

**Conservation Commission Minutes
Thursday, February 25, 2016
Mashpee Town Hall
Waquoit Meeting Room**

Present: Bradford R. Sweet, Robert C. Anderson, Dale R. McKay, John R. Rogers, Mark N. Gurnee, Conservation Agent Drew McManus, Recording Secretary Judy Daigneault

Absent: Ralph B. Shaw, Jr.

Chairman Brad Sweet opened the meeting at 5:55 p.m.

No comments from the Public

PRE/POST-HEARING AGENDA:

Minutes: January 28, 2016

Motion: Mr. Anderson moved to approve the January 28, 2016 minutes, seconded by John Rogers. Vote unanimous 5-0.

Vote: Request to release funds for wooden guardrail extension on Ashumet Road/Johns Pond Conservation area.

The Agent referred to two quotes provided from DPW. The quotes are to extend the guardrails at Ashumet Road and Back Road due to the fact that vehicles are able to go around the gates that are presently there. The quote for Back Road is \$7,820 and Ashumet Road is \$4,784. The funding would come out of the Land and Maintenance Account and requires a vote from the Commissioners to release these funds.

Motion: Robert Anderson moved to release funds from the Land and Maintenance Account as requested for wooden guardrails to be installed at the Johns Pond Conservation area, Seconded by John Rogers. Vote 5-0.

Update: Upper Quashnet Restoration (development of RFP)

The Agent gave an update on the Upper Quashnet Restoration. He said he was working on assembling a reference package from other agencies for the Commissioners on permit requirements. He is scheduling another meeting of the Steering Committee to work on an RFP and to discuss the up and down stream erosion associated with the Johns Pond fish ladder.

Additional Topics

Hearings:

6:00 Antonio and Helen Donato, 18 Cricket Way, Proposed construction of pier, ramp and float structure and retaining wall. Continued from 1/14/16 to allow time for more detailed plans (as per Acting Harbormaster's request). Engineer requests additional continuance to 3/10/16 @ 6:09 p.m. NOI

Motion: Mr. McKay moved to continue the hearing at the request of the applicant to March 10, 2016 @ 6:09 p.m., seconded by Mr. Rogers. Vote unanimous 5-0.

6:03 Leslie A. Wagner Caffyn, 10 Popponesset Island Road. Proposed removal/replacement of two cedar trees, construction/maintenance of landscape retaining wall, landscape improvements and mitigation plantings. NOI

Resource Area: Coastal Bank, Land Subject to Coastal Storm Flowage, Salt Marsh, Land Under Ocean, Coastal Beach.

Matt Costa, Cape and Islands Engineering, represented the applicant. He explained the proposed project is the removal of two cedar trees and installation of new cedar trees at the top of the bank; the construction and maintenance of a 133' landscape retaining wall; voluntary mitigation plantings located upland of the existing licensed stone revetment on the west side; and the repair of lawn area on the east side. A soft solution was attempted on the bank along the west side where the retaining wall is proposed and did not perform as anticipated. They are going to put a mat on the bank and then put grass plugs in there. It is a way to make sure the bank gets stabilized. The installation of the wall will stabilize the entire bank and will also protect the existing dwelling.

Mr. Costa noted previous approvals included work to the dwelling and septic system and are not part of this application. On the east side is a stone revetment and sink holes are forming. What they are proposing is to remove the soil on the backside and put a filter cloth down, layer with stones, then put a filter cloth on top and re-loam and reseed. He said they meet the performance standards and respectfully request the Commission issue an order of conditions.

The Agent noted the orders are still open on the plan that was previously approved. The mitigation hasn't taken place. He said the dwelling is pre 1978 and they can armor their bank in the interest of storm damage protection. He noted the shrubs on the bank are not going to survive on the long term. The project does meet the performance standards. It is an eroding vegetated bank. He noted the seepage that has been happening and said there are a lot of sink holes forming and the proposal to remedy this is a standard operating procedure.

Mr. Costa said they are going to take a detailed look at the best type of plantings for this job so it is a full bank maintenance project. He noted all the work on the bank will be done by hand.

No comments from the public.

Motion: Mr. McKay moved to Close and Issue, seconded by Mr. Rogers. Vote unanimous 5-0

6:06 Department of Public Works, 500-Beach Great Oak Road. Proposed installation of a steel pipe gate at entrance of road leading to South Cape Beach. Owner of record. Town of Mashpee. RDA

Resource Area: Salt Marsh, Land Subject to Coastal Storm Flowage, BVW

Catherine Laurent, DPW Director, representing the Town of Mashpee, explained the proposed work is the installation of a 20' wide, single-arm galvanized steel pipe gate at the entrance of the road leading the South Cape Beach. On the most part, the gate will remain open except during a storm event. She showed the position of the gate and the posts on a picture provided. The Agent explained where the digging was to take place.

