

Present: Chairman DeeDee Holt (left at 6 PM) Paul Chamberlin, Bob Lear, Carol Scott, John Geiger, Steve Kuzma, Associates Jackie Meaney and Stephanie Hamilton, Conservation Agent Kristin Andres and Secretary Mary Fougere.

Absent: Commissioner Billie Bates

The Chair announced that the meeting was audiotaped; when queried, no one in the audience would be audio recording as well.

497 Orleans Road, Frost Fish Hill Nominee Trust, William Marsh – applicant, SE 10-2757: The hearing was opened for a Notice of Intent (NOI) for the proposes maintenance of existing landscape berm plantings, seed and mulch; proposed restoration of 100yr Coastal Flood Plain and proposed maintenance of other site work at 497 Orleans Rd. William Riley, Esq and Don Poyant of Eastward Companies represented the applicant.

Document for referral:

- ❖ Existing Conditions Site Plan, dated 10/26/2011, prepared by Clark Engineering
- ❖ All other Documents submitted to file to date

Per Mr Riley, the following work has been completed and areas of work are shown on the new site plan:

- The 11-ft contour has been restored
- The erosion control matting is in place
- Additional asphalt has been removed, gravel has been installed

Commissioner Lear noted that the in looking at the spot elevations of 9.2, 9.5 and 9.7 on the applicant's site, and the road elevation of 8.4 ft, there appears to be an area where stormwater could be retained. Mr Riley stated that the engineer advised against connecting the berms. Ms Andres noted that stormwater management has always been a problem on this stretch of road; Mass Highway is aware of the problem. There was discussion during the hearing process concerning the connection of the berms to keep additional stormwater away from Frost Fish Creek.

It was moved, seconded and unanimously voted to close the hearing.

497 Orleans Road, Frost Fish Hill Nominee Trust, William Marsh:

Mr Riley asked the Commission to re-consider the amount of money that has been issued in fines since September 2, He stated that it seemed appropriate to rescind all but the single ticket that the applicant has paid. Currently, the fines have accumulated to \$14,100.

Although the original work had not been completed according to plan, he asserted the following:

- ❖ The violation on this site is not as egregious or destructive as other violations. For this violation, the Commission could treat this violation as a new category.
- ❖ Although Eastward was slow to comply, Mr Marsh never implied that the Commission was being unreasonable in the issuance of the Enforcement Order
- ❖ The area of work was not pristine wildlife habitat or a thickly vegetated area; there was never any threat to wetland areas. The work was completed to beautify the property since it was sparsely vegetated and full of weeds.
- ❖ The applicant has already paid the original fine issued for missing the deadline of August 24, 2011 for the completion of work

A timeline detailing the specifics of the violation was prepared by the Agent; at the request of Commissioner Scott, the Chair read portions of the document into the record.

Individually, the Commissioners **commented on the request by Mr Riley.** **Commissioner DeeDee Holt** – There are two issues to consider with respect to the fines, one is the duration and the other is the vote that the Commission took on September 21 to issue the tickets. There may be justification to reduce the ticket amount; she was willing to compromise on the fine but had to consider the amount of staff time and Commission time that was expended.

The Chair expressed that she thought there may be room to compromise, she stated that she would be in favor of a daily fine but perhaps less money/day.

Commissioner Chamberlin- When the Commission issues fines, it does so for two reasons. The daily fine is a tool to force a property owner into compliance, generally after a violation is discovered and plans have been discussed to rectify the violation. Fining is a tool that can also be used for punitive reasons, generally for repeat offenders or when the violation is particularly egregious.

An important aspect to note is the amount of staff time spent on this violation, In this case the time has been substantial and has gone on for 5 months during which The Agent had to spend time reviewing the matter, going to on-sites, writing letters, etc The taxpayer has paid for this time rendered because of failings by the applicant to meet deadlines, follow plans etc. For this reason, he feels that a portion of the fine should stand.

The daily fines were issued to force compliance to execute the plan, this work has been accomplished and he was willing to forgive the daily fines. However there were 5 deadlines shown in the timeline that the applicant did not meet, this could be reconciled by a fine for each missed deadline. He suggested a fine of \$1500.00.

Commissioner Kuzma- Stated that the project had gone on for so long , there was a failure to comply and that the applicant was familiar with work on this site and what was required as early as May 2010. He felt that the fines should stand since the situation was due to the applicant's own making. .

Commissioner Lear- noted that most of the missed deadlines occurred prior to September 2, 2011, he was unclear as to the reason for the daily fines.

