

**Conservation Commission  
Minutes of February 12, 2015  
Public Hearings  
Mashpee Town Hall  
Waquoit Meeting Room**

**Commissioners:** Robert Anderson, Ralph Shaw, Brad Sweet, John Rogers, and Dale McKay.

**Staff Present:** Drew McManus (Conservation Agent) and Judy Daigneault (Recording Secretary).

**Call Meeting to Order: 5:55 p.m.**

The meeting was called to order with a quorum by Chairman John Fitzsimmons at 5:55 p.m.

There was no public comment.

**Pre Post Hearing Agenda:**

**Approval of Minutes: January 22, 2015 (table until February 26).**

**Vote: Authorize Release of balance of funds for BSC Consulting Services for Gooseberry Island proposal. Return balance of funds to the Applicant.**

The Agent said the Consultant BSC Group has been paid. The original estimate for the peer review for Gooseberry Island was \$5,000. After the consultant was paid, there was a balance of \$684 in the account. In order to return the balance of the funds to the applicant, the Commission needs to take a vote.

**Motion: Mr. Shaw moved to release the funds of \$684 to be returned to applicant SN Trust, Gooseberry Island, seconded by Mr. Rogers. Vote unanimous 5-0.**

**MACC Annual Conference: February 28, 2015**

The Agent reminded the Commissioners that the MACC Annual Conference will be held on February 28, 2015 at Holy Cross in Worcester and they can register online.

**HEARINGS:**

**6:00 Edward D. and Lillian K. Yun, Trustees, 11 Ocean Bluff Drive.** Proposed construction of swimming pool and required safety fence, renovation of existing elevated boardwalk, and installation of mitigation plantings. Continued from 1/8/2015. Commission requires clarification on location/extent of original mitigation on the property from the house construction.

**Resource Area: LSCSF, Coastal Bank, Coastal Dunes, Buffer Zone to Coastal Beach.**

Dan Wells, Goddard Consulting, represented the applicant along with Mike Coutu from Sudbury Design Group. As requested by the Commission at the hearing on January 8, 2015, the applicant reviewed the approved project mitigation plan at the time when the house was originally constructed. After reviewing the plan, it was determined that all mitigation plantings for that project were to be installed within the coastal bank and that the proposed project will not alter any mitigation plantings from the house construction project.

Mr. Wells explained the modifications that Sudbury Design Group made to the plan. The proposed wood terrace and pool were relocated two feet toward the house and away from the coastal bank resource area. The pool is 8 feet from the house foundation. This change allows for an additional area of mitigation plantings in the buffer zone adjacent to the top of the coastal bank. The proposed fence has been moved further up the coastal bank and will be adjusted during installation to minimize disturbance to any vegetation. The plan is proposed to transplant any existing native plants to minimize disturbance to existing vegetation.

The Agent reiterated the resources areas. He said what is being proposed in the areas of coastal dune and land subject to coastal storm flow is entirely a resource area enhancement (mitigation plantings). A fence will be installed on the coastal bank and will not result in any alteration of the coastal bank. There will be no adverse effect to any of the resource areas. The Agent stated the project is not going to affect any of the performance standards. The Agent recommended a Close and Issue.

No comments from the public.

**Motion: Mr. Sweet moved to Close and Issue with the understanding that the mitigation plan will be submitted prior to the signing of the permit, seconded by Mr. Shaw. Vote unanimous. 5-0**

**6:03 Gregory Bush, 55 Santuit Lane. Proposed septic system upgrade.** Applicant requests continuance to February 26, 2015. Needs more time to submit plans. RDA

**Motion: Mr. Shaw moved to continue the hearing at the request of the applicant until February 26, 2015 @ 6:03 p.m., seconded by Mr. Shaw. Vote unanimous 5-0.**

**6:06 Valentin P. Gapontsev, 15 Ocean Bluff Drive.** Proposed construction of elevated boardwalk and stairs and mitigation plantings. Applicant requests withdrawal without prejudice. NOI

**Motion: Mr. Sweet moved to allow applicant to Withdraw without Prejudice. Seconded by Mr. Rogers. Vote unanimous 5-0.**

**6:09 Joseph L. Sullivan, 17 Bearse Road.** Proposed septic system upgrade. RDA

**Resource Area: LSCSF.**

Peter T. McEntee, PE, Engineering Works, Inc. was representing the applicants. He explained the work will consist of locating, pumping and filling or removing the existing cesspools. A new title V septic system will be installed. They have received approval from

the Board of Health. The Agent stated the lot is completely void of natural vegetation and because of the lot size there would not be any standards for retention of native vegetation. The Agent recommended a negative determination.

No comments from the public.

