

## MINUTES OF MEETING OF WAREHAM CONSERVATION COMMISSION

**Date of Meeting: February 15, 2012**

**I. CALL MEETING TO ORDER**

The meeting was called to order at 7:07 P.M.

## II. ROLL CALL

Members Present: John Connolly, Chairman  
Sandy Slavin  
Ken Baptiste  
Louis Caron  
Doug Westgate  
Donald Rogers  
Joe Mulkern, Associate Member  
Dave Pichette, Agent

Member Absent: Mark Carboni

**NOTE: The meeting proceeded w/ item V. Continued Public Hearings – A. NOI – Point Independence Yacht Club, Inc., c/o G.A.F. Engineering, Inc. – SE76-2215.**

Present before the Commission: Bill Madden, G.A.F. Engineering, Inc.  
\_\_\_\_\_, Pt. Independence Yacht Club

Mr. Pichette described the project. The property is at Point Independence Yacht Club in Onset. The project involves the installation of 198 sq. ft. of finger floats, installation of five pilings, & installation of vinyl sheet piling w/in land under the ocean & w/in land subject to coastal storm flowage & w/in estimated habitat for rare & endangered species. Five 12 inch pilings are to be installed under the existing gas dock for additional structural support. A floating barge will be utilized for the installation of the pilings. Three finger piers totaling 198 sq. ft. are to be installed around the gas dock to re-configure/create better access to boat slips. No new pilings will be installed for the floats as they will be held by existing pilings. Vinyl sheet piling will be installed around the existing dock gatehouse structure to prevent undermining of sediments in the area of the structure. These will be installed on the upland side of the structure. Existing pavement & concrete walkways would be saw cut to allow for the installation of the vinyl sheet piles. The DMF had no negative comments re: the project. A DEP number has been assigned. At the last meeting the hearing was continued because there were no comments from Natural Heritage & there was a request to look underneath the gatehouse structure to see what amount of material would be needed to fill in underneath. He met w/ Mr. Madden at the site & looked underneath. There isn't a significant amount of material that

will be needed to accomplish the amount of filling that is needed. The level of washout is not incredibly severe. Mr. Madden estimates it to be approx. five to six yards.

Mr. Madden stated Natural Heritage sent him a letter basically stating a MESA filing is needed. This filing was sent along on 1/26/12. He submitted a copy of this filing. This is all he received from Natural Heritage.

Mr. Pichette suggested waiting for any additional comments from Natural Heritage re: the MESA filing.

Mr. Madden discussed two catch basins on the east side & it appears that one of the catch basins that is w/in the layout of Independence Lane is collapsing. It also appears this catch basin is piped through the steel bulkhead. It was noticed that the pipe didn't have the proper amount of pitch on it. He spoke to Mr. Gifford, Municipal Maintenance Director who stated he will have these catch basins out & take a look at what is going on there. There may be a need to replace this pipe. After the status of the pipe issue is known, another filing may be needed to repair this issue.

Audience members had no questions or comments.

**MOTION: Mr. Westgate moved to continue the public hearing for Point Independence Yacht Club, Inc. to March 7, 2012. Mr. Baptiste seconded.**

**VOTE: Unanimous (5-0-0)**

### **III. PRELIMINARY BUSINESS**

#### **A. Approve meeting minutes: December 7, 2011**

This item will be handled later in the meeting.

### **IV. PUBLIC HEARINGS**

#### **A. ANRAD – Richard Dubin, Trustee, c/o G.A.F. Engineering, Inc.**

The public hearing notice was read into the record.

Present before the Commission: Bill Madden, G.A.F. Engineering, Inc.

Mr. Pichette described the project. The property is located at 3041 Cranberry Highway. This application is for a wetland delineation. This site is near Subway on Cranberry Highway. Wetlands on this property are marked w/ flags 1-7. The wetland line was reviewed w/ the engineer & Mr. Pichette requested some changes be made to the wetland delineation. A revised plan has been submitted which reflects the wetland line as revised. He recommended approval of the wetland line based on the revised plan. He also

recommended the Commission put in place a timeline for the owner to submit a restoration plan for the alteration that was done in violation at the site.

Brief discussion ensued re: area circumference of the alteration. Mr. Pichette stated no notice has been submitted to do anything yet, there is a violation. This is the issue. There is an alteration w/out a permit. In his opinion, the whole site should be restored & then come in w/ a permit or propose something immediately for the Commission to entertain. If there are no plans right now, there is an altered site which should be restored. Mr. Madden stated there is a jurisdictional limit where the restoration would need to be conducted. It would not be the entire lot. Mr. Pichette stated it would need to be to the buffer zone.

Brief discussion ensued re: picking up litter from the site.

Audience members had no questions or comments.

