

WEST TISBURY CONSERVATION COMMISSION  
MINUTES OF MEETING

April 9, 2008

**Present:** Prudy Burt Chair, Hadden Blair, Judy Crawford, Dan Pace, Binnie Ravitch, Peter Rodegast, Tara Whiting and Maria McFarland

**Also present for all or part of the meeting:** Jon C. Nelson, Jr. Lee & Dick Dubin, Amy Kwesell of Rubin & Rudman, Matthew Ray of Cini Law office, Leslie Fields of Woods Hole Group, W. Sterling Wall of Tetra Tech Rizzo, and Reid Silva of Vineyard Land Surveying

Prudy Burt called the meeting to order at 4:40 P.M. This meeting was recorded.

The minutes of the March 25<sup>th</sup> meeting were approved. Peter and Tara abstained.

**Map 38 Lot 8 continuation** of a public hearing under the requirements of G.L. Ch.131 § 40, as amended and the West Tisbury Wetlands Protection Bylaw and regulations on a **Notice of Intent** filed by Schofield, Barbini & Hoehn Inc. on behalf of Bagehot Backs LLC for property located at 55 Oyster Watcha Road owned by Peter deRoethth. The project consists of selective view clearing and tree removal within the Buffer Zone of a Bordering Vegetated Wetland. Maria reported that the applicant's representative has requested a further continuance to April 22nd as they are still working to satisfy the requirements of NHESP for work in estimated and priority habitat. A motion was made and seconded to continue this public hearing to April 22nd at 5:25 PM. All in favor.

**Map 1 Lot 33 continuation** of a public hearing under the requirements of G.L. Ch.131 § 40, as amended and the West Tisbury Wetlands Protection Bylaw and regulations on a **Notice of Intent** filed by Sourati Engineering Group, Inc. on behalf of Richard & Lee Dubin owners of property located at 94 Norton Farm Road. The project consists of the construction of a single family dwelling with detached garage, septic system, well, driveway and associated site work and the construction of a 40 ft. single span steel bridge to cross a perennial stream and wetlands for access to the house. This work will take place in the Riverfront Area and in the Buffer Zone to a Bordering Vegetated Wetland. The applicant submitted a third revision to the bridge plan as well as a revised alternatives analysis comparing the installation of a culvert with the proposed bridge.

George reported that to satisfy NHESP the trees to be taken down have been located on the plan. The sequence and construction notes were added to the bridge plan. George also submitted an updated riverfront analysis and culvert comparison. The culvert would cost less but the bridge would have less impact to resource areas during construction. The culvert would require replication. NHESP issued a determination letter dated April 8, 2008 that this project will not adversely affect the actual resource area habitat of state-protected rare wildlife species nor will it result in a "take" of state listed rare species under MESA. George explained that the leach field has been relocated outside of the Riverfront Area. The house, garage and leach field are all outside the Riverfront Area. The reserve area is still in the Riverfront Area, but if the system failed, it would be replaced in the same location.

When asked about the road repairs Dick said that some work has been done. Crushed stone was placed on the road in the last two years. It was agreed that the conditions in the John and Dawn Long Order of Conditions covering the road work will be incorporated into the new Order of Conditions.

Emails were received on April 9<sup>th</sup> from abutters Jon Leaird and Drs Richard. and Wendy Levine; both were read into the record. Dick said he will be in touch with the Leairds to reassure them about the driveway.

The Leaird letter expressed concerns about the shallow aquifer in this section of Makonikey. George said a lot of the houses in Makonikey are old and the wells were only drilled to perched water. The letters from the abutters will be forwarded to the Board of Health for their consideration in approving the well and septic design.

The staging area is shown on the plan and the sheet pilings have been reduced by approximately four feet on each side of the bridge on both sides of the stream. Equipment will be moved to the west side of the stream via a crane. Any landscape plan will need to be submitted to the Commission for review and approval.

The applicant requested a waiver to allow work in the first 25 feet of the buffer zone under the local bylaw.

After discussion the hearing was closed. A motion was made and seconded to approve this project as presented in its final format and to grant a waiver under the bylaw. Binnie and Hadden were called to vote on this project as they have attended all the hearings and a quorum is not otherwise present. Binnie, Hadden, Prudy and Judy voted in the affirmative.

Special Conditions will be reviewed and approved at the next meeting.

