

FINAL

MARION CONSERVATION COMMISSION
MINUTES OF THE REGULAR MEETING HELD ON JUNE 20, 2007

Members Present: Norman A. Hills, Chairman
Jeffrey W. Oakes, Vice Chairman (left at 9:45 PM)
Sherman E. Briggs, Jr., Recording Secretary (left at 10:05 PM)
Bruce C. Hebbel, Member (absent from 7:00 PM to 8:00 PM)
Lawrence B. Dorman, Member

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

Secretary: Diane R. Drake

Others Present: Jason A. Panos, Dana Altobello, Patricia Charyk, Daniel and Mary Ann Dowd, Wendy and Kevin Carreau, Debbie Druan and David Koshiol, Chris Bryant, Jamison Ryder, Frank Smith, Alexander Poulos, Laura Kay Coggeshall, Brendan Faneuf, Susan Nilson, Diane C. Tillotson, Richard Garnett, Steve Nojeim, Anne Converse, Susanne Kotowski, Leland and Helene Craver, Water Hartley, David Croll and Albert "Guppy" Ford.

Meeting convened at 7:00 PM Wednesday, June 20, 2007 in the main conference room of the Marion Town House, 2 Spring Street, Marion, Massachusetts. Site inspections were held on Saturday, June 16, 2007 by N. Hills, J. Oakes, B. Hebbel and L. Dorman.

7:00 PM **SARDINHA FAMILY TRUST** - NOI (SE41-1053) to replace the restaurant building at 450 Wareham Street with two new buildings (a restaurant and an office/retail building) (continued from May 16, 2007). Dana Altobello of Thompson Merrill represented the Trust. Revised plans had been submitted showing the updated wetland line and grading on the path. D. Altobello said the Planning Board denial of the project has been appealed, so it is still a viable project. S. Briggs said the Commission's previous Order of Conditions approving this project may still be valid, due to everything being put on hold due to litigation with the Zoning Board of Appeals' denial of the project, and would like Town Counsel's opinion on this matter. L. Dorman moved to continue the hearing, with the Applicant's consent, to 7:00 PM August 1, 2007; J. Oakes seconded; voted unanimously.

7:23 PM **PATRICIA M. CHARYK** - RFD (41D-1320) to remove a dead oak tree and an uprooted pine tree stump at 20 Old Knoll Road. Ms. Charyk was present and said the work will be done by one person using a chainsaw. L. Dorman moved to close the hearing; J. Oakes seconded; voted unanimously.

7:25 PM **SIPPICAN LANDS TRUST** - RFD (41D-1319) to clear a foot path from Ichabod Lane to the Sippican River, and construct a 4' wide by 20' long bridge over a low area of the path.

Christopher Bryant, the President of the Sippican Lands Trust, was present with Boy Scout Jamison Ryder who will do the work for his Eagles Badge. C. Bryant said the trail will be maintained by hand, and the alleged vernal pool shown on the plan has not been certified. L. Dorman moved to close the hearing; J. Oakes seconded; voted unanimously.

7:30 PM **DANIEL DOWD** - RFD (41D-1321) for landscaping (create raised planting beds, remove poison ivy and briars, vista pruning, add bluestone to pathways) at 13 Blackhall Court. Daniel and Mary Ann Dowd were present. D. Dowd said the Commission approved construction of a deck in 2002, and landscaping in front of the house in 2003. He said that in 2004 a local contractor removed some trees, and this landscaping plan was done in November of 2004. D. Dowd said he only recently saw a map of his property in which the distance from the house to the wetland line is noted as being 25', not 30' as he believed it to be. J. Oakes explained that the original Order of Conditions in 1988 referred to the hay bale line as shown on the Plan of Record at that time, and the whole lot is in the Conservation Commission's jurisdiction due to it being in the Flood Plain and the 100' Buffer Zone to Wetlands. J. Oakes said Roseland, the company that delivered the loam, should have known that the proposed work would need a permit. J. Oakes said the plan could be revised to stay within the hay bale line, or a Notice of Intent will need to be filed to do work beyond the hay bale line. N. Hills said the fill outside the hay bale line must be removed unless a Notice of Intent is submitted and an Order of Conditions issued approving it. Debbie Druan of 11 Blackhall Court said the activities taking place at the site are not minor, and she would like a Notice of Intent to be filed. D. Dowd said he will remove the dirt that was placed beyond the hay bale line, within a few days. L. Dorman moved to close the hearing; J. Oakes seconded; voted unanimously.

