

MINUTES OF MEETING OF WAREHAM CONSERVATION COMMISSION

Date of Meeting: December 7, 2011

I. CALL MEETING TO ORDER

The meeting was called to order at 7:02 P.M.

II. ROLL CALL

Members Present: John Connolly, Chairman
Ken Baptiste
Lou Caron
Doug Westgate
Sandy Slavin
Mark Carboni (Arrived at 7:08 P.M.)
Joe Mulkern, Associate Member
David Pichette, Agent

Members Absent: Donald Rogers

III. PRELIMINARY BUSINESS

A. Approve meeting minutes: September 21, 2011, October 5, 2011, & October 19, 2011.

To be handled later in the meeting.

NOTE: The meeting proceeded w/ item V. Continued Public Hearings – B. NOI Jack Conway/Jack Conway & Co., Inc. c/o Tibbetts Engineering, Corp. – SE76-2200.

Present before the Commission:

Mr. Pichette described the project. The property is located at 2-4 Tyler Ave. The project involves the construction of a commercial use building & associated parking & drainage in the buffer zone to bordering vegetated wetlands. A 30x58 ft. dwelling is proposed w/ an eight space parking lot. The project would be outside the 50 ft. setback to the wetland w/ the exception of portions of stormwater drainage structures. At the last meeting a revised plan was requested to relocate these features to be outside the 50 ft. no activity zone. A revised plan was submitted which did pull back the outfall pipe for the drainage to be outside the 50 ft. no activity zone. He did notice on the revised plan that some of the drainage for the roof runoff for the building still partially encroaches into the 50 ft. zone. He was anticipating this all to be taken out of this area. It is a minor issue & can be accommodated to allow the project to proceed. Other than that, the rest of the work is outside the 50 ft. no activity zone area. A DEP file number has been assigned. He

recommended the issuance of an OOC based on the revised plan & the added condition that the remaining stormwater infiltration trench be pulled back so it is outside the 50 ft. area & the haybales be placed up close to the construction vs. where they presently are. The initial haybale line needs to be behind the existing dwelling & will be removed & he would then recommend the haybale line be placed right up to the 50 ft. line or as close to it as possible.

The representative spoke re: the drainage system, infiltration trench & 50 ft. no activity zone. The representative doesn't feel it is a good idea to have a future limit of work hard up against the 50 ft. buffer zone. It is only 4-5 ft. from the corner of the future building. He is not in favor of allowing any potential fire access around the building because of the 50 ft. zone. He respectfully requested the future limit of work be accepted by the Commission for safety factors.

Audience members had no questions or comments.

MOTION: Mr. Westgate moved to close the public hearing for Jack Conway/Jack Conway & Co., Inc. Mr. Baptiste seconded.

VOTE: Unanimous (5-0-0)

MOTION: Mr. Westgate moved to grant an Order of Conditions based on the revised plan w/ the added condition that the remaining stormwater infiltration trench be pulled back so it is outside the 50 ft. area. Mr. Baptiste seconded.

VOTE: Unanimous (5-0-0)

NOTE: Mr. Carboni arrived at this time.

C. Lars Olson, Fine Home Building, Inc., c/o Thompson Farland, Inc. – SE76-2203

Present before the Commission:

Mr. Pichette described the project. The property is located at 35 Long Beach Rd. The project involves the construction of an addition & a deck to an existing cottage in the buffer zone to a coastal bank, coastal beach, & salt marsh. The initial plan submitted did not identify the coastal bank boundary. A revised plan was requested & was submitted. A 5x24 ft. addition is proposed approx. 24 ft. from the coastal bank. This would be supported on sono-tube footings. The proposed deck extension would be approx. 21 ft. from the top of the coastal bank. These distances do not conform to the Bylaw setback of 30 ft. for new projects. There are no grade changes proposed. A DEP filing number has been assigned. He had recommended the plan be revised to locate the new work outside the 30 ft. no activity zone. At the site visit, it was found there had been some vegetation clearing & this was discussed by the representative at the last meeting. He

recommended the issuance of an Order of Condition w/ the modifications he has proposed or what the Commission proposes.