**Map 22 Lots 22 and 24 - continuation** of a public hearing under the requirements of G.L. Ch.131 § 40, as amended and the West Tisbury Wetlands Protection Bylaw and regulations to consider a **Notice of Intent** filed by Vineyard Land Surveying & Engineering, Inc. on behalf of Geoffrey Berresford, and the Trustees of the Ann Nelson Realty Trust, owners of property located at 60 Littlefield Lane and 101 Old Court House Road for a limited project to repair an existing dam, install a new concrete sluiceway and dredge the pond. At the applicant's request, a motion was made and seconded to continue this hearing to April 22<sup>nd</sup> at 5:10 PM. All in favor.

**Map 1 Lot 50 -continuation** of a public hearing under the requirements of G.L. Ch.131 § 40, as amended and the West Tisbury Wetlands Protection Bylaw and regulations to consider a **revised Notice of Intent** filed by the Woods Hole Group on behalf of John Sundin Trustee of Beach Pebble Realty Trust for property located at 30 Beach Pebble Road for a project to stabilize an eroding coastal bank by installing a low profile rip-rap revetment along the toe of a coastal bank , and to re-grade and re-vegetate the upper face of the bank.

Leslie Fields updated the Commission on revisions to the project. She submitted a letter dated April 4, 2008 and a revised plan dated March 31, 2008. In response to a letter from Steve McKenna of Coastal Zone Management (CZM) dated April 7, 2008 Leslie revised the 3/31 plan. The members reviewed the new plan. Leslie went through the points in her letter April 4th letter and responded to the CZM letter along the way. A letter was also received by Dr. Berlin's attorneys Rubin & Rudman dated April 4, 2008. All documents are noted here for the record.

The revetment will not be extended to meet the existing Berlin revetment. The abutter is not amenable to that proposal. A note was added to the plan to show the date of the second survey of the bank and the beach which was done on Sept. 25, 2007.

The CZM letter recommended that the beach nourishment volume be calculated based on the entire face of the bank instead of just the area that is behind the revetment. The new volume is 330 cubic yards, which would be contributed to the beach over a ten year period if the structure were not there. Due to site constraints, they were going to stay with the original volume of sand (220 cubic yards). Based on CZM's comments, the revised proposal is to place 260 cubic yards of sand which will be extended to the property line. This amount represents about 8 years worth of material.

The new plan was also revised show the revetment side of the fill drawn correctly.

The CZM letter suggested a trigger mechanism for renourishing the beach. In response, the applicant is proposing a trigger that would be the elevation of the beach directly in front of the toe stones which is 3.5 NVGD. When the beach drops below 3.5 NVGD, the beach would be renourished. A permanent marker would be placed on the toe stone. A survey will be done once the toe stone is placed and the 3.5 NVGD be marked. It will allow half of the toe stones to be exposed.

The applicant proposes to monitor the beach for the 3.5 elevation twice a year; once in September and once in March. Photographs would be taken and submitted to the Commission within 2 weeks of monitoring. Renourishment would be done after two successive surveys. Doing two surveys would allow for some seasonal changes in the beach. Four permanent markers would be etched into the toe stones. This monitoring condition would be an ongoing condition and so noted in the Order of Conditions and the Certificate of Compliance.

Leslie gave details about the access ramp to be built across the face of the bank. Photos of similar ramps were circulated for review.

Next, revegetation along the top of the bank and access area was reviewed. The proposal includes revegetation of the entire face of the bank above the revetment using jute netting and beach grass. The Buffer Zone to the top of the bank will be replanted with the same species that are already there.

Angle of the structure: Steve's letter and the letter from the abutter's representative both spoke to the issue of the angle of the structure. Leslie said that they are in fact proposing to build the structure on the face of the existing bank. The toe stone does extend about 8 feet out from the toe of the bank. The applicant does not want to steepen the slope of the structure which is already at 1.5 to 1 ratio. The upper slope is not being touched. It will be a 1 to 1 ratio

Leslie showed an alternative plan showing the toe stone right at the toe of the bank. She explained that this design would require a significant amount of cutting away of the bank. She said she could recommend this design to her client. It was noted that the current distance from the house to the top of the bank is 39.6 feet. If, by the time it gets to construction, the coastal bank has changed, the revetment will still be built right against the then face of the bank.

Dan suggested that it would be a good idea if the nourishment was done at the Berlin wall at the same time as this one. The Commission will be discussing this matter with the Berlin representatives at its May 27<sup>th</sup> meeting. The Commission can't order nourishment to be done on both properties nor can the Woods Hole Group propose that.

Prudy asked for public comment. Amy Kwesell, attorney for Dr. Berlin made reference to the letter her firm submitted. The letter included some recommended conditions for this project. At

the last meeting Amy said she had raised the question of whether the Sundins own the beach in front of their house. Tonight Amy said that a title search showed no indication that the Sundins do not own the 8 feet of beach in front of the proposed revetment.

