

MARION CONSERVATION COMMISSION
MINUTES OF THE REGULAR MEETING HELD ON MAY 10, 2017

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4 Members Present: Cynthia Callow, Chairman
5 Jeffrey J. Doubrava, Vice Chairman
6 Norman A. Hills, Clerk
7 Joel D. Hartley, Member
8 Kristen St. Don-Campbell, Member
9 Shaun P. Walsh, Associate
10
11 Members Absent: Lawrence B. Dorman, Associate
12
13 Admin. Assistant:
14
15 Others Present: Rick Charon, CAI Rochester; Debbie Anderson, Ecosystem
16 Solutions; George Silvestri, Charles E. Silvestri, Ken Kenyon
17

18 Meeting convened at 7:00 PM on Wednesday, May 10, 2017 in the conference room
19 of the Marion Town House, 2 Spring Street, Marion, Massachusetts. Site visits were held
20 on Saturday, May 6, 2017 by N. Hills, C. Callow and J. Hartley. This meeting was televised
21 and video recorded by Old Rochester Community Television (ORCTV), and audio recorded
22 by Town of Marion staff.
23

24 7:00pm **Nancy Edmonds & William Murphy**: Notice of Intent (File No. SE
25 041-1267), to raze the existing house and construct a new single family dwelling at 296
26 Delano Rd. R. Charon, the rep. for Edmonds/Murphy described the lot, location of the
27 existing house in the velocity zone and where the different flood zone lines are. He is
28 proposing to raze the existing house and relocate the new house in the X zone extending
29 into the AE zone. It will have a regular foundation but legally could have a crawl space
30 underneath as long as the space was designed to freely drain down toward the water side.
31 There will be a garage as well, but it is to be located on top of the current leaching field, so
32 the existing septic/leaching field will need to be moved. Charon has submitted the new
33 septic plan to the BOH for their review. They tried to perform a perc test, but it was raining
34 too hard. New regulations (after 1995) require 4 holes – 2 for observation and 2 for the perc
35 test. J. Doubrava asked if a variance from the Board of Health would be needed because of
36 the proximity to the road. R. Charon said it wasn't needed because they were 5-10' away.
37 N. Hills commented that they still don't know if that location would pass the perc test but
38 R. Charon said he was confident it would because of the other tests done previously at the
39 neighbors' lots. J. Hartley asked about the driveway. R. Charon said that it goes in along
40 where the old one was and then turns to the left to go to the proposed garage. He was aware
41 of run off issues and these will be addressed by a stone swale that runs along the driveway

42 and at the end (where the driveway ends) there is a grassy swale which discharges well
43 before the buffer zone. N. Hills asked about the driveway material. R. Charon said it would
44 either be pavers or some solid surface such as asphalt or stamped concrete. He said he
45 prefers pavers but the ConCom should assume solid surface. J. Doubrava asked about
46 drainage issues from Delano Rd since it was slanted toward the lot. R. Charon said that
47 they would do a small berm. N. Hills stated that the pier was going to need some work soon
48 because the pilings were “toast”, and he wanted to make sure that everyone understood
49 that this NOI will not cover that work. J. Doubrava and N. Hills both said that there was a
50 large stone that had become dislodged. R. Charon said that on the plan there was a strict
51 delineation of the limit of the work which was well away from the pier. N. Hills asked what
52 they were going to do about roof run off. R. Charon replied that they would need to make a
53 special provision. They would put in contacts (a plastic bowl-like thing) otherwise known
54 as dry wells which are partially underground in the buffer zone area where the roof runs
55 off. S. Walsh asked if the seasonal float was covered by the Chapter 91 License. R. Charon
56 said he didn’t know and would find out but if it’s seasonal, they could just get it permitted
57 through the Harbor Master’s office. N. Hills said the float was on the plan but they hadn’t
58 seen it when they were out there. S. Walsh said that if it were truly seasonal, it is probably
59 done thru the Harbor Master’s office, but sometimes it is on the license. He also asked if
60 there were any pilings that it was attached to and R. Charon said there were not – it was
61 just an anchored system. S. Walsh asked how old the Chapter 91 License is. R. Charon
62 said he thought about 1994. N. Hills asked what the foundation was made from. R. Charon
63 said that it was masonry and it was constructed the proper way with a walkout and full
64 height until the last 20 feet which went to a crawl space. N. Hills commented that then it
65 will need some fill. R. Charon said it would. N. Hills confirmed with him that the old
66 foundation would be removed from the site. He also asked about stock piling. R. Charon
67 said that there wasn’t much room to do that although they planned on building the septic
68 system after all of the foundations had been done, so they would have the area where the
69 leaching field would be. N. Hills asked when they wanted to start this project. R. Charon
70 said he thought in about a month. N. Hills asked about the house. R. Charon described it
71 as a long Cape. S. Walsh asked if the ConCom had been out to this site before and C. Callow
72 and N. Hills replied that they had been several times for previous buyers. C. Callow said
73 that the last buyer wanted to move the house down into the resource area and the ConCom
74 said no. N. Hills said that the previous owner had put in a new septic system (the one they
75 are talking about moving) so they were out for that and also when some work was done on
76 the seawall. J. Doubrava said that he hoped they didn’t find any surprises when they
77 started to excavate and R. Charon said that so far they have only found evidence of propane.

78 Ken Kenyon (an abutter at 302 Delano Rd) asked if there were elevation maps available for
79 the public to look at and also if there was a height limit for what could be built. He had
80 reached out to the owners for information on the house plan and R. Charon said that he
81 would be happy to provide that as well. N. Hills made a motion to close the hearing,
82 seconded by J. Doubrava. Motion passed unanimously.

83
84 7:10pm **George Silvestri**, request for a Certificate of Compliance (File No.
85 SE 041-1261, Seaside Lane, Map 19, Lot 262B). D. Anderson (filling in for Brandon) said
86 that they had refreshed the wetland flags, put additional red flags at the 15' no disturb line
87 along with hay bales, provided "before" photos to the ConCom as required, had a
88 preconstruction meeting with C. Callow and the landscaper and submitted the "after"
89 photos with the application for the Certificate of Completion. C. Callow said that there were
90 questions about how much undergrowth had been removed but said that she may have
91 been partially responsible by not stating exactly how low they could cut. D. Anderson
92 replied that most of what they cut was invasive. C. Callow agreed, but said that they cut all
93 the way down to the 15' no disturb line and that she should have been more clear that they
94 couldn't cut lower than 3'. She also said that everything was clearly delineated and that it
95 looks very nice but... N. Hills said that they should put an ongoing order in the Certificate
96 of Compliance that says that the area has to be allowed to re-vegetate and that they cannot
97 cut anything within 50' of the wetlands line. D. Anderson said that that is not what the
98 applicant was hoping for as he is trying to sell the property and just letting the vegetation
99 grow back in after spending all of the time and money to improve the property and the
100 chance of invasive plants coming back into that area is pretty high. N. Hills said that if they
101 issue the Certificate of Compliance, they won't be able to do any more work and if they want
102 to remove anything such as bittersweet, they will have to include it as some other part of
103 the work on another document. D. Anderson indicated that she understood. S. Walsh asked
104 if the Order of Conditions was still valid and N. Hills said that it was issued 2 months ago.
105 J. Doubrava suggested issuing a Certificate of Compliance so that no more work could be
106 done because the order of conditions is closed. His concern is that it needs to be
107 communicated to the buyer because if the buyer comes in and sees that the land is cleared
108 down to the no disturb line, he might not realize what the rules are. N. Hills said that that
109 is why it's good to have the continuing condition on the Certificate of Compliance. C. Callow
110 said they can just close the order out so that the next time they do work, they have to come
111 to the ConCom. N. Hills still said that there should be a continuing condition. J. Doubrava
112 spoke about the issue with people pleading ignorance regarding wetlands saying that their
113 realtor never told them about this. D. Anderson said that she understands (she's on
114 ConCom in Needham) and that by closing this order out, it will make the new owner have

115 to come back to work with the ConCom who can explain the borders. S. Walsh asked if it
116 was an undeveloped lot and C. Callow replied that it was. J. Doubrava said that they may
117 not even need an NOI depending on where they locate the house because the lot is so long.
118 C. Callow said that they satisfied all 3 requirements on the Order of Conditions. J. Hartley
119 asked if there was something in the order that they did, that they weren't supposed to do,
120 because it wasn't that clear to him. C. Callow said there wasn't. There was an extended
121 discussion involving the definition of what is Vista Pruning and what is exempt Vista
122 Pruning. N. Hills still wants to include an ongoing order in the Certificate of Compliance
123 and S. Walsh doesn't agree because he says that if they did the work according to the Order
124 of Conditions, they are entitled to a Certificate of Compliance. He said that the ConCom
125 really just wants to put the buyer on notice that the work was completed and any additional
126 work will require the filing of a RDA or an NOI. J. Doubrava and N. Hills are still concerned
127 that the buyer understands that just because the land looks clear down to the 15' no
128 disturb line, doesn't mean that it can stay that way. After discussing that the buyer would
129 have to hire an engineer and an architect when they decided to build a house (both of whom
130 would advise them regarding the wetlands), N. Hills made a motion to issue a Certificate of
131 Compliance with no conditions, seconded by J. Doubrava. Motion passed unanimously.