The representative spoke re: discussion at the last meeting relative to the proposed addition & the deck. He has a revised plan addressing the deck & getting it further from the coastal bank. Brief discussion ensued. Mr. Carboni clarified that the addition is staying, but the deck will be matched up to the new extension, although the 30 ft. no activity zone standard will not be met.

MOTION: Mr. Baptiste moved to close the public hearing for Lars Olson, Fine Home Building, Inc. Mr. Carboni seconded.

**VOTE: (5-0-1)
Mr. Westgate abstained**

Mr. Westgate feels more discussion is needed.

MOTION: Mr. Baptiste moved to grant an Order of Conditions based on the revised plan & w/ the condition to sliding the deck over. Mr. Carboni seconded.

**VOTE: (4-2-0)
Mr. Westgate & Mr. _____ opposed**

A. Ronald & Lois Enos, c/o G.A.F. Engineering, Inc. – SE76-2201

Mr. Connolly recused himself from this hearing. Ms. Slavin took over as Chairman Pro Tem for this hearing.

Present before the Commission: William Madden, G.A.F. Engineering, Inc.
Ronald Enos
Trustees of the Trust

Mr. Pichette described the project. The property is located at 18 Burgess Point Road. The project involves the construction of a pathway w/in a bordering vegetated wetland in the buffer zone to the bordering vegetative wetland, w/in a coastal flood zone, & w/in the estimated habitat of rare & endangered species. A 6-ft. wide path approx. 560 ft. in length is proposed to provide access to the beach from Winship Ave. As the path does cross through bordering vegetative wetland approx. 1780 sq. ft. of vegetated wetland would be altered to complete the path. The intent is to be able to run a golf cart type vehicle over the path to access the beach. The applicant does not propose any surface for this path or any elevated structure to accommodate the golf cart(s). He expressed concern re: creating a vehicle access directly through this wetland. The area could become rutted or degraded over time. He recommended if this access is to be utilized by motorized vehicles that the disturbed wetland area be replicated. Also, it is unclear as to what was going to happen down at the coastal bank end of the path in terms of resources areas to be altered. He discussed this w/ the engineer who in turn submitted a revised

plan that clarifies the resources areas on the plan. He also questioned where vehicles would turn around at the water end of the pathway & the revised plan does show a turn-around area in the existing mowed field area portion of this property. He also had questioned whether the path at the coastal end of the site through the fragmites to the water is existing or created by the current owners. It is depicted on the plan as being an existing 6 ft. path to be maintained. Comments were received from Natural Heritage which stated this project would not have any adverse impacts. A DEP file number has been assigned & DEP submitted comments re: the project not meeting performance standards re: bordering vegetated wetland & a coastal dune. The coastal dune resource area is not identified on the submitted plan. Letters were also received from a wetland consultant & an attorney representing an abutter who opposes the project for a variety of reasons.

Mr. Madden stated he is aware of the correspondence re: the project. He spoke re: what was initially intended to be done. When the Trust purchased the property, the first thing that was asked of him was if he could stake the property line out & further define the boundaries the way they are in the field. This was done. He had asked the Trust what they were going to do w/ this property & he was told they were contemplating a path for access to the water. He stated the idea was hashed over of just putting a 4-ft. surveyed cut line along the property line. It was felt a reasonable argument could be made that there could be a 4 or 6 ft. wide surveyed cut path immediately adjacent to the property line, place some rain bounds or markers along that line, & use that limit of clearing for access down to the beach. After more discussion, it was felt that it would be more appropriate to come before the Commission & ask for permission to do the work that will result in true access to the beach. If the path were to end up along the property line, it would accomplish a goal in exposing that line. If it stays as it is shown on the plan which is just illustrative by nature, it would go through the wetland & the proposal would be to alter 1780 sq. ft. He reviewed other plans of record & filings of the area, & there was a large subdivision done to the north. One plan from 2002 identifies the coastal resource areas along Onset Bay. He also reviewed the filing as a result of an Enforcement Order to the abutting property owner, Winship LLC. In review of these documents, he came up w/ the final plan which is in front of the Commission this evening. What is shown on the drawing is the 1780 sq. ft. alterations which would consist of only mowing, no removal of vegetation, no excavation of soil, etc. It is though that the use of mowing only & leaving the root structure in place would provide appropriate base for a golf cart which gives a relatively low pressure w/ the size & width of the tires & places less ground pressure on the surface of the earth. There is a notation of a 6-ft. wide path illustration on the plan & this was put in the plan due to a discussion he had w/ Mr. Pichette when he was concerned re: the turn-around area at the back of the site. There is an area available to turn around. This is shown as an illustrative example of how the 30 ft. wide property could be used for access once the wetlands are passed through & end up at the water's edge. That field is currently mowed & maintained & has been for a number of years. There had been discussion re: use of the property as a parking area off Burgess Point Rd. A note on the plan originally noted "area to be cleared for parking". Abutter representatives brought forth information they felt was valid re: parking on a residential property allowed principle use. If you were to read the declaration of trust that was