No Comments from the public.

Motion: Mr. Rogers moved a Negative Determination, seconded by Mr. McKay. Vote unanimous 5-0.

6:09 Jennifer Allen and Anthony Honaker, 55 Running Light Way. Proposed removal/reconstruction of a deck and stairs. (Abbreviated Notice of Intent) ANOI

Resource Area: Buffer zone to freshwater wetland

Robb Sykes, Eastbound Land Surveying, represented the applicants. He described the proposed project is to replace the existing deck and build a stairway for access from the second floor to the ground along with a rinse station. He said much of the site is brush and natural vegetation. All work is within 100' setback to the BVW. The Agent said Mr. Sykes used the mitigation chart for the new plantings. There is no tree removal or removal of natural vegetation but because it is encroaching closer, it does trigger mitigation. No part of the project will affect the wetland.

There was a discussion on a rinse station vs. a shower. It was recommended that Mr. Sykes meet with the Board of Health to determine if they have any requirements on the rinse station and suggested holding the issuance of the permit until that conversation takes place with the Board of Health.

No comments from the public.

Motion: Mr. Anderson moved to Close and Issue subject to Board of Health approval, seconded by Mr. McKay. Vote unanimous 5-0.

6:12 Michael and Julie Rand, 58 Popponesset Island Road. Proposed construction of a pool, patio addition, landscape improvements and mitigation plantings. NOI

Resource Area: Land Under Ocean, Salt Marsh, Armored Coastal Bank, Land Subject to Coastal Storm Flowage

John O'Dea, Sullivan Engineering, represented the applicants, explained the proposed project is to construct a pool and patio. All work is located within a level lawn area in the buffer to the coastal bank. The work should have no impact on the stability of the bank because the bank is fully armored by a stone revetment. The applicants are requesting a waiver because a portion of the work is being performed within the 50' buffer. The pool as proposed is approximately 40' from the coastal bank at the closest point. He described the mitigation planting plan which will enhance and expand the existing buffer strip. A blend of coastal grasses and three species of woody shrubs will improve the site. He noted he received correspondence from some of the abutters and the Rand's have the intention of being good neighbors. The Agent read a letter from Clark Hill, 50 Popponesset Island Road, into the record. Mr. Hill listed his concerns: notification of abutters, location of pool equipment, type and appearance of the fence, types of plantings, construction methods. The Agent noted they did receive due notice in accordance with MGL and Conservation bylaw standards. Work limits should be shown on the plan and the plan could be revised. He referred to the landscape plan for the types of mitigation proposed. There is a project narrative associated with the NOI.

The Agent noted the Commissioners can condition the Orders regarding the concerns about the armored coastal bank to make sure no destabilization of the coastal bank occurs. We do

require the work limits shown on the plan. He stated that mitigation would have a greater purpose fronting the top of the coastal bank. The Agent said the lawn appears to be a high maintenance lawn and he would follow up with the landowners on the lawn standards. He said the previous mitigation plan needs to be reworked.

Public comments:

Arlene Wilson stated Mr. Clark Hill, abutter on the northerly side, asked her to speak on his behalf. She noted several points: the flood data and the elevation numbers are different, none of the topo has been updated since 2011, the grading on the landscape plan, reseeding the lawn with native seed, the water drained out of the pool for the winter, location of the pool mechanicals, pool listed as 26 by 13 is inside dimension overall dimension 29 by 16 which throws off the mitigation calculations and mitigation needs to be recalculated, plant list – beach grass should be replaced with switch grass, Rose of Sharon tends to be invasive, bark grass is becoming a problem and is non-native.

Mr. O’Dea said they updated the survey this winter. He would be happy to see if there are better grasses to work with. The Agent said some of those comments could be incorporated in an updated landscape plan. There were several items to be included in a new plan: pool equipment to be shown, adjustment to switch grass, Rose of Sharon and other ornamentals to make sure they are not going to cause any wild spread.

Judy Moody represented 64 Popponesset and asked that the Shamash family letter be read into the record. Mr. Sweet read the letter which expressed concerns with the proposed plantings and they are limited to no more than 5’ high. Mr. Sweet suggested a dialogue between the neighbors needs to take place.

