

NORWELL CONSERVATION COMMISSION

August 5, 2014 @ 7:00 PM - Room 112

MINUTES

ATTENDANCE: David Osborne, Marynel Wahl, Bill Grafton, Bob Woodill, Ron Mott and Lori Hillstrand.

Conservation Agent: Nancy Hemingway

AGENDA ACCEPTANCE:

Additions: None

Motion: Bob Woodill moved to accept the agenda.

Second: Ron Mott

In Favor: All

7:00PM:

COMMISSION BUSINESS

SCHEDULED DISCUSSIONS

- **Commission Priority Projects** – Nancy Hemingway said that starting in the fiscal year all priority projects must be compiled. All previous projects have been done, except for kiosks, have been done.
- **Land Management, Trails, etc. –**
Information provided by Nancy Hemingway on prevailing wages for Norwell contractors required for every project. David Osborne said Bob Woodill and Nancy Hemingway have gone through process of getting a contract - worked with Keith Walo (sp) and Jim Boudreau.
- **Jacobs Docks and Island Vandalism** — Bob Woodill is installing surveillance cameras. Safety lock and pins, designed by Ron Mott, are being fabricated at Kent Fabrication. Sign suggested to alert consequences of vandalism. Suggested sending postcards to residents near Jacobs Pond requesting assistance in watching and reporting vandalism.
Nancy Hemingway will draft a postcard for Commission approval.

SUB-COMMITTEE UPDATES

- **Open Space & Recreation**

Marynel Wahl said that there will be a meeting in Duxbury tomorrow evening. She will contact John Mariano regarding the mentioned termination of the Open Space & Recreation Committee. Bill Grafton spoke of the Lizzotte parcel on Stetson Road with Mr. Lizzotte. Conversation has been held – next step pending.

- **Pathways**
- **Trail/Signage** – Nancy Hemingway said that two people are now available to help, with a third available in Sept.
- **CPC** – Nancy Hemingway distributed a listing of grants given for use by the CPC.

MISCELLANEOUS

Bills: Jacobs pond \$5300 for treatment, Chessia Consulting \$1015, \$605 for Cytec dock plan, \$1630 – trail work, MACC - \$629, WB Mason - \$332.

Motion: Ron Mott moved to pay the bills.

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JP: Just to give you...if you're looking for information on _____ it goes back to 2000.

Bill Grafton: The original.

JP: Yeah, I've got stuff that goes back to 2012 on this stuff.

DO: Bob, do you want to say something?

RG: Sure, I have two questions: do you as the State Forester have a history of whether this property has ever been forested as a part of any type of a formal agricultural forests _____ plan. Do you get into that type of research?

JP: I don't know directly, but I can tell you that there are stone walls in there and stone walls are an indication that it was potentially cleared at one time, whether for animals or food crops or something. And, if you want to go way back, most of this area was cleared for agriculture.

DO: But under regulations, when it asks you to approve agricultural use...

JP: Or go under Chapter 61A usually will show the previous two years agricultural use. It's usually indicted by \$500 per year income from that property.

DO: Mr. Rodriguez's position here is, because it's growing trees and has been since we know, its agricultural use. I find that not conforming to the state law.

JP: Was in _____ and advisory, not a ruling, that by putting woodland under Chapter 61A which normally would grow an agricultural crop of after like 12 years of Christmas Trees maybe longer. At that time advisory stated that trees are putting on growth every year. That growth would be considered, at that time, towards income until they harvested. Because, you harvest trees about every 10-12 years some of them up to 80 years. Trees are increasing in value.

NH: That assumes that the land is already under Chapter 61A.

JP: Even with 61A you have to show the previous two years that you were under Agriculture showing that you have \$500 income from the first five acres of the property. Now that would be under 61A. That's not forestry cutting. I'm just stating a fact of how they deal with the Department of Revenue.

JR: The only real issue is that 61A is just a tax designation.

JP: _____ You get a current tax deduction based on what your current use is whether you're living in there as a household member, or you're growing crops.