**Motion: Mr. Shaw moved a negative determination, seconded by Mr. Sweet. Vote unanimous. 5-0.**

**6:12 Aldo R. and Sandra Esposito, 25 Sand Dollar Lane.** Proposed replacement of existing retaining wall and installation of mitigation plantings. RDA

**Resource Area: Coastal Bank, Buffer Zone.**

Darrell Chapman was representing the applicant and explained the existing retaining wall is made of wood and is rotten. The proposed work is to add a concrete wall after the wood retaining wall has been removed. There will be a bump-out in the middle of the wall footprint and it will be within six feet of the coastal bank. All work will be done by hand. The Agent referred to the landscape plan and the engineering plan which shows the delineation of the coastal bank. This is entirely within the buffer but the wall is proposed to get closer within the buffer to the top of the coastal bank so that is why it requires mitigation.

The Agent reviewed pictures of the wall and stated the mitigation plan is acceptable. It is a basic hardscape landscape improvement. Some of the plantings going on the coastal bank is an improvement because some of the coastal bank is barren. The Agent recommended a negative determination.

No comment from the public.

**Motion: Mr. Shaw moved a negative determination, seconded by Mr. Sweet. Vote unanimous 5-0.**

**6:15 Timothy J. and Deborah S. Martin, 7 Russell Road.** Proposed realignment of existing gangway and float. RDA

**Resource Areas: Land Under Ocean, LSCSF, salt marsh, BVW.**

Mark Burtis, Little River Boat Yard, was representing the applicant and explained the proposal is to change the position of the float which is parallel to the shoreline right now. The applicant would like to turn it perpendicular and push it out into Great River a little further and add a gangway as well. Two piles would be moved to new locations according to rotated dock. He stated the project was approved by the Shellfish Warden and Harbormaster.

The Agent reiterated that the Shellfish Warden and Harbormaster have signed off. He asked if the DEP # was displayed. Mark Burtis stated it was. The Agent recommended a negative determination.

No comments from the public.

**Motion: Mr. Sweet moved a negative determination, seconded by Mr. Shaw. Vote unanimous. 5-0**

**6:18 Popponeset Beach Association, 0 Uncle Percy's Road.** Proposed aquatic management of Dean's Pond. Continued from 6/26/2014 to allow time for submission of new plans. NOI

**Resource Areas: Land Under Water Bodies/Waterways, BVW, Inland Bank.**

Christine Fairney from the Popponeset Beach Association was present along with Mike Ball of Marsh Matters, and Keith Gazielle from Aquatic Control Technology, Inc. Ms. Fairney informed the commissioners that this project was started in 2006 and Mr. Gazielle was hired to do a study and analyze the condition of the pond. There were some invasive species they had previously treated. Since 2006 there has not been much maintenance to the pond. There have been some concerns from the neighbors as to the condition of the pond. The main concern is the vegetation and overgrowth of the weeds turning the pond into more of a swamp than a pond. Ms. Fairney noted there is a significant impact to wildlife and recreational activities. She said they now have a committee of 13 residents and asked Mr. Gazeille to update the 2006 pond study.

Mr. Gazeille said they found a dramatic expansion of vegetation cover. In addition, the density of the vegetation growth has doubled. The applicant is requesting approval to implement a vegetation management plan at Dean's Pond to mechanically remove 1.2 acres of vegetation. The raked material will be offloaded and temporarily stockpiled at the shoreline area and then loaded into trucks and hauled to an offsite location. They would like to preserve these areas as open water and maintain suitable fish and wildlife habitat. Mr. Gazeille described the workings of the hydro-raking.

No comments from the public.

The Agent encouraged the Popponeset Village Association to continue to monitor the health of Dean's Pond and to consider addressing some of the issues surrounding the pond, including runoff from impervious surfaces and preservation/enhancement of naturally vegetated buffer strips to lessen adverse impacts moving forward.

**Motion: Mr. Shaw moved to Close and Issue, seconded by Mr. Sweet. Vote unanimous 5-0.**

The Agent commented and encouraged the exploration of storm drainage to control runoff of sediments into the pond since most of the streets are dead end streets that lead into the pond.

**6:21 Lynn Giacchetto, Trustee, 9 Chart Way.** Proposed reconfiguration of existing driveway. RDA

**Resource Area: LSCSF, Buffer Zone to Coastal Bank.**

Charles Giacchetto explained he is proposing to expand the driveway in front of his house. This would involve the removal of six trees and several bushes.

The Agent reviewed the plan provided which showed the existing vegetation. Everything that is being proposed is outside of the 50' setback from the coastal bank which is armored. The entire lot is land subject to coastal storm flowage and a buffer zone to a coastal bank. It meets the performance standards for activities within the buffer zone to coastal bank. The Agent recommended a negative determination.

No comments from the public.