132
133 7:15pm **Barret & Virginia Levenson**, Notice of Intent (File No. SE 041-
134 1268) for the construction of a single-family house, barn and boat house at Cross Neck
135 Road, Map 6, Lots 3 & 4 (Continued from April 26, 2017). The applicant asked that the
136 hearing be continued until the next meeting because they have not heard back from Natural
137 Heritage. The hearing was continued until Wednesday May 24 at 7:10pm. N. Hills and C.
138 Callow decided to schedule a site visit at this location to check on the wetlands line. It is
139 scheduled for Saturday May 20. N. Hills (seconded by J. Hartley) made a motion to close
140 the hearing. Motion passed unanimously.

141
142 Discussion: **Little Neck Village** N. Hills went there on Saturday to look at the
143 retention ponds. They were full to the brim. N. Hills went back today and said that they
144 had mostly drained but there was still some standing water. Photos were passed showing
145 the Saturday and then the Wednesday water levels. J. Hartley said that it appeared that
146 they were functioning well; however N. Hills read from a copy of the Storm Water
147 Management Operations and Maintenance plan that stated that if there is standing water
148 in the ponds 48 hours after a storm, the bottom 6" was to be rototilled in order to break up
149 hard packed soil and then re-vegetated. N. Hills said that it had been 4 days so a letter
150 should be sent letting LNV know that they needed to perform this rototilling. He also said
151 that there is an overflow which was just at a trickle on Saturday. Also in the Storm Water

152 Management Operations and Maintenance Plan was a requirement that the ponds be
153 inspected 4 times the first year (post construction), 2 times the second year and then
154 annually afterwards and after every major storm. J. Doubrava said that they have an
155 obligation to do these inspections and maintenance because they are leasing the land from
156 the town. C. Callow will send a letter to LNV reminding them that they have this operations
157 maintenance plan and asking if the inspections had been done, if they had a checklist to
158 follow and to please send any inspection reports that had been done in the past. J.
159 Doubrava said that there could be a mosquito problem and C. Callow said that the resident
160 she spoke with was concerned with both the mosquitos and that too much mowing was
161 being done around the ponds.

162
163 Discussion: **Creek Road Project** C. Callow said that she received a phone call
164 on May 5th from Danielle Gallant (CDM Smith) asking that they be allowed to excavate two
165 exploratory test pits in order to determine the nature of the materials immediately beneath
166 the paved roadway. This information would help confirm the material chosen to be used for
167 the reconstructed roadway; however, it was stated that neither the extent of the roadway
168 or nor the depth of the proposed material removal/replacement would change based upon
169 these findings. There was a discussion about why these pits were needed to be dug if there
170 were not going to be any changes made based upon the findings especially since CDM Smith
171 said that they had plans that showed what was used down to 9' from prior work on Creek
172 Rd. and the plan is to only go down 2' with the removal and replacement of material. J.
173 Doubrava didn't have a problem with the pits but was concerned that even if they found
174 "rubber balls from 6" to 6' down" they weren't going to change anything. K. St. Don thought
175 it would be a waste of time since no changes were to be made and they already knew what
176 was underneath. N. Hills said that maybe they wanted to do it because they knew what was
177 underneath and were concerned. C. Callow and N. Hills agreed that if they do the testing,
178 they should report back to the ConCom with what they found. S. Walsh said that they were
179 only going down 2 feet so this process seems like overkill but it could be that they feel they
180 should do this because of some of the comments that were made at the public hearing. C.
181 Callow and K. St. Don agreed. N. Hills said that one of the commenters asked whether or
182 not the base was adequate and that maybe it should be checked. He also said that he has
183 no problem with the pits as long as the resource areas around them are protected. S. Walsh
184 said that his problem with this discussion was that these pits are not a ConCom issue as
185 these pits are located on a roadway that has nothing to do with a resource area. It is in the
186 buffer zone, but digging in the road itself is out of our jurisdiction. Additionally, S. Walsh
187 said that our job as the ConCom is to protect the resource areas that would be affected by
188 this digging and since it was on the road, nothing would be affected. The pits were proposed

189 to be 2 2' x 4' x 5' deep and they would be backfilled and repaved within 1 day following the
190 sample removal. The ConCom decided that C. Callow would write a letter saying that this
191 matter is out of their jurisdiction, and that they would defer to the engineers' judgement as
192 to whether or not these exploration pits should be dug; however, if the pits were done, they
193 would like to hear the results of the test.