NH: Could you say _____ chapter 61A.

JP: Current use law and the property are valued at what its current use is. Whether you're living there or you're growing Christmas trees.

LH: So then to show that the property has been in agricultural use you would need to show that it has also been 61A?

JP: That's not a requirement but that's what some people do. They put it under 61A and they've proven that during the last two years it was farmed.

JR: Is it not true that all you need for a 61A is a 10 acre piece of property and a management plan?

JP: No. 5 acre. Under 61A it's based on income and is 5 acres. Chapter 61 requires 10 acres and you have to have a certain percentage _____ and you have to have a certain amount of _____, and I have to approve it or not approve it.

DO: Anybody from the audience that wants to comment on this particular issue? I have asked Nancy to propose wording for a motion.

RG: You have choices here. Your choices are: if you don't believe you have enough information, you can take position then that you don't have enough information. If you have enough information you can issue a positive determination of applicability and direct the filing in an OOC. In which case Mr. Rodriguez can appeal to the DEP. Or you can issue a negative determination of applicability.

I would probably tell you that if you are considering a positive, that you probably make a pronouncement as a part of a positive as to the applicability of the _____ bylaw even though the filing is made under the Wetlands Protection Act.

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Still, it still would be appropriate for you to make a judgment as to whether that would implicate that anyway. It won't have any bearing on a DEP process but it would be your judgment.

DO: But in the motion we mention that it does not comply with the local....

RG: If that is the way you handle things. So, I think it's denial on the basis of a lack of information in which case you are going to have to elaborate what information it is that you don't have in which case there'll be an appeal, probably. If you issue a positive determination it sounds to me that Mr. Rodriguez is likely to appeal. If you issue a negative determination, he'd be very satisfied.

LH: Do we have any role in a DEP appeal?

RG: Yes. You're an interested party.

BG: Do you feel that some of this cutting is going to affect the wetlands in an adverse way?

NH: I absolutely do. I feel this pruning and thinning will obliterate all vegetation in the wetland.

BG: Let's go back. Do you think it will have an adverse effect in the lawn or the surrounding wetlands?

NH: My recommendation holds.

BG: Mr. Shute wants to know that. It's our obligation.

BW: The same would be true when these trees are harvested. So whatever scrub comes up within those 10 years, allegedly, those trees would be whipped out again.

NH: Mr. Rodriguez has the opportunity to bring it to the DEP and Joe Perry. That hasn't been done. It could be denied or approved there.

JR: Again, the issue really is the land and agricultural issue. Because under the Norwell bylaw, land and agricultural use is exempt under the local bylaw.

NH: If it was in agricultural use as of the date of the adoption of that bylaw which was 2002 and this land wasn't in agricultural use at that time.

JR: That's where we differ. This is for a determination only under the state?

NH: This was only filed under the state act. It wasn't filed under the wetland protection act.

BG: do you still feel that this has an adverse effect on the lawn and the surrounding wetlands?

NH: I believe that but I think it's a decision that the Commission has to make.

BG: Well if the Commission thinks that then that's the issue for _____. We only care about the issue of the wetlands component of it.

DO: If you decide on a positive determination, I'll ask Nancy for guidance on the motion.

BG: So we're not going to rule on the bylaw here?

NH: Yes, you can.

RG: A part of that determination implicates the regulations that apply. You can make a determination that the area of work described in the plan _____ the review and approval under the local bylaw. And he could challenge that decision.

BG: That's good. No?

RG: That's part of a positive determination under the bylaw.

BG: Sometimes we do specific sections like 2B or whatever. Would that be something that's appropriate under the bylaw and specific sections that apply here, positive and the WPA, negative. Right, Nancy?

RG: I think your first question that you need to determine is whether the area described in the plan is subject to protection under the act. You have to think of that in a positive or negative way and these are _____. So that's the first question you have to answer. The second question - are the boundary lines of the resource area, shown on the plan, confirmed or not confirmed by the determination you make. Then you have to determine whether the work described on the plan is within an area subject to protection _____ for the removal of fill. Then you have the option of making the determination if work there is subject to regulation under our local bylaw. That's a standard form type _____.