**Motion: Mr. Shaw moved a negative determination, seconded by Mr. Rogers. Vote unanimous 5-0**

**6:24 Robert M. Valletta, 112 Captains Row.** Proposed tree removal and replacement of invasive species with native plantings. Continued from 1/22/2015. NOI

The Agent noted this is the second time in a row no one showed up and suggested the Commissioners could ask the applicant to withdraw the application or to deny the application because there is no one here to present.

**Motion: Mr. Shaw moved to continue the hearing until February 26, 2015 at 6:06, seconded by Mr. Rogers. Vote unanimous 5-0**

**6:27 Donald B. and Phyllis M. Brick, 18 Spoundrift Circle.** Proposed pruning of trees overhanging dwelling along with establishment of a vista corridor. Continued from 1/8/2015 – Commission requires submission of a revised plan showing vista corridor. As of 2/6/2015, no revised plans received. NOI

The Agent noted no one was present. He said he met with the contractor who is representing the homeowner and informed him on two separate occasions that he needs to submit a revised plan showing the vista corridor. The Agent recommended a denial based on the lack of submission of revised plan showing the proposed vista corridor.

No comments from the public.

**Motion: Mr. Shaw moved to deny the application without prejudice, seconded by Mr. Sweet. Vote unanimous 5-0.**

**6:30 Constance R. Connors, Trustee, 114 Summersea Road.** Proposed construction of landings, stairs and posts that will lead to a new pier, ramp and float. NOI

**Resource Areas: LSCSF, Land Under Ocean, Salt Marsh, Coastal Bank, Located on Ockway Bay.**

Matt Costa, Cape and Island Engineering, was representing the applicant and explained the proposed project is to build an elevated stairway down the bank to a new pier, ramp, pile and float system. Mr. Costa reviewed the plan provided. The Harbormaster and the Shellfish Warden have signed off. The project meets the performance standards and the project does not require mitigation as per Chapter 172 of the Mashpee Code regulation 12.

Mr. Costa explained that all work from the seaward edge of the coastal bank will be done from a barge or by hand within a four hour time span consisting of two hours before and

after high tide. The Division of Marine Fisheries commented in their review letter that a non-leaching wood alternative should be used for the piles. Mr. Costa stated they will make that adjustment and have the piles vinyl coated to prevent leaching wood preservative chemicals. He commented the concrete steps are going to stay in place but will not be used due to the fact natural vegetation is starting to creep in over them.

Mr. Costa commented on the letter from the Division of Marine Fisheries and the concern with the leaching components of the piles. Mr. Costa has offered to make that change and it will be conditioned in the permit if the Commission approves the project.

The Agent noted the Harbormaster and Shellfish Warden have signed off and they will have all the appropriate signage for display of DEP number and property address on the dock in perpetuity.

No comments from the public.

**Motion: Mr. Shaw moved to close and issue, seconded by Mr. Sweet. Vote unanimous 5-0.**

#### **Briarwood Association Land, 261 Hooppole Road: Wetlands Violation**

The Agent he was a made aware of a violation by an association member of Briarwood who notified him by email that mowing had been taking place in an area that he had been familiar with for several years. The Agent sent out a notice of violation after inspecting the property and it was obvious mowing had taken place. This was opened up at a hearing for discussion and there was discussion on a claim of Briarwood that the mowing activity is grandfathered. The Association hired a wetland consultant to check the conditions to verify the presence of a wetland. The Agent recommended the Commissioners hear from Briarwood and their representatives.

Adam Brodsky, Environmental Lawyer, Drohan Tocchio and Morgan, was representing the Association. He reviewed his letter dated January 29, 2015. He spoke about the grandfathering under certain exemptions in the state and local wetland regulations. In his analysis he determined the mowing of the lawn is exempt from MESA project review. He said they are not doing any new alterations. Mr. Brodsky commented that Briarwood should be able to continue this activity (as it was started prior to the promulgation of wetland regulations (state and local).

Brad Holmes, Environmental Consulting and Restoration (ECR), stated he has completed a review of the property at 261 Hooppole Road. The review was focused on the existing conditions, onsite wetland resource areas, maintenance activities, and historic conditions. Mr. Holmes stated that ECR is able to confirm that the site contains wetland resource areas and areas of Conservation Commission jurisdiction. He noted the southern portion of the site is located within an area mapped as priority habitat and habitat for rare species (Natural Heritage and Endangered Species Program).

Mr. Holmes stated that ECR did a site review to review the existing conditions of the site with the focus on the maintained mowed area of the site. The mowed area contains a volleyball area and park benches. The mowed area consists of more than 50% wetland

herbaceous plants. Based on ECR's site review the mowed area of the site meets the classification of a bordering vegetated wetland consisting of a wet meadow environment. He said, based on the Association and review of aerial imagery, the mowed area of the site has been maintained since the 1960s.