Sterling Wall of Tetra Tech Rizzo who is Dr. Berlin's consultant said that the project was a good design, addressed monitoring, volume of materials and he agrees with calculations. The stone structure is similar to Berlins and is the same construction Sterling said there is the difference of opinion relates to the actual location of the toe. He asked Lesley if there was a change with respect to the top and bottom of bank this design is flexible enough so that it could be brought back? Leslie responded that a preconstruction survey will be done to determine where the toe is at the time of construction and staked in the field.

Sterling said he is not sure if he fully agrees with the slope. Sterling showed a single sheet showing his estimate of the current condition of the bank. He said while it might be necessary to cut the top of the bank back by 8 feet, the material that is cut away could be reused as part of the beach nourishment. He asked that this be considered.

Sterling added that the proposal for access is good; safer and shallower. He asked about the logistics of getting the sand down to the beach. Leslie responded that the plan is to put the ramp back over the revetment to get the sand to the beach.

Leslie said she would like to keep the hearing open so that she can further respond to the CZM and Rubin & Rudman letters and the issue of the slope of the bank.

Mr. Ray (attorney for abutters Moller and Baylson) was asked if he had anything to say. He said no.

It was asked if the Makonikey Roads and Beach Trust have any limitations on time of year when construction work can take place. Leslie will find out.

With the consent of the applicant's representative, a motion was made and seconded to continue the hearing to May 13<sup>th</sup>.

Before the vote, Leslie asked what concerns the Commission has, other than what has been submitted in the CZM and Rubin and Rudman letters? She added that she hadn't heard anything from the other abutters (Mr. Ray's clients).

Binnie suggested a trigger for an extreme erosion condition. Leslie responded that if the toe stone is exposed that would be the trigger to bring re-nourish right away.

The outstanding issues are the slope and the beach nourishment. It was agreed that no other state permits are required. Leslie will also check on the construction window.

Leslie asked if there were any other abutter concerns need to be addressed. Matthew Ray did not have any comments, but said that he would like to see a copy of any new plan.

The continued hearing will be at 5:10 PM on May 13<sup>th</sup>. Prudy, Judy, Tara and Peter voted in the affirmative.

**Map 23 Lot 7** - a public hearing under the requirements of the West Tisbury Wetlands Protection Bylaw and regulations on a **Notice of Intent** filed by Vineyard Land Surveying & Engineering on behalf of Iya Labunka owner of property located at 68 Tisbury Lane West. The project consists of the construction and maintenance of a 10' wide by 630' long driveway within 100' of a vernal pool. Letter dated March 26, 2008 from NHESP states that with respect to the driveway only, the project as proposed will not adversely affect the actual Resource Area habitat of state-protected rare wildlife species. With respect to MESA this project is being proposed within the habitat of five state listed species. More detailed information on the entire project and lot must be submitted to NHESP.

Reid Silva represented Ms. Labunka. Reid submitted a letter from Doug Cooper dated April 1, 2008 regarding potential vernal pool habitat at this property. There is apparently some confusion as to whether there is an area of potential vernal pool habitat. The Commission observed an area of standing water located near the road at its site visit on April 1<sup>st</sup>. Doug's letter of April 1<sup>st</sup> states that there were two wet pockets that were dry at his site visit on March 31<sup>st</sup>. A motion was made and seconded to continue the public hearing to April 22<sup>nd</sup> at 5:45 PM in order to give the Commission the opportunity to have another site visit. The vote in favor was unanimous.

### **Old Business**

**Map 25 Lot 4** Jon Nelson – Violation at 20 Glory Road. Jon Nelson came in to explain why he had done substantial clearing along the Mill Brook. The house is on the market and the Commission is concerned that a buyer might get the impression that this is permissible. A motion was made and seconded to issue an Enforcement Order. The order will require that this area be allowed to regrow. A follow up site visit will be conducted to be sure the property is being brought into compliance. The vote in favor was unanimous.

**Map 42 Lot 1** Trustees of Reservations/ 330 Long Point Road. The Commission has received the DEP file number letter. There were no comments. The Order of Conditions was signed. There is one special condition; no pressure treated wood shall be used. A motion was made and seconded to approve. The vote in favor was unanimous.

### **Administrative**

**Appointments:** After discussion a motion was made and seconded to recommend to the Selectmen that Hadden and Binnie be appointed as full members. Judy, Peter and Tara will be reappointed as full members. All in favor.

**Greenlands:** Maria will arrange a walk through Greenlands with Bill Veno of the Land Bank on a site visit day that is open.

There being no further business on the agenda, the meeting adjourned at 6:40 P.M.

Respectfully submitted,

Maria McFarland  
Board Administrator  
APPROVED