7:50 PM **MARION LANDS TRUST** - ANRAD (SE41-1064) to verify the delineation of the wetland resource areas at 369/371 Wareham Street and Lots 68A and 68B Wareham Street (continued from June 6, 2007). Present were David Croll (the buyer), Albert "Guppy" Ford (the seller), Dana Altobello (the engineer), and Brandon Faneuf (the wetlands biologist/consultant contracted by the Conservation Commission, to be paid for by the buyer, to verify the wetland resource areas shown on the engineer's plan). J. Oakes said he had a few minor changes to B. Faneuf's findings, and described the changes. B. Faneuf said he tested the soils all over the property. J. Oakes said that because the U.S.G.S. map shows the stream that runs through the property, it is considered to be a perennial stream unless proven otherwise. A. Ford said the stream dries up for several months each year. J. Oakes explained that four photographs of the stream taken over an extended period of time will be needed to show it does dry up, and is therefore an intermittent stream. N. Hills explained that as a perennial stream the area 200' on both sides of the stream are considered to be in the Rivers Protection Act, with its own restrictions. D. Croll said he would like to have the stream issue resolved now, as well as the accuracy of the wetland lines. B. Faneuf said he regards the ponded area to be the area from concrete bridge to concrete bridge. B. Faneuf said there is a potential vernal pool on the abutting lot near Flag B126; J. Oakes said if the pool does become certified, then a 100' buffer zone around it would impact the Ford site by approximately 50', but it really doesn't matter in this case because that area is a wetland anyway. D. Altobello asked to continue the hearing so that he can revise the plan to show the suggested changes, and take photographs showing the stream does dry up. B. Hebbel moved to continue the hearing, with the Applicant's consent, to 7:10 PM August 1, 2007; L. Dorman seconded; voted unanimously.

8:15 PM **THE KITTANSETT CLUB** - NOI (SE41-1062) to modify existing parking areas at 11 Point Road and Butlers Point (continued from June 6, 2007). J. Oakes and S. Briggs left the room. Present on behalf of the Club were Chip Garnett (the Club's President), Susan Nilson (engineer), and Diane Tillotson (legal counsel). Also present was Jason Panos (Mark and Eileen Epstein's legal counsel). The Commission has received a summary from each of the attorneys. L. Dorman said he does not believe all other permits must be received before an Order of Conditions can be issued, especially in this case. A letter had been written by the Building Commissioner explaining that, due to his resignation on June 28, 2007, he has forwarded all correspondence concerning this matter to Jon Witten, the Town's Counsel. J. Panos said permit applications must be submitted to the Planning Board and the Zoning Board of Appeals, even if those permits are not issued, before an Order of Conditions can be written. J. Panos submitted photographs taken by the Epsteins on June 16, 2007 showing approximately 28 cars parked in the grassy area abutting their property, and said this is the norm, not just overflow parking. D. Tillotson said there was, in fact, an event at the Kittansett Club last Saturday, the day the photographs were taken, and many of the cars shown in the photographs are actually on the paved area, not the grassy area. J. Panos asked the Commission to restrict usage of the grassy area to "occasional use," not "regular use." L. Dorman moved to close the hearing; B. Hebbel seconded; voted unanimously. J. Oakes and S. Briggs returned to the table.

8:40 PM J. Oakes moved to issue a full Certificate of Compliance to **THE TOWN OF MARION** for installing a water main along Benson Brook Road from Mill Street to the new water storage tank, with a note that the existing hay bales shall be left in place and allowed to disintegrate naturally (SE41-1034); L. Dorman seconded; voted unanimously.

L. Dorman moved to issue a full Certificate of Compliance to **KATHLEEN GILES** for constructing a garage at 42 Tucker Lane, with a note that the boat rack beside the garage shall be pulled forward approximately 10' to get it out of the wetlands (SE41-1027); B. Hebbel seconded; voted unanimously.

The Commission Members discussed **STEVEN HURLEY'S** request for a Certificate of Compliance for constructing the dwelling at 21 Bayview Road (SE41-921). It was agreed that the roof runoff, road re-grading and salt marsh line issues have been resolved. Abutter Walter Hartley was present and said he does not believe the corrective work has been done correctly. J. Oakes said the only issue may be road drainage and suggested tabling approval of the Certificate of Compliance until later tonight.

