

**MARION CONSERVATION COMMISSION**  
MINUTES OF THE REGULAR MEETING HELD ON APRIL 26, 2017

Members Present: Cynthia Callow, Chairman  
Jeffrey J. Doubrava, Vice Chairman  
Norman A. Hills, Clerk  
Joel D. Hartley, Member  
Shaun P. Walsh, Associate

Members Absent: Kristen Saint Don, Member; Lawrence B. Dorman, Associate

Admin. Assistant:

Others Present: Jeffrey Osborn, David Gulley, Michael Murphy, Nick Dufresne, Farland Corp.; Barrett Levenson, Brandon Faneuf, Virginia Levenson, Barry Levenson, Dave Davignon, Schneider & Associates; Robert Harvey

Meeting convened at 7:00 PM on Wednesday, April 26, 2017 in the conference room of the Marion Town House, 2 Spring Street, Marion, Massachusetts. Site visits were held on Saturday, April 22, 2017 by . This meeting was televised and video recorded by Old Rochester Community Television (ORCTV), and audio recorded by Town of Marion staff.

7:00pm **John J. & Cynthia Paliotta**: Requests for Certificates of Compliance for File Nos. SE041-1014 and SE041- 1190. Dave Davignon explained that the NOI for SE041-1014 was for a conceptual house to be built by the previous owner and the work was never started. He realized that it was still active when he did the Request for Determination of Applicability for the new owners (the Paliottas). N. Hills made a motion (seconded by J. Doubrava) to issue the Certificate of Compliance with the “Invalid Order of Conditions” box checked because the work was never commenced, and no new work can be done without a new filing. Motion passed unanimously. A Notice of Intent (SE041-1190) was filed for vista pruning and an existing path cut to the beach by the original owner. It carried over to the new owners (the Paliottas) but they never did the work. N. Hills commented that there was a letter from the engineer stating that the work had never commenced. N. Hills made a motion (seconded by J. Doubrava) to issue the Certificate of Compliance (File SE041-1190) with the “Invalid Order of Conditions” box checked because the work never commenced, and no new work can be done without a new filing. Motion passed unanimously.

41 7:10pm, **John J. & Cynthia Paliotta**, Request for Determination of Applicability,  
42 (File No. SE 041-1643) to construct a single family dwelling at 119 Converse Road (further  
43 defined as lot 46A on map 17. D. Davignon explained that the Paliottas were issued a letter  
44 from the Conservation Commission on March 29, 2017 telling them that they needed to file  
45 an RDA when they applied for a building permit. The concern was that they hadn't complied  
46 with a letter issued the previous Fall regarding 4 conditions under an enforcement order.  
47 They have completed them and had LEC Environmental do the inspections. They have  
48 installed fence posts with markers at the wetlands locations. N. Hills asked if the posts were  
49 metal. D. Davignon said yes and that the marking was done at the same time as the Ludes  
50 marking was done and that the ConCom might want to put it on their Site Visit List. N.  
51 Hills agreed. D. Davignon said that the plan shows the proposed house above Contour 27  
52 (at least ½) so it's above the base flood zone of AE15 which is further down the hill. He also  
53 said that there were 2 lines of silt fence. One was installed at the 100' buffer zone line and  
54 the 2<sup>nd</sup> was installed (to show the limits of the work) at the stone wall which is where the  
55 fill will be placed until an NOI is filed. The NOI will be for any filling, grading or altering of  
56 the land within the buffer zone (when the job has progressed further). Currently they are  
57 just hauling in fill around the footprint of the house. N. Hills asked if the grinder pump had  
58 been installed. D. Davignon responded that the pump would be installed after the  
59 foundation of the house was completed. J. Doubrava asked what the purpose of this RDA  
60 was and D. Davignon said it was to enable them to move forward with the building permit  
61 process. No work will go further than the proposed limits of work as shown on the RDA as  
62 far as bringing in fill. There is a silt fence installed parallel to the stone wall and they are  
63 hoping to be able to proceed with the foundation work. D. Davignon said that they will be  
64 filing an NOI for feathering and grading the land further down the hill as it goes slightly  
65 into the buffer zone. J. Doubrava asked where the 2<sup>nd</sup> silt fence was. D. Davignon replied  
66 that the contractor told him that it was further down the hill but there had been no fill  
67 brought into there yet. D. Davignon told the contractor that it had to come further up the  
68 hill which Dave thinks has been done. J. Hartley stated that the silt fence is the limit of the  
69 work. S. Walsh asked if the contour lines were existing or proposed. D. Davignon said that  
70 they were existing. J. Doubrava said that the ConCom needs to do an inspection in order  
71 to relax the enforcement order. N. Hills (seconded by S. Walsh) made a motion to close the  
72 hearing. The motion passed unanimously.