The Agent summarized the reworking of the mitigation areas to focus mitigation coming off the top of the coastal bank, showing location of pool equipment, swapping out some of the vegetation to switch grass and taking a look at the Rose of Sharon and dwarf fountain grass to make sure the spread is not going to have any adverse impacts and showing the construction limits. The patio should be added to the plan, showing 20 by 16 pool patio area. All structures need to be accounted for in the plan. He will follow up with the lawn issue.

Arlene Wilson suggested a continuance so the plan that Conservation approves and the plan ZBA approves is the same plan.

Following a discussion, Mr. O’Dea requested a continuance on behalf of the applicant.

Motion: Mr. McKay moved to continue the hearing to March 10 @ 6:12 p.m., seconded by Mr. Gurnee. Vote unanimous 5-0’

6:15 Johnson H. and Dianne M. Appleman, 91 Edgewater Road. Proposed expansion of existing deck. RDA

Resource Area: Top of Inland Bank, Santuit Pond

Joseph Appleman, homeowner, stated the proposed project is to expand the existing deck by an additional 8 x 10 feet. The Agent said there is no request of removal of trees or vegetation and no impact to the bank itself. The project meets the performance standards.

No public comment.

Motion: Mr. Anderson moved a Negative Determination, seconded by Mr. Rogers. Vote unanimous 5-0

6:18 Patrick J. and Nissa R. Knight, 39 Little Neck Lane. Proposed creation of vista pruning corridor and construction of an elevated stairway, pier, ramp and float structure NOI

Resource Area: Land Subject to Coastal Storm Flowage, Coastal Bank, Bordering Vegetated Wetland, Salt Marsh and Land Under Ocean, Ockway Bay

Matt Costa, Cape and Islands Engineering, explained the project is the removal of two trees on the coastal bank to allow for the construction and maintenance of a pier, ramp, pile and float system, elevated stairway and posts that will lead to the new pier structure and a 40' wide vista corridor. He said they situated the pier to meet the 25' required setback lines as required by Chapter 91 and Army Corps. He identified the lines on the plan and reviewed the proposed mitigation plantings. He reviewed the project with the Harbormaster and Shellfish Warden and they don't have any issues with the project. They have a typical timber constructed pier and aluminum ramp and traditional encapsulated floats. The appropriate signage requirements will be on the pier and identified on the plan. He said the vista pruning involves mostly minor pruning of branches. He noted it is a heavily treed lot and didn't originally propose mitigation but did come up with a good solution for mitigation to compensate for the proposed removal of two trees on the coastal bank. He said the project meets the performance standards and requested the Commissioners issue an order of conditions.

The Agent felt what was discussed regarding plantings like bearberry and arrow wood should alleviate any concerns about erosion on the bank once it is covered to accommodate the stairway to the dock. The Harbormaster and the Shellfish Warden don't have any issues and no comments. The vista pruning in this area is minor there are no saplings.

There was a discussion on the positioning of the stairway and the removal of the trees. Mr. Costa said this is a project that would better the area. They are going to leave the root system from the trees in the bank to additionally stabilize that area. They will be careful with the plantings and the proper matting will be used which will really help to stabilize bank.

No comments from the public

Motion: Mr. Anderson moved to Close and Issue, seconded by Mr. McKay. Vote unanimous 5-0

6:21 Garrison Development LLC, 17 Alma Road. Proposed construction of single-family dwelling and garage. NOI

Resource Area: Land Subject to Coastal Storm Flowage, Coastal Bank, buffer zone to freshwater wetland and isolated wetland

Tom Bunker, BSS Design, represented the applicant. He noted the proposed project is on an undeveloped lot. The proposal is to construct a single family four bedroom house and to install a Title V septic system. The house will be located as far away from the wetland resource areas as possible on the high portion of the lot out of the flood zone. He said the Board of Health requires a denitrification unit if the proposed soil absorption system cannot maintain 150' to the coastal bank. The leaching field will be 121 feet from the wetland. He said it meets the performance standards. The Agent explained there were three different types of wetlands, isolated land subject to flooding, freshwater wetland, buffer zone at Hook Pond. All parts of

what is proposed are outside the 50' buffers. The driveway will be gravel and the work limit is shown and there will be no runoff to the wetlands. The Agent asked Mr. Bunker to specify on the plan what is going on around the house as far as landscaping. He said if it is lawn we need to condition the lawn standards.

No comment from the public.

