

**WEST TISBURY CONSERVATION COMMISSION
MINUTES OF MEETING**

December 14, 2010

Present: Prudy Burt Chair, Judy Crawford, Binnie Ravitch, Peter Rodegast, Tara Whiting and Maria McFarland

Absent: Joanie Ames

Also present for all or part of the meeting: Nora Nevin, Cheryl Lowe, Mark Bernard, Peggy Stone, Katharine Sterling, Benjamin Reeve, Matthew Dix and Glenn Hearn

Prudy Burt called the meeting to order at 5:02 P.M. [This meeting has been taped and is available for review. Due to a malfunction, only a portion of the meeting was recorded.]

There were no draft minutes for review.

Request for Determination of Applicability filed by the Park and Recreation Committee for the installation of snow fencing on the path to Lambert's Cove Beach located at **Map 3 Lot 91**. Cheryl, Mark and Peggy were present for the Park & Rec committee. The application is for 4 rows of staggered snow fencing, eight to ten feet apart, beginning near the top of the bluff and running along the mouth of the path opening and along the dunes.

The discussion covered the history of maintaining the dune using a Bobcat and snow fencing, the timing of doing such work and the cost. Park & Rec was given a copy of the Woods Hole Sea Grant publication entitled, "Coastal Dune Protection & Restoration", which details the proper way to install snow fencing and has an example of signage for educating the public about the importance of staying out of the dunes.

A letter from Sheriff's Meadow Foundation dated November 19, 2010 addressed to the Commission and read into the record, gives permission for this work as maintenance of the existing path under Paragraph III. B. 2 of the Conservation Restriction.

A motion was made and seconded to approve amending the Request for Determination to allow Park & Rec to have the dune lowered as soon as possible using a Bobcat. The snow fencing will be installed on the same day. After consulting with Dave Merry, the Bobcat operator, Park & Rec will come back to the Commission with the number of feet the dune will be lowered by. All in favor.

Conditions:

- A pre-construction site visit including the Bobcat operator, the fence installer, a representative of Sheriff's Meadow, members of Park & Rec and the Commission.
- A Bobcat may be used. No machine wider or taller than that which can travel down the current woodland access path shall be used. This is a one time approval for the use of a Bobcat.
- The sand displaced by the Bobcat shall be deposited on the seaward side of the dune.
- Best Management Practices shall be followed for installing the snow fencing and the signage.

A motion was made and seconded to approve these conditions. All in favor.

Peggy and Maria will coordinate the site visit.

Map 8 Lot 1/SE79-304: Public Hearing on a **Notice of Intent** filed by the Martha's Vineyard Land Bank for property located at 100 Buttonwood Farm Road. The proposed project includes the clearance and maintenance of approximately 500+/- linear feet of walking trail within the Buffer Zone and a 45' raised wooden boardwalk through a Bordering Vegetated Wetland on a trail easement over a section of **Map 8 Lot 1 owned by Katharine Parks Sterling**. The trail easement runs between the Land Banks' Wompesket Preserve and John Presbury Norton Farm properties.

Noted for the record were the following documents:

- Memo dated December 7, 2010 from Greg McGregor/MACC helpline/Re: Landowner permission.
- Legal Opinion from Hemenway & Barnes dated December 13, 2010 [opinion obtained by the Land Bank and addressed to the Commission].
- Legal Opinion from Perry, Hicks and Deshalies from 2006 case.
- Legal Opinion from Rackemann, Sawyer & Brewster from 2006 case.

Issues discussed:

- The MACC memo and the Hemenway & Barnes opinion were reviewed and discussed.
- The members reviewed 310 CMR 10.05 (4). If the applicant and the landowner are not the same, the applicant shall obtain written permission from the landowner prior to the filing of the Notice of Intent.
- 310 CMR 10.00 effective June 2009, defines "Landowner" as the owner of record of land or an interest in land that is subject to a Reviewable Decision. A "Reviewable Decision" is a "Mass DEP decision that is a superseding Order of Conditions etc.
- The dispute between the parties is over which version of the easement is valid.
- The applicant has asked the Commission to look at the project based on the original easement and that the Commission should act on the merits of the project.
- The property owner asked the Commission to look at the language of Greg's memo that says "absence evidence of a dispute" and the Commission does have evidence because the Board does know about the relocated easement.

Public Comment:

- Ben Reeve said that the easement has been relocated and that is where it is.
- Glenn Hearn asked the Commission to look at the Hemenway and Barnes opinion.

Comments from Commissioners:

Tara said that the definition of landowner allows the Commission to go forward.

Peter said it seems like the Commission should act on the application given the recent information. It is going to have to get settled elsewhere. Binnie agreed. Our job is simply to understand the impact a project may have on the wetlands and to protect the wetlands, It would be appropriate for the Commission to go forward with the current application and did not think going forward would prejudice in one way or another the outcome of any legal dispute between the parties.

Judy would have preferred to have taken what Greg called the boldest approach and not heard the application at all.

Prudy said she had been against approving the 2006 and is against approving this application.

Binnie asked if the Land Bank would proceed with the work if the NOI was approved but that the legal dispute was not settled. If there is an appeal, no work can begin. It would become an enforcement issue if work started during an appeal. Binnie asked that the Land Bank say that no work will be done until the legal dispute is resolved. It was agreed that this was beyond what the commission could require.

The members discussed the 2006 case in which Town Counsel provided the Commission with an opinion advising denial of the application.

The public hearing was closed. A motion was made and seconded to deny this project because the Notice of Intent is administratively incomplete due to the absence of prior written permission from the property owner. All in favor.

New Business:

Map 1 Lots 17 & 63/Kravetz and Map 12 Lot 5.12/Retik/ Tree Cutting Both of these properties have trees that the owners would like to remove. Maria did site visits with the property owner's representatives. RDA's will be required for both projects.

Administrative:

The Commission sadly accepted Judy's letter of resignation effective December 31st.

Non Resident Members: Discussion regarding appointing non-resident members on the Commission. Maria reported that there is no prohibition on non-resident members serving on appointed boards. Maria will call Nora Nevin to see if she is still interested in becoming a member.

Correspondence:

In: Memo received on December 7, 2010 from Greg McGregor/MACC helpline Re: Sterling Endofthedirtroad LLC: Bill from Rubin & Rudman for November
Legal Opinion from Hemenway & Barnes LLP dated December 13, 2010 re: Land Bank/Sterling

There being no further business the meeting adjourned at 6:40 PM.

Respectfully submitted,

Maria McFarland
Board Administrator
APPROVED