Commissioner Geiger objected to Mr Riley's statement that the violation should be considered as a "new category" and assumes that he meant that there is a difference between violations that occur in the resource areas vs the this violation which occurred in the Flood Plain the delineation of which is hard to see in the field. This was a wetlands violation committed by a repeat offender, there is no documentation that assigns value to wetland types.

The original violation was based on an RDA decision that was not followed. He favored a compromise.

It was moved and seconded to reduce the fine from 300.00/day to 150.00/day for the period beginning Sept 2, 2011 to October 25, 2011, totaling \$7950.00. The vote was 4 in favor of the motion, 2 opposed.

20 Davids Lane, Brickman & Chatham Conservation Foundation: Edson Eldredge of North Chatham Landscape was present in response to a violation involving the clearing, loaming & seeding and installation of an irrigation system on property owned by the Chatham Conservation Foundation. Charles "Tony" Murphy and Bob Abbott represented the Foundation.

Ms Andres summarized the events leading to the discovery of the violation and the subsequent events. A timeline prepared by The Agent, dated October 26, 2011 was distributed. An NOI had been filed in 2003 for the construction of a dwelling. The limit of work for that project was shown as a haybale line on the plan and was located on the property line. The property line was re- staked by Terry Eldredge on October 25, 2011. There are two BVWs flanking two sides of the property on 20 David's, on the seaward side. The Foundation property is on the seaward side of the Brickman property. Mr Brickman maintains that he has a view easement over the Foundation property.

MS Andres received calls from David Doherty and Charles Murphy after they had discovered the violation as well as a call from Edson, who also reported the violation. Photographs of the existing site conditions taken by The Agent were circulated to the Commissioners.

Mr Murphy, Chairman of the Land Management Committee of the Foundation addressed the Commission. Ownership of the pathway along the water was clarified. It was noted that Mr Brickman's kayak rack is on the adjacent Weber property. Mr Murphy verified that the Foundation holds a Conservation Restriction on the Weber property.

Mr Murphy also verified that Edson Eldredge has been straightforward in his admission that he did all the work for Mr Brickman, however the situation must be corrected up to the property line. Mr Eldredge stated that he has annually mowed the meadow/lawn area for approximately 5 years, most recently last week. .

The Commission agreed that the Staff Recommendations for Commission Action as listed in the October 26, 2011 letter/timeline should be followed. Additionally, Commissioner Scott added that the the Brickmans should install fencing along the property line. **It was moved, seconded and unanimously voted to issue an Enforcement Order. An Enforcement Order was signed; the Commission expected a restoration sketch plan, an invasive monitoring plan, copy of the easement on the Foundation land for Brickman and a copy of the Conservation Restriction held by the Foundation on the Weber Property.**

It was moved, seconded and unanimously voted for the Brickmans to remove the Kayak rack from the Weber property. Additionally, a copy of the easement must be provided to the Commission.

It was moved and seconded to fine both Mr Brickman and Mr Eldredge in the amount of \$ 300.00 each. The vote was 5 opposed to the motion and 1 in favor. **Motion denied.**

It was moved and seconded to assume 12 mows were completed since 2005 and that a fine of \$300.00 be imposed reflecting 12 mowings, for a total of \$3600.00. Futher, that the fine be split evenly between Mr Brickman and Mr Eldredge. The vote was unanimous in favor of the motion.

Turtles of Goose Pond: Naturalist, Susan Bauer, presented a narrated slide show on the life and habits of freshwater turtles in Goose Pond and Schoolhouse Pond in Chatham. The resource areas under ponds is home to a few species of turtles who feed on the algae and weed mats under water.

As a naturalist, Ms Bauer has conducted countless underwater explorations in various ponds and is well versed in turtle habits.

87 Squanto Drive, Dousa, SE 10- 2556: The Commission drafted additional Special Conditions at the table. It was moved, seconded and unanimously voted to approve the pruning work and removal of bittersweet at 87 Squanto Drive. **An Order of Conditions was signed.**

184 Eastward Rd, Neil & Sandra Kessner, SE 10-2758: A draft Order of Conditions was reviewed. It was moved, seconded and unanimously voted to approve the project shown on the Ryder & Wilcox, Inc plan dated October 5, 2011 for the project at 184 Esstward Road. **An Order of Conditions was signed.**

Sears Point, Clare & Hilary Bovey, The Bovey Nominee Trust, SE 10-2755:A draft Order was reviewed for the project to relocate the driveway and shed at Sears Point. The work is shown on the Eldredge Surveying & Engineering LLC plan dated 9/12/2011. **It was moved, seconded and unanimously voted to approve the project; an Order was signed.**

The following projects were approved under an Administrative Review:

- **Main Street, Chatham Beach & Tennis Club:** