands?; J. Oakes said yes, the same as Dr. Popitz's driveway. Ruth Nicolaci said she thought the lot did not pass a percolation test the last time, and said she does not think there is any grandfathering of destroying wetlands. J. Oakes said whatever damage is done should be minor and should grow back, and if the lot does pass the perc. tests, the driveway will be built where the backhoe crosses the wetlands. William St. Cyr said his property abuts the Cornell lot in the rear, and he has not seen the revised plan (N. Hills gave Mr. St. Cyr one of the plans). K. Ferreira assured Mr. Kirschmann that a thorough survey will be done to prevent any infringement on the abutting properties. Anne Kirschmann asked how wetlands can be filled if the Wetlands Protection Act prohibits that?; R. Merlino explained that D.E.P. does allow crossing wetlands in order to get to uplands, and the wetlands that are altered would have to be replicated. K. Ferreira said he is going to ask the Board of Health to accept the 1985 percolation tests, so that a smaller machine can be used to do just soil evaluations. N. Hills moved to close the hearing; S. Briggs seconded; voted unanimously. J. Oakes moved to issue a Conditional Negative Determination for Box #2 and a Positive Determination for Box #2A, with the condition that the smallest possible machine will be used in the least obtrusive area; R. Merlino seconded; voted unanimously.

N. Hills moved to issue a Negative Determination for Box #3 for Dennison Makepeace's new deck and landscaping at 92 Front Street (41D-1250); R. Merlino seconded; voted unanimously.

R. Merlino moved to issue a Positive Determination for Box #3 for Daniel Dowd's egress to Hastings Road from his 13 Blackhall Court property (41D-1247); N. Hills seconded; voted unanimously.

J. Oakes moved to issue a Negative Determination for Box #3 for Laura DeCosta's septic system project off Washburn Park Road (41D-1248); R. Merlino seconded; voted unanimously.

The Commission discussed the Cole Daughters Realty Trust filing (SE041-1037). The hearing has been closed. N. Hills said he would like to research the W.P.A. regulations before voting to allow or deny the project.

R. Merlino moved to cancel the regularly-scheduled Conservation Commission meeting of December 21, 2005; N. Hills seconded; voted unanimously.

Meeting adjourned at 9:30 PM.

Diane R. Drake, Secretary

Approved December 7, 2005