NH: Would it help to go through each one of these components _____?

BG: I'm wondering now if we can close and then....

RG: Close the public portion of the meeting?

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BG: Yeah, and then issue the determination more specifically. Because there's a lot to be dealt with here and Mr. Rodriguez wants it right too. Everybody wants it right.

NH: I would recommend that that all be done tonight because you're at a timeline.

MW: Are we separating the forestry plan from the crossing?

NH: The forestry plan is separate from the crossing.

MW: We can determine what crossing he can have?

NH: No. Even the crossing for the forestry plan according to the Joe Perry submitted in May of 2014 states that the crossing is subject to Norwell bylaw but approved as the access for the forest cutting plan.

MW: So the one in red....?

NH: Yes. The one in red was the denied access and the one in blue is the approved access.

MW: So right now, blue is approved and we're looking at the forestry plan?

RM: No. We didn't approve the blue one yet.

NH: There's three different access points around the cemetery and the cart path wraps around the cemetery. So it's a little bigger than the actual _____. There are two forms here. That is the forest cutting plan requested, recommended and required access point. That's not the subject of the _____.

DO: Would it be proper to ask Nancy for wording on a motion.

BG: So, why don't you sketch out the positive determination under the town bylaw?

RG: It should be under the act.

BG: Okay. Are we going to do the town bylaw?

NH: I will read to the determination form and you can make the decision on each of the items.

RG: You know the criteria that you're voting on are the same under a positive or a negative. Yes or No.

You have to ask yourselves, is the area described in the request subject to protection under the act. That's your first question. If you say no, you move onto the next question. If you say yes, you still move on to the next question. Because there's _____ that's relative to the determination.

BG: So we did negative under the act because the bylaw is stronger and put positive under the bylaw.

RG: Mr. Rodriguez is correct. He does not need a filing under the bylaw because he's claiming exempt. He needs a determination under the act alone.

NH: Which does not exempt him from the bylaw?

BG: I guess we should figure out the motion but I think the language is going to have an adverse effect on the land and surrounding wetland. It is an important component.

NH: Let me read through the list of items and you can vote and you can turn these individual items into a motion.

- 1) The area described in the wetland plan is and area subject to protection under the act and the hearing requires the following of a motion _____.

RG: It's a Yes or a No. A "no" then that's part of the determination you've made.

DO: I can do a poll if you wish.

RG: it would be a motion to close the public hearing and then begin deliberating.

Motion: Bill Grafton moved to close the public portion of the hearing on Mount Blue, Lot 17.

Second: Ron Mott **In Favor:** All

All Commission members were polled for following questions:

- 1 - Is the area described on the plan subject to protection under the act?
Answer: Yes - All.
- 2A - Are you confirming that the boundary lines of the resource areas are accurate.
delineation is not approved.
Answer: 2A - No - All / 2B - Yes - All.

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- 3 – Did the work described in the plan and documents within the area subject to protection under the act and will remove fill, dredge, or alter that area.
Answer: Yes - All.
- 4 - The work described in the plan and document in a buffer zone and hopefully will alter an area subject to protection under the act.
No finding needed.
- 5 – On a standard form determination is the area and/or work described in the plan subject to review under the town bylaw.
Answer: Abstain – 1, Yes – 5.

Attorney Galvin then read a motion to be adopted by the Commission.

The motion would be to make a positive determination of applicability based on finding that the area on the plan is subject to protection under the act. The boundary delineations of the resource area described in the plan are not accurate. Based on the findings of the resource areas are not confirmed by the determination. Based on the determination that the work described in the plans and documents is within an area subject to protection under the act and will remove fill, dredge or alter that area. Based on the findings that the area and/or work described in the plan and documents is also subject to review and approval by the Commission under the local wetland bylaw and the regulations with the additional reasons that the agent stated exclusive of the vernal pool and the past history of the property. And the addition of Mr. Grafton's comments that there be an adverse impact on the residual stand of trees by the proposed thinning and pruning effort.