formed & recorded at the Registry of Deeds, it states this parcel of land is a pertinent to 2, 5, &, 7 Burgess Point Rd. & also 212 Great Neck Rd. Thus, the view is this parcel of land is incidental to the primary parcel. The use would be considered for residential use & a parking issue would not be something to be concerned with. They decided to remove the word "for parking". The applicant is not intending to utilize it for parking. It will be used for access to the property & main access to the water. At this end of the site there are a couple of steel pipe ballings that are used to block off access at the right of way right at Burgess Point Rd. & the plan also shows a 7-ft. wide wooden gate outside the 30 ft. no disturb zone that is in the Bylaw. He stated he disagrees that any type of Special Permit, Variance, etc. is needed or that this project would need the involvement of zoning whatsoever. It is felt the owners are entitled to use this land for their enjoyment. Several families will utilize this path for access to the water. He displayed photographs of what happens down at the water. He displayed an old plan that shows resource areas the Commission once approved further down to the water. These coastal wetland resource areas had been delineated by another engineer at some point in time in the past. He doesn't feel the photos illustrate the presence of a dune. There is no proposal for work in this area. There is no activity proposed other than using the land for residential in this particular area. Brief discussion ensued.

Mr. Carboni asked re: the replication suggestion from Mr. Pichette. He felt the disturbance was in a certain area. Mr. Pichette explained it is a strip w/in the wetland area if it is still to be utilized w/ the width they are proposing for use w/ a cart. He stated the strip commences at flags C2 & C3 down to A1 & A2.

Brief discussion ensued re: water rising up to this area & if this is a problem.

Mr. Baptiste asked what will be done if the cart (going in or out) meets w/ a car on the road. Mr. Madden stated the path will be utilized by four families & he assumes they will all be sharing the cart as transportation. Mr. Baptiste stated if two modes of transportation are utilized, if one impasses the other, there would be no where to go. He asked how wide the golf cart is. Mr. Madden stated four ft.

Mr. Madden doesn't know where the replication could be done. He stated the cart doesn't have much ground pressure. The grass system is established there & doesn't see problems w/ this. He noted the different times of year, such as wet times in winter when these people most likely would not be present. Mr. Pichette stated traditionally, the Commission has only worked w/ four ft. width paths that have been approved through wetlands. He is not opposed access through this property, but w/ a six ft. path, it is more or less creating a small roadway w/ no replication. The rest he has no problems w/.

Mr. Westgate asked what the footprint/track of the golf cart is. The golf cart footprint was noted. Discussion ensued re: the golf cart vs. the path.

Ms. Slavin stated at the end of the path where there is a turn around, there is a 30 ft. no activity zone. There is already a cleared field there. She asked how this path would be maintained. Mr. Madden stated it will be lawn mowed twice per year to six inches. Ms.

Slavin spoke re: the other path that was utilized for horses. Mr. Pichette stated the other path being utilized was supposed to be strictly for pedestrian traffic/horses, not vehicles. The applicant asked what if someone violates this restriction on this other path re: no vehicles. Mr. Pichette explained that a call should be made to the ConCom so it can be investigated. Discussion ensued re: vehicle to be utilized on the path, its size, etc.

Ms. Slavin asked if the any audience members had any questions or comments.

Present before the Commission: Adam Brodsky, Environmental Attorney
Lenore White, Wetlands Scientist

Attorney Brodsky stated he represents Winship LLC, the abutter to the property in question. He has reviewed the revised plan submitted. He emailed a short letter to Mr. Pichette. Mr. Pichette stated the members have a copy of this letter.