**MOTION: Mr. Westgate moved to close the public hearing for Richard Dubin. Mr. Caron seconded.**

**VOTE: Unanimous (5-0-0)**

**MOTION: Mr. Baptiste moved to approve the wetland line as shown on the revised plan submitted on February 15, 2012. Mr. Caron seconded.**

**VOTE: Unanimous (5-0-0)**

**B. NOI – Jerry Smith, c/o J.C. Engineering, Inc.**

The public hearing notice was read into the record.

Present before the Commission: Mike Pimental

Mr. Pichette described the project. The property is located at 14 White Pine Ave. The project involves upgrading of a septic system in the buffer zone to bordering vegetative wetland. An existing septic system is to be replaced w/ a new Title V system. The proposed leach field would be approx. 52 ft. from the edge of the wetland. The leach field would be a raised system surrounded by a retaining wall on three sides of the field. The side facing the wetland would be graded towards the wetland. A pump chamber would be installed & approx. 33 ft. from the edge of the wetland. It is proposed to crush the existing leaching galley & fill w/ sand. He recommended all the concrete/material be removed from the site rather than buried on site. Haybales are proposed between the work & the resource area as shown on the plan. A DEP file number has been assigned. He recommended issuing an OOC w/ standard conditions & the added condition to remove any concrete material from the site & not bury it on site.

Audience members had no questions or comments.

**MOTION:** Mr. Westgate moved to close the public hearing for Jerry Smith. Mr. Caron seconded.

**VOTE:** Unanimous (5-0-0)

**MOTION:** Mr. Westgate moved to issue an Order of Conditions for Jerry Smith w/ standard conditions & the added condition that all concrete material be removed from the site vs. burying it on site. Mr. Baptiste seconded.

**VOTE:** Unanimous (5-0-0)

**V. CONTINUED PUBLIC HEARINGS**

**A. NOI – Point Independence Yacht Club, Inc., c/o G.A.F. Engineering, Inc. – SE76-2215 (DONE)**

**B. NOI – WalMart Stores/Mark Goldsmith, c/o Bohler Engineering – SE76-2172**

Present before the Commission: Matt Smith, Bohler Engineering  
Don Shall  
Wilma Smith

Mr. Pichette described the project. The property is located at the corner of Tobey Rd. & Rte. 28; the site of the new proposed WalMart store. The project involves the construction of a new commercial retail store which is WalMart & associated structures including parking lots, stormwater drainage structures, utilities, etc. This work is in the buffer zone to bordering vegetative wetland & w/in the estimated habitat for rare & endangered species. A 158,000 sq. ft. retail building & 615 parking spaces are proposed. The limit of work would be approx. 50 ft. from the edge of the wetland. The wetland is marked w/ flags BBW 13 through BBW 68. The wetland line was reviewed & some changes were made to the line which are reflected in the current set of plans the Commission has. Approx. 19.4 acres of land that is w/in the estimated habitat of rare & endangered species for the eastern box turtle is proposed to be permanently altered. WalMart is working w/ Natural Heritage to address potential mitigation for this alteration, but at this time, the Commission does not have final comment from Natural Heritage. Also, in his opinion, what is being proposed is not adequate in terms of mitigation. He would prefer to see some mitigation that results directly in compensation of land (in Wareham) due to the land that will be permanently altered, than perhaps land being reserved in some other part of the state. The proposed stormwater drainage structures include underground infiltration structures & an open retention pond & storm ceptor units to handle runoff from the site. Comments have been received from Hancock & Associates re: the proposed work. A number of recommendations were made in the comments. The remaining issues are the Natural Heritage matter, whether or not the Commission will want to wait to get final comments from Natural Heritage prior to issuing its final decision, comments re: responses from Hancock Associates, & it is still

unclear as to whether there will be a septic system or a connection to the sewer system. The applicant has submitted a draft EIR. There is a comment period open as of now.

Mr. Smith stated this application was submitted last March & presented it to the Commission last April. They came back before the Commission in October to discuss how they would address comments & have now received responses to the comments which come down to a handful of issues from a site plan perspective. They are getting closer w/ the Planning & Zoning Board on permitting. He spoke re: the current site plan that contains revisions such as 2.4 acres of impervious surface on site. He discussed the contents of a letter submitted dated February 8, 2012 that contains these handful of issues. The most substantive issue for Conservation is to do w/ a request to include emergency shut-offs where appropriate to isolate the drainage system in the event of emergencies. He stated there is a different standard for stormwater quality as are the uses. He spoke re: provisions & nature of this use. The only spills that could be expected at this site are very small. In this instance, it would drain into the catch basin & there is room to capture the drainage. It was stated that natural gas will be utilized at the site. Discussion ensued re: who will be notified in case of a spill & the time it will take to react to a spill. It was stated that a management firm may be on hand to do this, but there will still be a reaction time.