Motion: Bill Grafton recommends that we make a positive determination under the act for Mount Blue Street/Lot 17/NCC#17(14) for thinning and pruning in a wetland area and adopting the findings and conditions that were presented by Town Counsel.

Second: Ron Mott

In Favor: All

42 Parker Street / SE52-1028 & NCC# 21(13) / Septic Repair **COC**

Applicant: James & Elaine Regan / **Representative:** Darren Grady, Grady Consulting

Discussion: Nancy Hemingway said that this is a title 5 septic upgrade. She recommends catch basins are cleaned and having silt socks removed and approving the COC.

Motion: Bill Grafton moved to issue a COC. Not to be released until the catch basins are uncovered and cleaned.

Second: Ron Mott

In Favor: All

302 Summer Street / SE52-998 & NCC#11(12) / Single Family Home and Related **COC**

Applicant: Representative: Richard Murphy /

Discussion: Nancy Hemingway said that she and the applicant couldn't find more than 50% of the plants listed. He is having the nursery come back and replant.

Motion: Bob Woodill moved to continue 302 Summer Street to the next meeting of September 2, 2014.

Second: Ron Mott

In Favor: All

Chittenden Landing / SE52-???? & NCC# 1(14) / Dock replacement and modification **NOT (cont.)**

Applicant: Norwell Conservation Commission // **Representative:** David Osborne

Discussion: Pre-hearing information: David Osborne said that there is a proposal and the price has increased from \$11k to \$15k.

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Nancy Hemingway said that there are four different permits to be obtained. Dave Hill has reviewed the crossing at Coffey Lane and made suggestions for dock placements; 2 places on Jacob's Island and 2 on Assinippi. A determination is requested from the residents.

Ralph Gordon – Replace a dock that was inappropriate and it is an important upgrade.

Betsy Gordon – Agrees with the new dock and appreciates the time spent.

Cindy Bailey – She looked at the original and subsequent plan – definitely an improvement and will replace an unsafe dock. Her concern was that the original plan was grossly inadequate and there have been improvements made. Her question is concerning placement of the dock relative to the river under low tide. Not addressed in the current plan. First plan had ramp perfectly aligned to the steps and wants to know why that was rejected.

Ron Mott said that the plan was submitted to the neighborhood was rejected since they wanted to stay within the current footprint.

Betsey Gordon answered that there were two reasons – keep it more tucked to the bank for protection and the closeness to their property.

Ron Mott said that the current plan with the handrail where it is would be a deterrent to fishing in the marsh and would offer launching of kayaks and canoes.

Motion: Bob Woodill moved to adopt the current plan for the dock replacement and modification on Chittenden Lane and submit an NOI and the appropriate paperwork necessary for the required plans.

Second: Bill Grafton

In Favor: All

29 Prospect Street / NCC# 22(14) / Encroachment & Yard work (After-the-Fact) RDA / DOA

Applicant/Representative: Harry Merritt

Discussion: Nancy Hemingway said that we are waiting for John Merritt before taking the site visit.

Motion: Ron Mott moved to continue 29 Prospect Street.

Second: Lori Hillstrand

In Favor: All

Cordwainer Drive (Bl. 17, Lot 87) / NCC# 24(14) / Wetland Delineation RDA / DOA

Applicant: Dale Valicenti / Representative: Carmen Hudson, Cavanaro Consulting

Present: John Cavanaro, Dale Valicenti and John Zimmer, South River Environmental.

Discussion: Nancy Hemingway sent large plans and a smaller version that shows the RDA.

John Cavanaro said that it's a vacant 3-acre lot and last remaining vacant business lot. Original subdivision was done by DSC and has remained the same as 1985. Test pit, witness by BOH rep, were discussed. The wetland was delineated but outdated. There was evidence of hydric soils. The test pit was from 1985.