Attorney Brodsky addressed concerns he & his client have w/ this project. Even w/ the project changes, the project still does not meet the performance standards w/ the alteration of BVW. There is going to be the cutting of vegetation which is defined as an alteration in the Wetlands Protection Act, under 310 CMR 10554A. There is a requirement to have at least one to one replication. No replication is being proposed for this project. If the project does not meet the performance standard than an OOC cannot be issued. There is still a question of the coastal resource areas, particularly a coastal dune. It doesn't seem that any specialist has gone out to this site to delineate the coastal dune at the end of this property. Without this located, no-one can figure out where the buffer zone is, where the no-activity zone is, etc. There may be some misunderstanding about the 30 ft. no activity-zone. There is a 30 ft. no activity zone on the coastal side of the property, but also a 30 ft. no-activity zone on the inland side of the project. Work is prohibited under the Town's Bylaw, unless the applicant requests a waiver & none has been requested. Even if a waiver was sought, this project would not meet the waiver requirements because there are only five instances in which a waiver can be granted. He cited the five requirements that would need to be met. Relative to the parking issue, he is relieved to see the proposed parking lot off of Burgess Point Rd. has been eliminated, but the question remains as to what will be done w/ the golf cart(s). If golf carts are going to be parked on the property in question, it is believed that zoning determination is needed. He has spoken to Mr. Burke, Director of Inspectional Services who shares this opinion. The Commission could grant w/ a special condition that prohibited parking, but this would be difficult to police. The most logical thing to do would be to ban any motorized vehicle on this property which eliminates the parking issue. If there is going to be any parking, under the Wetlands Protection Act, there is a requirement to apply for all applicable permits for the Commission to give an OOC.

Ms. White expressed concerns about this project which she outlined in a letter she addressed to the Commission in November 2011. The work proposed will result in the destruction of the wetlands. There would be a complete loss of this wetland area that will be cleared & maintained. It is not only a buffer zone project. The project proposes to clear a wetland & keeping it clear & removing the function this wetland provides on a

permanent basis. This can't be done under the Wetlands Protection Act unless replication is proposed. There is no replication proposed for this project. Another concern is the use of vehicles in this area. There is a coastal dune in this area. This has not been delineated & another resource area that would be severely affected by this project. By driving over this area, it will destroy the vegetation that keeps the dune in place, the elevation of the dune would change & this helps maintain other properties. This project has not addressed this & this is another reason this project should not be approved under the Wetlands Protection Act. Another reason she feels this project has failed to meet the requirements under the Act is this is a flood zone & part of it is a velocity zone. The vegetation that is present currently helps protect the land. Once this vegetation is gone, problems result. She stated when you remove vegetation from a flood zone it impairs the ability of the area to function the way it needs to function to protect properties. This is why wetlands are protected. She stated the resource areas at the seaward end of the property have not been adequately identified. Without knowing where the resource areas are, it is not known if the project meets performance standards. There is a Bylaw that states there is a 30 ft. no activity zone. This project not only affects this 30 ft. no activity zone, but it actually is in the resource area. At least 1700 sq. ft. of resource area would be lost w/ this project. She doesn't feel this meets the Town's regulations. She asked the Commission to deny the project.

Mr. Baptiste stated the proposal does not have the golf carts going down the dune. This is not going to be done. The pictures he has seen & he knows this area, there is already a path there. He knows this area. Ms. White stated she did not see this path. Mr. Baptiste stated there are other spots in this area re: replication which can be dealt w/ later. He feels the applicant is speaking to parking in a field that is already in existence. He again stated this project doesn't entail the applicants driving the vehicle down on the beach. Ms. White asked for clarification on maintaining the path. Mr. Baptiste stated the path is already there (foot traffic).

Mr. Carboni asked if it has been determined if a coastal dune exists in this area. Ms. Slavin stated it is not documented on the plan the Commission has. Ms. White stated DEP's comments also questioned whether or not the project met the performance standards & whether there is a coastal dune on the property. She gave a definition of a coastal dune.

Brief discussion ensued re: any restrictions relative to walking across a coastal dune. Mr. Pichette stated there are no restrictions re: walking across a coastal dune. One of the applicant's stated the abutter to this property uses the area all the time & this abutter created a path recently through the wetland right next to the property in question. He stated it appears this was o.k. to do w/out permission. They are trying to do it the right way by going through the Commission. He feels it is ironic that the abutter has hired attorneys, experts, etc. to challenge this project when he has destroyed wetlands, dug them out, put stone there, & was never required to correct this.