Mr. Holmes stated that he was able to document the mowed area of the site is a wetland resource area under the jurisdiction of the Conservation Commission. The maintenance of mowing and use of the site as a recreational area is a grandfathered use that predates the Massachusetts Wetlands Protection Act and Town of Mashpee Wetlands Protection Bylaw. He said Briarwood intends to maintain the mowing activities as it has since the creation of the recreational area, but proposes to enhance the existing conditions of the site by removing the weeping willow trees and replacing with native wetland saplings and shrubs. He concluded by saying that based on the findings, it is their position that the ongoing maintenance mowing at the site is a grandfathered activity and should not be considered a violation of the Massachusetts Wetlands Protection Act Regulations and Town of Mashpee Wetlands Protection Bylaw.

There was much discussion. The Agent stated under the regulation Chapter 172 he believed that mowing is altering because it can destroy vegetation. He cited under regulation 24, which defines various Conservation terms, he is not recommending any retroactive fines or retroactive permitting. His recommendation is to cease any future mowing in this area. He said that this is a case being made through aerial photographs and photographs of the area to show a consistent timeline of mowing in this area in order to establish a precedent of grandfathered right to continue this activity and justify it in the past. The Agent said from aerial photographs it is not apparent whether mowing has taken place or not. Photographs and mowing receipts which they have provided are scattered. The Agent does not feel the evidence presented shows a consistent timeline of mowing activity. The Agent stated based on his personal observations at this site he has seen this herbaceous wetland in full grow out condition. He felt there has not been a compelling argument made for grandfathering. There was much discussion on the grandfathering.

The Agent stated the area where the mowing activity has taken place is not within a buffer zone to a resource area but rather directly in a wetland resource area (BVW), thus the regulatory statute (310 CMR 10.02(b) cited by the Mr. Brodsky does not apply to this situation as that section of the regulations is premised on Activities within the buffer zone. The Agent feels the information provided does not show a clear and consistent timeline to establish an argument for exemption. The Agent claims that there has been a substantial amount of time that this area was not consistently mowed and it took on wetland characteristics. On multiple site visits to this property from 2007 and 2010, the Agent witnessed this wetland area in a non-mowed condition. He said he was approached by the former president of Briarwood Association to find out what the association could do about the mosquito problem that the wetland was causing and the Agent referred him to mosquito control. The former association president also asked about permission to put in a volleyball court. The Agent informed him that it would be unlikely that the Commission would allow a volleyball court in this area as it would be considered a structure and thus, prohibited under the regulations. The Agent claimed that the association was aware of this wetland area and that it was under the jurisdiction of the Conservation Commission by virtue of the association president inquiring about allowable activities in this area.

Attorney Brodsky said the Association's intent is to continue to use the area for recreational activities with the understanding that any future changes require Commission approval. They are proposing to remove the (planted) weeping willows because they are not native to the area.

The Agent said the outcome he is looking for is that this area be certified as a wetland and no further mowing or alteration be allowed in this area. He has been in contact with town counsel regarding this matter and is awaiting feedback. The Agent stated he also has correspondence from the same association member who reported the mowing activity which showed evidence of alteration to the wetland (creation of a drainage ditch) and also email correspondence from one of the association members who claimed that the association is trying to "fill" the wetland. The Agent said he could supply this information to Attorney Brodsky. Based on the photos showing evidence of alteration coupled with the email correspondence from association members indicating that they are trying to "fill" the wetland, the Agent is concerned about the future usage of this area for recreational purposes. He said he believes that the continuation of mowing the wetlands will result in subsequent cumulative adverse impacts to this documented wetland resource area.

Public Comment.

There were some comments from the association members stating the mowing and recreational activities have taken place since the 1970s.

In conclusion, all parties agreed to table the discussion of this matter and reconvene at the hearing on March 12<sup>th</sup> to allow time for town counsel feedback.

**Motion: Mr. McKay moved to table this hearing until March 12, 2015 seconded by Mr. Sweet. Vote unanimous 5-0**

**Review proposed Chapter 172 By-law changes for May Town Meeting**

The Agent gave an update on the proposed wording changes to the Ch. 172 Mashpee Wetland Bylaw for the upcoming May town meeting. The Agent reviewed the proposed wording changes to the Commissioners and advised them to provide any feedback they may have. The Bylaw changes have been submitted for the May town meeting warrant but there is still time for editing, feedback, etc.

**Suggestions on Chapter 172 Regulatory language (Regs. 1-33)**

The Agent recommended that the Commissioners review the Ch. 172 regulations for updating. He stated that any changes to the Ch. 172 regulations (not the Bylaw) would require advertisement in a local newspaper and a public hearing. Once changes are formalized and public comment has taken place, then any proposed changes may be promulgated at a public hearing of the Conservation Commission.

**Motion: Mr. Sweet moved to adjourn the meeting, seconded by Mr. Shaw. Vote unanimous 8-0. Meeting adjourned 8:50 p.m.**

Respectfully submitted,

Judy Daigneault, Recording Secretary