Mr. Pichette stated w/in the comments, groundwater not be observed during high groundwater season is noted. He asked if this issue will be addressed. Mr. Smith stated they have done a lot more soil testing on site. The results have not yet been provided to Hancock Associates or the Town. Brief discussion ensued.

Mr. Pichette stated in Hancock Associates letter, there are a number of things they say should be done, in terms of bio-retention areas being lined, but Wal-Mart representatives are saying these should be conditions of approval. He feels some of these matters should be corrected on the plan, not just a condition of approval. The Wal-Mart representative stated a reason they are holding off on sending in yet another set of plans, is they are still working through DOT issues that may be substantive. There will be another set of plans. They are just trying to be efficient.

Mr. Smith stated they are still pursuing connection to the Town's sewer system. He fully expects to be connected to the sewer. The plans currently show sewer.

Mr. Smith stated they are making progress w/ the Planning Board & Zoning Board & matters are wrapping up. He is unclear what the process is for which board votes first. Mr. Pichette stated there isn't a protocol of who votes first or second. The Commission's viewpoint is as long as the Planning Board &/or Zoning Board is signing off on the stormwater system, then that is the main component that needs to be done. The Commission also has separate issues the Zoning Board wouldn't be involved in, such as endangered species. Each board/commission has their own interests. Mr. Smith stated they can work w/ that.

Mr. Smith noted State permits that remain & updated the Commission on the progress of these. He explained what the plans show from a DOT perspective. He discussed their proposal to Natural Heritage & how Natural Heritage has since changed their policy re: conservation of species. He spoke re: their past practice. He noted the quandary re: mitigation relative to the State's position & some Commission members' position (keeping the mitigation in Wareham).

Mr. Westgate spoke re: the Eastern Box turtle on the property & in the area. He feels the mitigation should be kept in Town, not elsewhere. Discussion ensued. Mr. Pichette feels there is still time to give consideration to this matter, even if it needs to be discussed directly w/ Natural Heritage. He doesn't feel it is as easy as giving money & having it be the end of it.

Mr. Rogers asked if there are any Bylaws re: dust control. Mr. Pichette stated there is not a specific Bylaw re: dust control. It is construction management process. Mr. Rogers asked if there will be any dust control measures for this project. Mr. Smith stated there will be & explained in length how this will be done.

Mr. Smith encouraged the Commission to submit their thoughts relative to the MEPA process.

Audience members had no questions or comments.

**MOTION: Mr. Westgate moved to continue the public hearing for WalMart Stores to March 7, 2012. Mr. Caron seconded.**

**VOTE: Unanimous (5-0-0)**

**NOTE: The meeting went back to item III. Preliminary Business – A. Approval of meeting minutes: December 7, 2011.**

**MOTION: Mr. Baptiste moved to approve the meeting minutes of December 7, 2011. Mr. Rogers seconded.**

**VOTE: Unanimous (5-0-0)**

**NOTE: The meeting proceeded w/ item VII. Enforcement Orders – B. Daniel Otto – 48 Great Neck Road.**

Present before the Commission: Daniel Otto

Mr. Pichette stated this property had a violation which involved the alteration of vegetation in the buffer zone to bordering vegetated wetland. At the last meeting, the members wanted to look at the property. The work that was done went beyond what the approved limit of work was.

Brief discussion ensued re: location of the stone wall to the buffer line. Mr. Pichette stated the limit of work was to be 25 ft. behind the house. He stated in the OOC, the haybale line was supposed to be the limit of work & there shall be no alteration or removal of vegetation beyond the haybale barrier. When Mr. Otto purchased the property the previous owners had already done some clearing & there is no COC issued on this site w/ the prior owners. He feels restoration needs to be done back to the stone wall. Mr. Pichette stated there is still a violation on the property that needs to be fixed. He suggested some sort of restoration plan.

**MOTION: Mr. Baptiste moved to require restoration of the disturbed area. Mr. Westgate seconded.**

**VOTE: Unanimous (5-0-0)**

**C. John Thompson – 2 Burgess Point Road**

Present before the Commission: John Thompson

Mr. Pichette stated there has been alteration of the property beyond the approved limit of work site. Mr. Thompson has been in previously & he agreed to plant some vegetation which has been done, but the area is not filled back in naturally. He believes additional restoration planting needs to be done. He & Mr. Westgate met Mr. Thompson at the site & reviewed several issues. Discussion ensued re: how to proceed.