73  
74 7:15pm **Barrett & Virginia Levenson**, Notice of Intent (File No. SE041-  
75 1267) for the construction of a single-family house, barn, boathouse and driveway at Cross  
76 Neck Rd, Map 6, Lots 3 & 4. B. Faneuf explained that there was an RDA issued for a perc  
77 test and well installation. There was a negative determination issued in March. The perc

78 test was performed but suspended because of weather and ground saturation issues in the  
79 area of the proposed leach field. He further explained that the entire property is within an  
80 estimated habitat so he has applied for an NOI as well as sent an application to the National  
81 Heritage and Endangered Species Program. He expects tonight's hearing to be continued  
82 because he hasn't gotten anything back from the National Heritage. He just wanted to begin  
83 the hearing process to explain the proposal, describe the lot, what is going to be done and  
84 how it will comply with state and local standards. He described the lot on Cross Neck Road  
85 as being wooded and 2 parcels. There is a large parcel and a small parcel. All of the work  
86 proposed will be on the large parcel. The small lot looks like it was dug out decades ago  
87 (based upon the age of the trees coming out of it). Drainage from Cross Neck Rd goes into  
88 the small lot. It is a wetland and holds water although there are no signs of vernal pool life.  
89 B. Faneuf thought that it will probably be dried up by May. In the Southeast corner of the  
90 lot there is a man-made hole dug out to take the overflow from the drainage and this  
91 overflow drains onto the larger lot. There is a manmade ditch that goes for a while and then  
92 the wetland widens out to the east to the proposed crossing. All wetlands on the lot are  
93 classified as BVW with a 100' buffer zone. Another wetland is flagged in the southwest  
94 corner which is part of the same BVW (and connects with it offsite). Mr. Levenson wants to  
95 build a home on the larger lot but there is no way to get to it without crossing either the  
96 BVW or the man made ditch. B. Faneuf said that even though the ditch is manmade, it's  
97 an intermittent stream and all part of the same system because it connects BVW with BVW.  
98 The stream flows from the man made hollow to the larger BVW to the left of the crossing.  
99 J. Hartley asked if it was flowing from the right to the left B. Faneuf replied that it was. He  
100 is proposing that the crossing go over the intermittent stream because it's a well-defined  
101 ditch already and there will be minimal disturbance because you don't have to fill in any  
102 BVW and you don't have to replicate it and do all of the monitoring for 2 years. In his  
103 opinion, because it's an intermittent stream, it doesn't have to meet all of the Massachusetts  
104 Stream Crossing Standards. They are proposing 2 12" culvert pipes be placed under the  
105 driveway with a slight elevated grade. The natural topsoil will be removed (at a minimum)  
106 and processed gravel will be put in and packed down so that over time the driveway doesn't  
107 subside. The driveway will go into the lot to the house and garage. The septic system will  
108 be behind the house on the south side and be mostly out of the buffer zone. A small part  
109 of the leaching field will be within the buffer zone with the associated grading of it. B. Faneuf  
110 also talked about the local well and resource protection standards. Number 1 is the  
111 ConCom's policy of a no touch zone within 15' of a well and resource area. They have done  
112 this except for the crossing. They couldn't meet it at that location but are minimizing the  
113 disturbance as much as possible. J. Doubrava confirmed where the 15' line is on the plan.  
114 B. Fanuef said that there will be no structures within 30' which isn't marked out on the