Nancy Hemingway asked that the plan be revised. Past plans and permits were not on file and were requested by the agent.

Motion: Bob Woodill moved to issue a negative determination with a positive 2A for the BVW, positive 5 of area subject to review by the Conservation Commission and a negative 3 with part of the area in the buffer zone.

Second: Ron Mott

In Favor: All

37 Ford's Crossing / SE52-??? & NCC# 25(14) / Deck Construction & Landscaping NOI/ OOC

Applicant: Ben LaMora / Representative: N/A

Present: Ben LaMora - contractor.

Discussion: Ben LaMora explained the property and proposed construction and Landscaping. Bill Grafton asked to see the plan. Nancy Hemingway said that there is no DEP number and cannot be closed without this number. David Osborne would like to see a larger plan with lines, contours and a planting plan for the conversion of a lawn area back to the original condition.

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Motion: Bill Grafton moved to continue this hearing.

Second: Lori Hillstrand

In Favor: All

16 Circuit Street / SE52- ??? & NCC# 23(14) / Landscaping & Construction of Stone Wall
(After-the-Fact) NOI/OOC

Applicant: Kevin McKinnon / **Representative:** Brad Holmes, ECR

Present: Brad Holmes

Discussion: Brad Holmes said that this is a NOI for an after-the-fact construction of a stone wall. There was a stop work order issued. The owner was going from a stone wall to a landscaped wall. There were 2-3 dead trees removed. DEP findings were discussed. Nancy Hemingway presented Mr. Holmes with a plan showing an isolated wetland on the site. She discussed the historical facts of this property and the 2002 plans showing the limit of work. Nancy Hemingway said that more evidence and proof is required since there is estimated habitat impact. Continuation and a site visit were recommended. The landowner's presence was requested at the 9/2/14 meeting.

Motion: Bob Woodill moved that we continue 16 Circuit Street/SE52.

Second: Bill Grafton

In Favor: All

Mill Lane (Torrey Pond Dam) / SE52-1057 & NCC# 26(14) / Dam Repairs & Improvements
NOI / OOC

Applicant: Julie Bennett / **Representative:** J. Matthew Bellisle, Pare Corporation

Present: Matthew Bellisle, Lauren Hastings and Julie Bennett

Discussion: Matthew Bellisle explained the project. The owner found a need for a dam which was identified by sink holes on the property. They're proposing an open cut removal of old pipe in the embankment. There'll be a concrete cradle installed. The surface will be restored by contractors. Lauren Hastings discussed resource areas and delineation. Nancy Hemingway said a continuation is required since there has been no communication from Natural Heritage.

Motion: Bob Woodill moved to continue Mill Lane (Torrey Pond Dam).

Second: Ron Mott

In Favor: All

ENFORCEMENT / VIOLATION HEARINGS and DISCUSSIONS:

A summary of sites and progress will be included in the agent's notes to the Commission.

282 Lincoln – Nancy Hemingway said that they started to remove fill. They'd like this reviewed by Bob Woodill and David Osborne.

59 Pond Street – Nancy Hemingway sent an email. A number of new violations were mentioned.
Old Oaken Bucket

SCIENCE AND REGULATION IN THE NEWS
EDUCATION AND TRAINING OPPORTUNITIES

And other such matters that may be pending before the Commission

ADJOURNMENT:

Motion: Bill Woodill moved to adjourn.

Second: Lori Hillstrand

In Favor: All

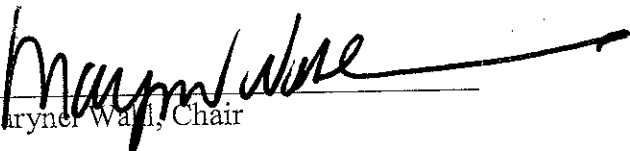
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I hereby certify that the above minutes were presented and voted by a majority vote by the Norwell Conservation Commission on September 16, 2014


Marynne Walsh, Chair

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