

**WEST TISBURY CONSERVATION COMMISSION
MINUTES OF MEETING**

December 8, 2009

Present: Prudy Burt Chair, Joanie Ames, Hadden Blair, Judy Crawford, Dan Pace, and Maria McFarland

Absent: Peter Rodegast, Tara Whiting and Binnie Ravitch

Also present for all or part of the meeting: Tara Marden of Woods Hole Group, Sarah Lund and Elaine Florio of Baobob Advisors

Prudy Burt called the meeting to order at 5:00 P.M. In the absence of a quorum Joanie will serve as a voting member this evening.

The minutes of the November 10th meeting were approved as revised.

Map 39 Lot 11/SE 79-0296: 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 the Woods Hole Group on behalf of Endofthedirtroad LLC for property owned by Endofthedirtroad LLC located at 234 Middle Point Road. The proposed project includes the installation of approximately 255 feet of sloping low-profile rock revetment along the eastern shoreline of the Tisbury Great Pond, together with the routine maintenance of the revetment, in order to stabilize an eroding coastal bank. Work will take place on a coastal beach, coastal bank, coastal dune, land subject to coastal storm flowage and in the buffer zone. Construction access will be over the buffer zone, considered a resource area under the West Tisbury Wetlands Protection Bylaw. [An audiotape of this hearing is available for review.]

Tara Marden of the Woods Hole Group is the applicant's representative. The green return receipt cards for the notices to abutters were submitted. The DEP file number letter and the NHESP comment letter have been received.

The design for this project is a low profile sloping rock revetment. The design is based on engineering calculations using profiles prepared by Vineyard Land Surveying and Engineering. The engineering calculations were not submitted as part of the NOI but are available if the members want to see them. A grain size analysis was done from sediment samples taken at the site. The wind and wave data was collected from different sources by the engineer. The coastal processes at this site determined the size of the toe stones, the type of filter fabric and how deep to bury the toe stones.

Tara Marden then proceeded to address the following recommendations/comments from Steve McKenna of Coastal Zone Management who attended the December 3rd site visit. (A letter is to follow from Steve.)

- Revise the access so that it runs perpendicular to the beach.

A revised plan dated 12-10-09 has been submitted showing the construction access relocated to come in perpendicular to the shore creating a twelve (12) ft strip through the buffer zone rather than 120 feet long as originally proposed. A request of a wavier of the Bylaw provisions concerning work in the No-Disturbance Zone has been submitted.

Discussion of whether the work should be done from the top of the bank or from the beach. The issue is trying to avoid clearing the whole length of the top of the bank. Beach nourishment could be placed first and then the equipment could access the beach but it would be tricky.

There was some question about whether the applicant owns the lot next door at Map 39 Lot 10. Tara will confirm that the applicant is the owner of Map 39. If this is the case, the access way will be revised again to go over the bank where the driveway comes closest to the bank.

- Applicant should submit a written alternatives analysis.

A written alternatives analysis was not submitted. Tara said that the alternatives are beach nourishment, fiber rolls, rock revetment or do nothing. She does not think that fiber rolls are a good alternative as ice is a problem in the winter and fiber rolls are only good for 5 to 7 years. Because the toe of bank is often wet, fiber rolls would be constantly saturated and require yearly maintenance. Due to high water levels, erosion rates and constant maintenance fiber rolls are not suitable. Pictures from winter 2009 showing the icy conditions were reviewed. She agreed to submit a written alternatives analysis.

- Applicant should submit a proposal for beach nourishment. The 12-10-90 plan adds 275 linear feet at 0.18 cy/ft.

Tara said her client is not opposed to doing beach nourishment as mitigation. The amount of sand would be based on a calculation using an erosion rate of 2 ft per year x of the length of the bank x the height of the bank. This would give an accurate volume of sand that would replace what is being naturally lost from the bank. Beach nourishment was not included in the original NOI. Tara is waiting to hear from NHESP to see if they will permit beach nourishment which would occur in the spring. According to Wendy Culbert's habitat assessment for this property there are no Sea Beach Knotweed plants within the project site. The closest plant was found 400 ft. from the end of the proposed revetment.

- Delineate the coastal dune and revise the design to taper in to the coastal bank to lessen the impact on the coastal dune. Tara will ask Vineyard Land Surveying to do this.

(At this point in the hearing Hadden Blair arrived. Tara Marden recapped to bring him up to speed so that he would be able to participate in this hearing.)

- Status of the house.