115 plan, but all structures are greater than 30' away from the buffer zone. In back, the  
116 proposed boat house meets the standards of being greater than 30' from the buffer zone  
117 and 15' from the no disturb zone. The associated grading and whole project are going to be  
118 outlined with erosion controls to ensure that no sediment gets into the wetland. N. Hills  
119 wanted to know how they were proposing to get to the boat house which is a couple of  
120 hundred feet from the garage and driveway. N. Defresne replied that they were going to just  
121 access it across the lawn area. N. Hills noted that the boat house is very large and that  
122 perhaps the weight of the boats/trailers driving across the lawn might be too heavy and  
123 require more support. B. Levenson said that it would only be twice a year (spring and fall).  
124 N. Hills wants the plan to reflect the access line to the boat house. S. Walsh commented  
125 that there was about 35' between the north corner of the garage and the 15' no disturb zone  
126 which should be plenty of room to maneuver a boat and trailer. N. Defresne pointed out  
127 that he believed the access would be a straight line from the driveway/garage to the boat  
128 house. N. Hills said he just wanted it on the plan because sometimes it's obvious and  
129 sometimes not. B. Faneuf continued with the 2<sup>nd</sup> local protection standard which is the  
130 submission of wetland edge data forms, These forms were submitted in the NOI package  
131 along with photos of the site (as required by the Natural Heritage). B. Faneuf noted that the  
132 site had been logged and asked if the ConCom had a forestry cutting plan in place for this  
133 lot. N. Hills said no. B. Faneuf replied that there had been cutting done in both the buffer  
134 zone and the BVD in the past with no plan or permission. N. Hills asked if they did the soil  
135 samples just in one spot (at flag 26). He mentioned that he didn't see a flag 26. N. Defresne  
136 and B. Faneuf clarified that the sample was done at flag 16 (the 26 was a clerical error)  
137 which is approximately in the middle of the site. B. Faneuf said that he likes to take the  
138 sample from the center. N. Hills asked if just one sample was done and B. Faneuf said yes.  
139 Norm said that sometimes just one spot isn't adequate and that they will need to discuss  
140 that. J. Doubrava asked if the engineers thought they would have the results of the perc  
141 test by the next hearing. N. Hills replied that it wouldn't be for a while – maybe a couple of  
142 months. B. Faneuf said that the weather hasn't cooperated and they also need to wait for  
143 the Natural Heritage to come back with the endangered species comments. C. Callow  
144 inquired as to why there was not a file number from DEP yet. B. Faneuf said that it was in  
145 process. N. Hills said that the ConCom needs to know where the septic system will actually  
146 be going, not just what is marked on the plan and that that won't be decided until the perc  
147 test results are done. S. Walsh asked if the intermittent stream is mapped on GIS. B. Faneuf  
148 said it was not, as it was such a small distance and it's a man-made ditch for an overflow  
149 of a man-made hollow. N. Hills said it's a man-made ditch to make sure there is no pond  
150 there. S. Walsh said that the first time out there in February, there was no flow. B. Faneuf  
151 said there's a little flow now, but the hollow fills up unevenly – in patches. The one patch