**MOTION: Mr. Westgate moved that Mr. Thompson meet w/ Mr. Pichette to come up w/ a plan. Mr. Baptiste seconded.**

**VOTE: Unanimous (5-0-0)**

**D. Robert Barry – 37 Prospect Street**

Mr. Pichette explained this is a violation that has occurred at 37 Prospect St. in Onset which involves alteration of vegetation on a coastal bank. An Enforcement Order was sent out to the property owner to have them attend this meeting to discuss the violation & restoration action. He asked the Commission to ratify the Enforcement Order.

**MOTION: Mr. Westgate moved to ratify the Enforcement Order for Robert Barry – 37 Prospect Street. Mr. Baptiste seconded.**

**VOTE: Unanimous (5-0-0)**

**MOTION: Mr. Westgate moved to authorize the Agent to direct stabilization on site & clean up the debris. Mr. Baptiste seconded.**

**VOTE: Unanimous (5-0-0)**

**VI. EXTENSION REQUESTS**

- A. Diane Gustafson – Signatures (Not handled)**

**VII. ENFORCEMENT ORDERS**

- A. Mark Lombardi – 276 Barker Road (Not handled)**  
**B. Daniel Otto – 48 Great Neck Road (DONE)**  
**C. John Thompson – 2 Burgess Point Road (DONE)**  
**D. Robert Barry – 37 Prospect Street (DONE)**

**VIII. CERTIFICATES OF COMPLIANCE**

- A. Carol Knight – 43 Gault Road**

Mr. Pichette stated he is still looking for information on the septic as-built for this site. He asked to put this off until the next meeting.

**IX. ANY OTHER BUSINESS/DISCUSSION**

- A. Discussion: Pittsley/Tourigny.**

Present before the Commission:     Mr. Tourigny  
  Mr. Pittsley

Mr. Pichette stated this issue deals w/ Mr. Tourigny & Mr. Pittsley's shellfish operation & the issue w/ the dock having additional floats. At the last meeting, Mr. Tourigny was going to speak w/ DEP re: permitting issues w/ additional floats. He did receive a call from Mr. Hill of DEP stating he did speak w/ Mr. Tourigny.

Mr. Tourigny discussed his conversation w/ DEP.

Mr. Pichette stated Mr. Hill indicated to him that DEP could write a permit that could have specific language relative to additional seasonal floats if the Commission approved it & it went through the permitting process w/ DEP. Again, DEP stated they could tailor a permit to the aquaculture activity, but if this was no longer utilized for this purpose, then the permit would not be valid for those floats anymore.

Brief discussion ensued re: if there is a zoning issue or not.

Mr. Pichette stated if Mr. Tourigny & Mr. Pittsley wanted to proceed, they would have to file an NOI for review & approval of the floats & then at the same time submit the Chapter 91 application. Mr. Tourigny asked what the Commission's preference is at this time before he proceeds w/ this process & spending money. Mr. Westgate stated this is a residential dock that is now used as a commercial venture. This is the issue.



Mr. Pichette stated Mr. Hill mentioned the idea of replacing the current floats w/ the upweller floats & therefore, no additional permitting would be needed. Discussion ensued.

**B. Discussion: John Kornish – Stone Bridge Marina.**

Present before the Commission: John Kornish

Mr. Pichette stated Mr. Kornish has some proposals to expand his existing building at the Stone Bridge Marina. Mr. Kornish spoke to the Commission at the last meeting to get a sense of their thoughts on his ideas & what permitting process should be followed. At the last meeting, some members wanted to visit the site to see how the site currently exists in relation to what Mr. Kornish has in mind for a potential expansion of an open air deck to the back of the building. Some members did visit the site.

Mr. Kornish briefly discussed his proposal & submitted photos of the site to the Commission members for review.

Mr. Westgate asked if Mr. Kornish has gone to the Building Dept. yet. Mr. Kornish stated no, but engineers have looked at his plans.

Mr. Pichette asked when the last time the porch existed. Mr. Kornish is not sure, but there was a permit issued to take it down, approx. in 1990 -1991.

Mr. Mulkern expressed concern re: lack of parking for this site. Mr. Connolly stated parking has nothing to do w/ this Commission; only wetland issues.

**C. Violations**

Mr. Pichette stated the owner of 31 Point Road requested the meeting re: her violation be heard two weeks from now. Brief discussion ensued.

**D. Discussion: Westgate Conservation Property – Papermill Road**

Mr. Pichette updated the Commission that the survey work is done & the engineer is in the process of developing the parking lot plan for the site.

**E. Swifts Beach Conservation Property.**

No discussion.

**F. Discussion: M.A.C.C. Conference.**

Mr. Pichette stated applications for those who want to attend are due to him ASAP.

**X. ADJOURNMENT**

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

**VOTE:** Unanimous (5-0-0)

Date signed: 7-18-12

Attest: [Signature]

John Connolly, Chairman

WAREHAM CONSERVATION COMMISSION

Date copy sent to Town Clerk: 7/19/12