The Commission Members discussed **THE TOWN OF MARION - RECREATION COMMITTEE'S** project to construct a new ball field at Washburn Park (SE41-1068). The hearing was closed at the Commission's June 6, 2007 meeting. The Commission must decide whether to approve or deny the project tonight. J. Oakes had distributed an email to the Members listing reasons the project should be denied; N. Hills had distributed an email to the Members listing reasons the project should be approved. J. Oakes said he is against the project as stated in his summary. L. Dorman said he agreed with N. Hills' views. S. Briggs said a barrier on the cart path to prohibit vehicular traffic could be a safety issue, and he does not think lights will ever happen there. B. Hebbel said the ponds are the headwaters to Buzzards Bay and there will be runoff from the field. N. Hills said if this project was to construct a house instead of a ball field, the Order of Conditions

would address runoff, wildlife habitat, and prevention of pollution. S. Briggs said the U.S. Army Corps of Engineers might want to review the project, and if the Commission's Order of Conditions is appealed, D.E.P. will likely approve it. S. Briggs moved to issue an Order of Conditions approving the project; L. Dorman seconded; N. Hills voted in favor; B. Hebbel and J. Oakes opposed.

S. Briggs moved to approve payment of \$258.00 for July 1, 2007 through June 30, 2008 Massachusetts Association of Conservation Commissions dues; J. Oakes seconded; voted unanimously.

Reorganization was discussed. S. Briggs moved to keep the Commission membership as it presently is (N. Hills as Chairman and Treasurer, J. Oakes as Vice Chairman, and S. Briggs as Recording Secretary); B. Hebbel seconded; voted unanimously. B. Hebbel moved to appoint N. Hills as the Commission's Community Preservation Act representative; J. Oakes seconded; voted unanimously. B. Hebbel agreed to continue as the Commission's representative on the Tri-Town River Committee.

L. Dorman moved to issue a Conditional Negative Determination for Box #2 to the **SIPPICAN LANDS TRUST** to clear a foot path to the Sippican River and construct a bridge over a low area, with Conditions that: (1) the footpath will be maintained as forest loam; (2) no crushed stone or woodchips are to be placed on the path; (3) all materials will be carried in by hand; and (4) no heavy equipment will be allowed in the wetlands; S. Briggs seconded; voted by majority with B. Hebbel abstaining (41D-1319).

J. Oakes moved to issue a Conditional Negative Determination for Boxes 2 and 3 to **DANIEL DOWD** for his landscaping project at 13 Blackhall Court, with Conditions that the loam that was placed on the water side of the hay bale line location shown on the plan of record shall be removed and that area allowed to revegetate; and any proposed filling, dredging or altering of the area between the hay bale line and the wetland line shown on the plan of record will require an additional filing of a Notice of Intent or a Request for a Determination of Applicability prior to any work taking place; S. Briggs seconded; voted by majority with B. Hebbel abstaining (41D-1321).

J. Oakes moved to issue a Conditional Negative Determination for Box #2 to **PATRICIA CHARYK** to remove a dead oak tree and an uprooted pine stump at 20 Old Knoll Road, with a Condition that no heavy equipment will be allowed in the wetlands; L. Dorman seconded; voted by majority with B. Hebbel abstaining (41D-1320).

Discussion of **STEVEN HURLEY'S** request for a Certificate of Compliance for constructing the dwelling at 21 Bayview Road (SE41-921) resumed from earlier tonight. J. Oakes explained to Water Hartley that he feels the corrective actions have been substantially done and he is satisfied that road drainage will continue down the road and to the marsh. J. Oakes and L. Dorman agreed that work had been done on Bayview Road. W. Hartley disagreed and compared grading shown on various plans for this project. W. Hartley asked the Commission to hold off issuing the Certificate of Compliance until a professional opinion can be received from W. Hartley's Engineer. J. Oakes said he believes the flooding issue has been resolved, and there is no point in holding off issuing the Certificate of Compliance. N. Hills said W. Hartley is exaggerating that all road runoff is going onto W. Hartley's property. B. Hebbel said the Commission could order S. Hurley to pay for

an independent consultant to determine what has and has not been done. J. Oakes and N. Hills agreed that a summary from either S. Hurley's Engineer or an independent consultant will be needed. N. Hills will draft a letter to that effect.

N. Hills drafted **THE TOWN OF MARION, RECREATION COMMITTEE'S** Order of Conditions (SE41-1068) to construct a new ball field at Washburn Park. L. Dorman moved to issue it as written; S. Briggs seconded; N. Hills, L. Dorman and S. Briggs voted in favor; B. Hebbel voted against; motion passed.

B. Hebbel drafted **THE KITTANSETT CLUB'S** Order of Conditions (SE41-1062) to modify existing parking areas at Butler's Point. N. Hills moved to issue the Order as written; L. Dorman seconded; voted unanimously. B. Hebbel will draft a letter to The Kittansett Club reminding them that there is not supposed to be continuous parking at Butler's Point.

Meeting adjourned at 10:15 PM.

Diane R. Drake, Secretary

Approved August 1, 2007