152 that fills up the most over flows by just a trickle. N. Hills said that's because at one time,  
153 someone took sand out of there. S. Walsh commented that whatever it was, it was a long  
154 time because there's a lot of mature vegetation in there. J. Hartley and the rest agreed. N.  
155 Defresne said that he is confident that the soil is good and will perc in the place they have  
156 on the plan when it is no longer saturated. J. Doubrava asked who decided when the soil  
157 is too wet to be tested. N. Defresne said that it was the soil evaluator from Farlane. J.  
158 Doubrava then asked who decided when the soil is OK to be tested. N. Defresne said it was  
159 Farlane and then they schedule with the Board of Health. They have a soil test scheduled  
160 for June 6, 2017. J. Hartley said a negative perc test means the soil is too wet. C. Callow  
161 asked what happened if it doesn't perc in June. N. Defresne said they would then wait a  
162 little longer. He believed that it will be fine by the June date. He explained that there is a  
163 wet season from about December until April when the ground water rises. It recedes in the  
164 summer. N. Hills was bothered by the fact that it was too wet now, but wouldn't be later  
165 because when they put the system in and it got wet, there would be a problem. N. Defresne  
166 explained that there is a 4' separation between the septic system and the ground water and  
167 the perc test makes sure that the soil below it drains properly. D. Gulley at 166 Cross Neck  
168 Rd. asked the ConCom to explain what the National Heritage and Endangered Species  
169 Program was/did. He also stated that 4-5 years ago the sale of this land fell through  
170 because someone found evidence of an endangered turtle on the premises. He wanted to  
171 know if the ConCom and/or the National Heritage had been involved. C. Callow explained  
172 that the ConCom had not been involved in the sale of the land 4-5 years ago and they had  
173 no way of knowing if the National Heritage had been involved either. She suggested  
174 contacting them directly. She then explained that the National Heritage gets notified when  
175 an NOI is filed and will come out and do a site visit and look for evidence related to  
176 endangered or other species habitats and then issue a report within 30 days of their  
177 findings. N. Hills noted that the ConCom cannot make a decision without this report. J.  
178 Hartley commented that down the road there had been an issue with turtles and S. Walsh  
179 asked if it was past the cranberry bogs and J. Hartley replied that it had been. N. Hills then  
180 said that this hearing should be continued until after the results of the perc test had been  
181 reported, because if it failed, the plan would have to be revised. N. Defresne replied that  
182 they could always issue a revised plan. He suggested scheduling for 2 weeks because by  
183 then they would probably have both the file number from DEP and the report from the  
184 National Heritage. N. Hills made a motion, seconded by C. Callow to continue the hearing  
185 until May 10<sup>th</sup>, 2017 at 7:15pm. The motion passed unanimously.

186  
187 Discussion: C. Callow called D. Davignon up for a discussion regarding the request  
188 for a 3 year extension permit for an amended order for N. George and Laurie A. Host (File

189 No. SE041-1203, 456 Point Rd). D. Davignon said a question came up about whether the  
190 order is still valid. He says that there is conflicting language within the order itself and is  
191 hoping that since the amended order doesn't have a specific expiration date (it just references  
192 3 years from the issuance) that there might be a grey area and they can extend the project.  
193 The Hosts are almost finished with their vegetation management project. J. Doubrava  
194 confirmed that the amendment was to change from an anchor dock mooring system to  
195 pilings. D. Davignon said that was correct. N. Hills said that this amendment doesn't  
196 change the issuance date of the original order. S. Walsh said that in all instances, an  
197 amendment does not extend the expiration date of the original order. The part of the  
198 signature page referring to this order doesn't say amended as it is referring to the original.  
199 S. Walsh said there is a lot of DEP case law on this issue. N. Hills said that the Order had  
200 expired in July of last year. C. Callow asked if there were any other orders open on this  
201 property and D. Davignon said there weren't. He is going to find out what is left to be  
202 completed on this project and perhaps advise them to file an RDA. Host has been working  
203 diligently on his vegetation management project and the other allowed landscaping projects  
204 but still has a few things left, including delineating the wetlands with permanent markers.  
205 N. Hills noted that they had a partial certificate of compliance for the gangway and float  
206 pile. D. Davignon said that they only applied for the partial for that portion so that they  
207 could "close the books" on the waterways license application. He will contact the Hosts  
208 tomorrow and find out what is left. If it is minor, he will file an RDA on their behalf, if major,  
209 it will be an NOI. He will come back to the ConCom next month for a May meeting.