Motion: Mr. Anderson moved to Close and Issue pending the receipt of revised plan showing the lawn/landscaping, seconded by Mr. Gurnee. Vote unanimous 5-0

Vote of endorsement: John Falacci (Bayswater/New Seabury) New Seabury Conservation Restriction amendments – BSC Group on behalf of Orenda Wildlife Trust.

John Falacci stated they were looking for endorsement of a swap of land within the conservation restriction area. They are looking to swap two parcels because they are in the process of updating their amenities to get a much better design. He referred to the plan provided which shows the land to remove the restriction from and the area we are proposing to put the new restriction on. There are some guidelines for them to get approval. He noted the calculations of the areas. They will increase the conservation area just shy of one quarter of an acre. Mark Robinson is working with Orenda Wildlife Trust and the Cape Commission has reviewed it and we will be working with them. Andy Marks, Water District, has not found any objection and will be meeting with the Selectmen and the last is the Orenda Trust and the Commonwealth of Massachusetts. The Agent said the bottom line is this probably works out better than the previous layout and results in an increase of square footage. He asked that the Commissioners take a formal vote on their decision.

Motion: Mr. Gurnee moved to endorse the proposed amendments to the New Seabury Conservation restriction held by Orenda Wildlife Trust, seconded by Mr. McKay. Vote unanimous. 5-0

Vote of endorsement of conceptual plan. Falmouth Rod and Gun Club presentation – Farley Bog restoration.

The Agent said this is an endorsement of a concept plan. Falmouth Rod and Gun Club is a partner with the Mashpee National Wildlife Refuge. They own 100 acres of land in Falmouth and Mashpee as well. They own some lands around the abandoned bogs. He introduced Ken Bates to present a power point for the Commission's consideration.

Ken Bates was making the presentation on behalf of Gary Anderson. He designed the presentation to give factual information. Ken Bates said he is a Chairman of the Waterways Committee, a member of the Rod and Gun Club and the Sporting, Safety, Conservation and Education Fund of Falmouth, Inc. (SSCEFF).

Mr. Bates did a power point presentation and covered several points:

The location of the Farley Bog and Garner Bog.

Location of the Childs River and its flow.

The lack of brook trout habitat

River too long and shallow

Farley Pond surrounded by land owned by the Falmouth Rod and Gun Club

The Club is recording conservation restrictions on all the parcels so they will never be developed and preserved in perpetuity as natural wildlife habitat.

Previously, the Farley and Garner Bogs were cranberry bogs but the leases were abandoned. Abandoned bogs have been turned over to the Towns' Conservation Commissions.

Will the Farley Bog go feral?

Suggested what the towns could do to bring this proposal to fruition.

Requests endorsement of the concept.

The Falmouth Road and Gun Club and SSCEFF would undertake the realignment of a portion of the upper Childs River to create cold water fisheries.

They would move forward with the restoration of the Farley Bog back to natural wetland habitat for water fowl and other birds and mammals.

They received interest and support from Mass State Fisheries, US Fish and Wildlife Services, representative from Waquoit Bay National Reserve, and the Mashpee National Wildlife Refuge

Mr. Bates showed an aerial photo of the Farley Bog.

He showed a photo of what the Farley Bog would look like after complete restoration.

Proposal to rerouting the Childs River.

This would provide shade lowering its temperature.

Plantings would be installed.

Expand existing pond on the north end of the bog and create a new pond on south end of the bog.

The road would be removed and planted with native species to discourage dirt bikes and four wheelers.

Construct footbridges across the Charles River.

The rest of the bog would be restored to wetlands and planted with native plantings.

Mr. Bates listed the benefits:

Provide nesting areas for waterfowl and song birds as well as habitat for other animals.

Realigning the Childs River would cool the river to help the migration of herring and brook trout

Restoring the Farley Bog to wetland would reestablish a natural water filtering area

The project would enhance recreational activities and create educational activities

Would shift the responsibility and expense to administering an abandoned bog to organizations which have land and water conservation as core elements of their organization

The Rod and Gun Club and SSCEFF have formed a committee of its members and State Representative David Vieira.

Ground penetrating radar technology was used on the Farley Bog.

There is a sense of urgency to begin the restoration process.

He showed a topographical map of the Farley Bog

Steps to be taken to rehabilitate the Childs River and restore the Farley Bog

Ask for both towns to transfer responsibility of the Farley Bog to the Rod and Gun Club

Develop a project plan with timelines and identify grant opportunities

Apply for permits from regulatory bodies and perform soil testing

Begin construction and restoration

Phase two to extend the project to the Garner Bogs

Key Considerations

Control of responsibility for the Farley Bog
Require substantial financial investment
Volunteer labor by Rod and Gun Club and SSCEFF

Option 1: have the towns of Falmouth and Mashpee declare the Farley Bog surplus land to be sold to the Rod and Gun Club.