Mr. Brodsky stated the issue is not being against use of the property, but the issue is following the guidelines of the Wetland Protective Act. He briefly noted what transpired

on the abutter's property. Ms. Slavin stated the issue(s) w/ the abutter were dealt with. One of the applicants understands this, but there should be a level of consistency the way these projects are handled.

Ms. White stated it is not clear what is proposed re: the coastal dune area. A note of the plans states "to be maintained". She doesn't know what this means..

Mr. Westgate stated he knows this area well. He asked where the dune is. He doesn't recollect a dune. He noted the abutter's matter started out as a violation, not like this present application.

Mr. Madden stated not all the BVW on the site is being altered. 1700 sq. ft. is being altered. This represents less than 9.5% of the entire BVW on the site. He spoke re: the topography on the plan. There is no mound, but a gentle slope across the field down to the water's edge, thus, it doesn't meet the definition of a mound. He doesn't consider it a dune. He stated he spoke to Mr. Burke, Director of Inspectional Services & he respected what he (Mr. Madden) had to say. He stated Mr. Burke did not receive the Declaration of Trust. He stated there is no parking lot, but simply access for the owners of the property.

A question was asked re: if the owners are planning to park the cart(s) on the property & asked why one of the members is not sitting on the Commission & asked if he recused himself. Ms. Slavin stated the member did recuse himself. Mr. Westgate stated w/in the OOC, it can be written that no parking of vehicles other than general use. Mr. Brodsky feels that even if they park during the day while they are enjoying the beach, this is an inconsistent use & noncompliance w/ zoning. Mr. Westgate stated civil matters have nothing to do w/ the Commission.

Mr. Pichette stated Mr. Brodsky is referencing, as part of the Wetlands requirements, when someone submits an NOI, they also have to apply for & receive any other local permits that are required. What Mr. Brodsky is arguing is if a zoning permit is required, then this permit has to be applied for. He doesn't know if this requires a zoning permit or not. He has not discussed this particular issue w/ the Building Inspector. He did discuss the parking lot w/ the Building Inspector & thus, the parking lot has been removed from the plan.

Mr. _____ stated Mr. Pichette was there with he & _____ at the property & he stated Mr. Pichette agreed that it wasn't wetlands. Mr. Pichette disagreed. He stated the wetlands needed to be delineated & he was told this would be done. Mr. _____ stated it has been determined this is not wetlands (outside the street) & he should be able to do what he wants there, for example, cut trees down. Mr. Pichette stated this is correct if it is outside the area that is not wetlands & outside the 30-ft. no activity zone.

Ms. White stated it was mentioned that only a certain portion of bordering vegetative wetland will be altered by this parking area, but the regulations dealing w/ bordering vegetative wetlands state no portion of the wetlands shall be destroyed or impaired.

Relative to the definition of a coastal dune, a coastal dune is defined as hill, mound, or ridge. It is a land form. She feels portions of this site that do meet the definition of a coastal dune. She referenced the code that offers the definition of a coastal dune.

Discussion ensued re: how the Commission wants to proceed. Ms. Slavin feels more discussion is needed & she would like to go down to the site & explore it further. Mr. Pichette stated Mr. Madden stated in his letter that the applicant wishes to close the hearing this evening. Mr. Madden stated it is up to the judgment of the Commission, but if it can be closed this evening, he is in favor of this. He believes the project can be approved w/ conditions to move forward. Brief discussion ensued. Ms. Slavin stated she heard information this evening that she hasn't heard before & she would like to visit the site again. Mr. Westgate feels the determination of the coastal dune needs to be made so that there are no questions later on. Mr. Madden stands that there is no dune & gave reasons he is determining it is not a dune.

It was stated that if the hearing is closed, no more input would be accepted, but the Commission as a whole can still discuss the matter.

MOTION: Mr. Baptiste moved to close the public hearing for Ronald & Lois Enos. Mr. Caron seconded.