210  
211 Discussion: C. Callow said she has to write two letters to people who may be in  
212 violation with their projects. The first one is 11 Zora Rd (owner is Vanderveer). They may  
213 have put fill in when they built their deck and the Order of Conditions says no fill. C. Callow  
214 is going to write a letter telling them about the allegation and that the ConCom will be  
215 performing a site inspection on Saturday May 6<sup>th</sup> before taking any action. The second letter  
216 will be going to 5 Joanne Drive (owner is Johnson) regarding a possible wetlands violation.  
217 There are cut logs and construction debris in what may be a resource area. C. Callow is  
218 going to send a letter telling the owner about this possible violation and that the ConCom  
219 will do a site inspection on Saturday May 6. Photos were passed amongst the ConCom that  
220 were taken from Point Road by Shaun Walsh.

221  
222 Discussion: Bird Island Restoration Project. N. Hills said that they went to Bird  
223 Island and photographs were passed around showing the nesting huts and changes made.  
224 He said that they didn't see any birds – just 2 Canada geese and that the birds are overdue  
225 now. J. Doubrava said it looks like no planting has been done but that the hardscape and

226 fill are done. N. Hills said that the work had been completed for the year and some planting  
227 was done and that the level had been raised from what it was before. S. Walsh asked if  
228 there was a plan for plantings in the spring and N. Hills responded, that the plan was for  
229 the fall. J. Doubrava noted that the plantings are really for erosion control. N. Hills said  
230 that the nesting huts were installed and rock piles made around the perimeter. He said that  
231 the rocks make it easier to walk around and helps with erosion. S. Walsh asked if the area  
232 looked like it was supposed to based on the filings. N. Hills said that it looked a lot different  
233 than it was before. He said that they put cement blocks around the perimeter between the  
234 birds and the rock piles so that the chicks couldn't get out there and fall between the rocks.  
235 He just wants the birds to come back and also to see ow it does in the first big storm. J.  
236 Doubrava is concerned that without many plantings, the invasive plants will come back  
237 and take over the island, or that everything done will be washed away in a big rain storm.  
238 N. Hills was very concerned about the phragmites returning. C. Callow said she would send  
239 out an email to Carol Mostello asking her to come speak to the ConCom.

240  
241 Discussion: Little Neck Village. C. Callow spoke with a resident who was  
242 concerned about the lack of maintenance being done on the retention ponds. The resident  
243 also said that they are mowing too close to the retention ponds – there is supposed to be  
244 tall grass around them. C. Callow said that it is under the ConCom's jurisdiction to tell the  
245 property managers that they need to be maintaining the ponds. N. Hills commented that  
246 the ConCom should do a site visit and that there is an Order of Conditions for Little Neck  
247 Village that contains a post-construction Storm Water Operations and Maintenance Plan.  
248 He also said that the town owns the land and has granted a 99 year lease to LNV. C. Callow  
249 and J. Doubrava both said that the property managers have an obligation to maintain it.  
250 S. Walsh asked who the permittee was and someone in the audience said Hermitage Trust.

251  
252 Issuances: Norm Hills moved to issue the determination of Applicability for  
253 **John J. and Cynthia L. Paliotta**, File No. 41D-1643 (119 Converse Rd) Negative, Box 1  
254 since all of the work was outside of the buffer zone. J. Hartley seconded and the motion  
255 passed unanimously.

256  
257 Discussion: S. Walsh and J. Doubrava noted that they may not be available for  
258 the May 6<sup>th</sup> site visits.

259  
260 Meeting adjourned at 8:05pm

261  
262 Submitted by: Lissa Magauran, Administrative Assistant; Minutes approved 8/9/2017