Discussion centered on what the definition of "reconstruction" is under 310 CMR 10.30 (3) and whether this house was in fact entitled to have a revetment. A pre- 1978 house on this property was demolished in 1996 and a new house, including the foundation was built in its place. The new house is substantially larger than the pre-1978 house prompting members to question whether this was "reconstruction" or "new" construction. The 1996 building permit was for new construction. Tara Marden told the members that she had a conversation with the DEP southeast regional office and was told that their policy on this issue is that they would permit the revetment as the new house was not built closer to the shore line. In 1996 the house was slightly outside the 100 ft. buffer zone.

Maria confirmed that she had the same conversation with DEP; as long as there was a house on the property and a new house doesn't significantly encroaching upon the resource area more than the existing house was, they would allow the revetment.

Members also talked about the building code regulation that if renovations to a house increase the value of the building by more than 50% the house will be considered new construction.

The following points in the NOI were addressed by the Commission:

- Herring on Middle Point Cove. The Notice of Intent states that there is a herring run in this Cove based on a conversation Tara had with the Edgartown Shellfish Warden. The commission consulted with the West Tisbury Shellfish constable and Kent Healy on the Tisbury Great Pond commissioners. There is not a herring run in this cove.
- The NOI states that the pond is opened seasonally. In a paper written by Kent Healy on the Hydrology of the Tisbury Great Pond, (March 2009) a copy of the relevant section was given to Tara Marden. According to Kent's study, the pond is opened any time the water level of the pond is at 5 NGVD.

Hiring of a consultant:

Members reviewed two third party peer review proposals; one from LEC Environmental Consultants, Inc. and one from New England Environmental, Inc.

Tara asked what they would provide us with. Prudy explained that in this instance, the board does not feel it has the technical expertise to review the Notice of Intent without assistance. Tara expressed her reasons why she did not feel a third party peer review was necessary. Maria explained that the reason for hiring a consultant is to help the board with its decision. Maria read from Section 4 of the local bylaw regarding the circumstances under which the commission could ask the applicant to pay for a third party peer review.

Hadden said he was against hiring a consultant for the board and said he was sympathetic to the applicant and thought they have filed a competent application.

Dan said he has sat on the board for two revetment projects and thought we should hire a consultant. Judy agreed. Joanie was on the fence.

The Commission is trying to administer the Wetlands Protection Act and our bylaw and needs to make sure that this is the best design with the least impacts for the resource areas. Dan said he was worried that there might be some flaw that he can't see in the design that might not be seen for a year or two from now.

Tara asked the Commission about using CZM or Sea Grant. Maria explained that CZM will provide a letter of technical assistance but they do not help Commissions write and review Orders of Conditions.

The scope of work in the consultant's proposals were compared.

Joanie made a motion to hire a consultant. Judy seconded the motion. Hadden abstained. Judy, Joanie, Prudy and Dan voted in favor. A further motion was made to select LEC

Environmental as a consultant. After another brief discussion with the applicant's representative Prudy, Dan and Judy voted yes and Hadden voted no. Motion carried.

A motion was made and seconded that a request be made for access to counsel to get a legal opinion on the definition of reconstruction as set forth in Section 310CMR 10.30 (3). All in favor.

There were no comments from the public.

The next step is for Tara to revise the project plans to incorporate the changes suggested by CZM including changing the access, shortening the length of the revetment, beach nourishment, delineation of the coastal dune and a written alternatives analysis. The consultant will be asked to review and comment on the project plan after it is revised. Not on the original proposal submitted with the NOI.

A motion was made and seconded to continue the public hearing, with the applicant's representative's consent, to January 26, 2010 at 5:10 PM. All in favor.

Old Business:

Map 3 Lot 17.1 & 17.2/Goodwin/violations: Maria reported that Brooks Billingham was coming in to meet with her to go over the Enforcement Order and what needs to be on his plan.

Map 1 Lot 50/ SE-79- 270 /Sundin: Maria reported that the final as built plan came in. And that there is a deviation from the approved plan. Maria will call Leslie.

Administrative:

FY2011 Budget: After review a motion was made and seconded to approve the FY 2011 budget. All in favor.

Site Visits: Dan asked if we could change the time of site visits to 1:30. It was decided that site visits will be held on the first and third Thursday of each month leaving town hall at 1:15. We will revisit the site visit day when everyone is present.

Correspondence In: Copy of the MVC decision designating the Island Wind District as a DCPC.

There being no further business on the agenda, the meeting adjourned at 6:15 P.M.

Respectfully submitted,

Maria McFarland
Board Administrator
APPROVED