VOTE: (3-2-0)

MOTION: Mr. Baptiste moved to exercise the right to have 21 days to render a decision relative to the public hearing for Ronald & Lois Enos. Mr. Caron seconded.

VOTE: (3-2-0)

IV. PUBLIC HEARINGS

There were no public hearings scheduled.

V. CONTINUED PUBLIC HEARINGS

- A. NOI – Ronald & Lois Enos, c/o G.A.F. Engineering, Inc. – SE76-2201 (DONE)**
- B. NOI – Jack Conway/Jack Conway & Co., Inc., c/o Tibbetts Engineering, Corp. – SE76-2200 (DONE)**
- C. NOI – Lars Olson, Fine Home Building, Inc., c/o Thompson Farland, Inc. – SE76-2203 (DONE)**

VI. EXTENSION REQUESTS

There were no extension requests.

NOTE: Mr. Connolly returned to the table.

VII. ENFORCEMENT ORDERS

A. Jamie Herring – Warren Point Road

Mr. Pichette informed the Commission that the planting was done. He visited the site last week & the plant material looked decent.

VIII. CERTIFICATES OF COMPLIANCE

A. Alfred Ferreira – 38 East Central Avenue

B. Walter Shanks – 10 Nimrod Way

C. Town of Wareham – Besse Park

Mr. Pichette requested all three of these Certificates of Compliance be held because there are issues w/ additional pieces of information for all three that still need to be submitted. He briefly noted the additional information he needs for each individual project. Brief discussion ensued re: item A & that this COC could be issued as long as Mr. Pichette verifies the fee was paid.

MOTION: Mr. Westgate moved to grant a Certificate of Compliance for Alfred Ferreira – 38 East Central Avenue. Mr. Baptiste seconded.

VOTE: Unanimous (6-0-0)

IX. ANY OTHER BUSINESS/DISCUSSION

A. Swifts Beach Conservation Property

Brief discussion ensued re: if the chain has been put back up to prevent traffic.

B. Discussion: Violations

Mr. Pichette has encountered new violations. There was cutting done in the Swifts Beach area behind the Tortora's property. Someone has gone onto this property, unbeknownst to the homeowner & cut tree down. He is still investigating the issue. Brief discussion ensued.

C. Discussion: McCabe Property

Mr. Pichette has sent out the request for engineering services & just waiting to get responses.

D. Discussion: Conservation Restrictions

Ms. Slavin stated the Commission has the responsibility to review the CR's the Commission holds.

E. Discussion: Request for Services

This matter was already handled.

F. Discussion: Bouchard B-120 Meeting

This matter was already handled.

X. NOTE: The meeting went back to item III. Preliminary business.

B. Approve meeting minutes: September 21, 2011, October 5, 2011, & October 19, 2011.

MOTION: A motion was made & seconded to approve the meeting minutes of October 19, 2011.

VOTE: Unanimous (6-0-0)

MOTION: A motion was made & seconded to approve the meeting minutes of October 5, 2011.

VOTE: Unanimous (6-0-0)

NOTE: Brief discussion ensued re: Commission representation at the Planning Board hearing for the wind power project(s).

Mr. Pichette spoke re: the 30 ft. no activity zone enforcement re: applications. He stated the intent of the no activity zone is to limit activity w/in this 30 ft. zone, but this evening, an application was granted which infringes on the 30 ft. no activity zone. He feels there needs to be continuity in enforcing these things. He asked that the Commission be conscience of the regulations. Brief discussion ensued.

Mr. Pichette spoke re: Mr. Tourigny on Granston Way. He stated all the structures were removed. Mr. Tourigny called him re: a new boat that Mr. Tourigny wants to tie to this dock as part of use for his shellfish operation. He stated the boat is pontoon boat w/ a shed on it & it has an MS # on it. He showed pictures of this boat to the Commission. Also, there were extra floats attached to the boat which Mr. Pichette told him these would have to be taken off. He stated as of now, there is no motor on this boat. Discussion ensued.

XI. ADJOURNMENT

MOTION: A motion was made & seconded to adjourn the meeting.

VOTE: Unanimous (6-0-0)

Date signed: 2-15-2012

Attest: *John Connolly*

John Connolly, Chairman
WAREHAM CONSERVATION COMMISSION

Date filed: 2/16/12

Date copy sent to Town Clerk: 2/16/12