194
195 Correspondence: C. Callow brought out ZBA decision #735 (120 Front Street
196 decision) and a Chapter 91 License for the Blankenship Trust, and a letter regarding the
197 Beams projects. The ConCom looked them all over and said they just needed to be filed.

198
199 Other Business: C. Callow let the ConCom know that the letters to 11 Zora Road
200 (Vanderveer) and 5 Joanne Drive (Johnson) were sent out today and that the site visits were
201 scheduled for Saturday May 20.

202
203 Other Business: C. Callow said that when she and N. Hills went to look at the bike
204 path along the railroad bed (parallel to Route 195) they noticed a lot of household trash in
205 the area running along the highway. She asked if we should advise the State Police or
206 another agency regarding this problem. K. St. Don said that Jody Dickerson (Rec Dept. and
207 Selectman) works with the Sheriff's Department to send inmates out to clean up the exit
208 ramps. C. Callow liked that idea and will send a letter.

209
210 Other Business: C. Callow spoke with Tammy (The Music Hall Manager) about
211 having the summer ConCom meetings in that location since it is air-conditioned and the
212 Marion Police station was already spoken for by the ZBA. She will let the ConCom know.

213
214 Other Business: J. Doubrava asked if the ConCom had heard back from the Board
215 of Selectmen regarding the Enforcement Order for Washburn Park that was issued 2 years
216 ago. He asked what the next step should be and if we could escalate it. N. Hills said to start
217 with talking to the town administrator. C. Callow said she'd make an appointment with him
218 (Paul Dawson) on Monday. S. Walsh asked if the ConCom had ever asked someone from
219 the town to come to a ConCom meeting to give an update. J. Hartley said that they had in
220 the past, but not recently. C. Callow will ask someone to come speak to the group.

221
222 Other Business: S. Walsh said that we have had 2 project denials in the past couple
223 of months, both of which have been appealed to DEP and he wanted to go on record saying
224 that although he works at DEP, he has nothing to do with any matter from this Commission
225 that goes to DEP. He is not involved; he recuses himself and it goes to another attorney

226 there. He wanted to be very clear that although he works at DEP, he has nothing to do with
227 any appeal of any decision that this board makes. He wants to go on record with this
228 information because both of the appeals that were made to DEP made an assertion that
229 there was some sort of conflict of interest because he works at DEP and is on the ConCom.
230 He reiterated that he has nothing to do with any appeals that come to the DEP and has had
231 this discussion with the State Ethics Commission as well. C. Callow said that his statement
232 has been noted and that the residents of Marion should be very glad to have him serving
233 on this commission because he is invaluable! S. Walsh explained how the appeal process
234 works. An appeal is sent to the regional office in Lakeville and assigned to an Environmental
235 Analyst who conducts a site visit with members of the local ConCom. There is no hearing
236 per se, and a decision is rendered and issued. That decision may be appealed to the DEP
237 in Boston and that is an adjudicatory proceeding. Any person aggrieved by a decision at
238 the regional level can file a notice of claim for a hearing. The hearing is open to the public
239 but no participation or commentary is allowed unless someone is invited ahead of time to
240 be a participant.

241
242 Issuances: **Nancy Edmonds & William Murphy**, File. No. SE041-1267. N.
243 Hills made a motion (seconded by J. Doubrava) to issue an Order of Conditions with the
244 addition that the hay Bale line is the limit of the work and that 4 dry wells be installed to
245 collect the run off from the roof. He originally wanted to put drip strips in as a condition,
246 but it was decided by the commission that 4 dry wells would be sufficient. J. Hartley said
247 that erosion control is the most potential problem because of the slope and the work being
248 done. S. Walsh asked if the Order of Conditions contained anything about requiring that
249 the applicant ensure that the siltation barrier is kept in good working order. N. Hills replied
250 that that is part of the standard Order of Conditions. C. Callow mentioned putting
251 something in that said that they were not allowed to work on the pier but N. Hills said that
252 that wasn't mentioned in the scope of this project so that wouldn't be an issue. The motion
253 passed unanimously.

254

255 Meeting adjourned at 8:05pm

256

257 Submitted by: Lissa Magauran, Administrative Assistant

258 Approved on: 08/09/2017