Option 2: to offer the Club a long term lease on the Farley Bog.

If the Rod and Club purchased the land, they would agree to put a conservation restriction on the property as it has done with all of its abutting acreage. The conservation restriction would be in the name of each Town's Conservation Commission which would assure that Farley Bog would be preserved in perpetuity in its natural state.

Conclusion:

They were asking the Conservation Commission to look favorably on the proposal to rehabilitate and restore to key environmental assets, the upper Childs River and the Farley Bogs. It is a very worthwhile project and will benefit fish and wildlife and the land and water resources in both communities.

They ask for a vote from the Commission authorizing to move forward to determine if the concept is viable. They are asking the Board of Selectmen and the Conservation Commission from each town to select a representative to meet with counsel from each Town along with Representative Vieira and Gary Anderson to determine a means to transfer responsibility for the Farley Bog to the Road and Gun Club. The subcommittee would then report back to each board for a subsequent recommendation on the project.

Mr. Bates said they are looking forward to the Commission's endorsement of their restoration proposal. He said they have met with both the boards in Falmouth and the boards have endorsed the concept and they have appointed Susan Graham from the Board of Selectmen and Betsy Gladfelter from the Conservation Commission. Their presentation to the Board of Selectmen in Mashpee is March 14th.

The Agent noted this is very similar to the upper Quashnet River. The purpose of this presentation is to give the Commissioners a conceptual outlook of what is being proposed and to seek endorsement of this concept. It is not a vote to lock into any position of details.

One of the benefits considering a sale is most of the bog is in the town of Falmouth and it opens the door to private entities and clubs for funding opportunities not open to municipalities.

Following a discussion on the presentation commissioners generally agreed that this was a viable project.

Motion: Mr. Gurnee moved to vote to endorse the conceptual plan from the Falmouth Rod and Gun Club for the Farley Bog Restoration, seconded by Mr. McKay. Vote unanimous 5-0

Motion: Mr. Sweet moved to appoint Mr. Gurnee as Mashpee Conservation Commission's representative to the subcommittee, seconded by Mr. Rogers. Vote unanimous 5-0.

Update: DEP superseding Orders of Conditions – Coastal bank stabilization projects at 118, 124, 126 Shore Drive West

The Agent said DEP issued their superseding Orders of Conditions. DEP is not allowing the polypropylene liner to go over the coir envelopes. It is not biodegradable and they feel it would have some impact to the coastal area. The abutters have ten days to submit an appeal. DEP's recommendation was to hold off on having the applicants come in showing a revised plan showing the removal of the polypropylene and reflecting any amendments to the existing conditions to meet DEP's superseding Order of Conditions. It was recommended to wait until after the appeal period. The superseding order would get recorded at the Registry of Deeds and we would get a copy of the recording page and all the onsite requirements would take place but under control of DEP at that point. We will wait and see what happens with the appeal.

Discussion: Regulation 30

The Agent said he is holding off on the discussion on Regulation 30 and is awaiting comments from Glen Harrington, the Health Agent.

Motion: Mr. Gurnee moved to discuss the executive order from Governor Baker, seconded by Mr. Anderson: Roll Call Vote: Mr. Anderson, yes; Mr. Gurnee, yes; Mr. Sweet, yes; Mr. McKay, yes; Mr. Rogers, yes. 5-0

The Agent stated the executive order 562 is an Order that was sent out to all State agencies to review regulations in the interest of identifying any regulatory language that may place excessive burden on the applicant. There is a set of criterion in this order. The concern regarding the impact to the MA State Wetlands Protection Act is this may result in the gutting of some of the regulations. In reviewing Governor's executive mandate, one of the criterion for review is that state regulations should not be stricter than federal standards. This will weaken a number of wetland regulations. The Agent noted this order has nothing to do with local bylaws. He was asking the Commissioners to review the letter written by MACC to DEP and if they have any feedback he would pass it on. The other mandate is no regulation should adversely affect the applicant. He said he understands that regulations need to be reviewed but an important part of the administration of the wetland act is how fair they are applied by the Boards and Commissions that are responsible for enforcing them.

Motion: Mr. Gurnee moved to adjourn, seconded by Mr. Rogers. Vote unanimous 5-0 Meeting adjourned 8:58 p.m.

Respectfully Submitted,

Judy Daigneault
Recording Secretary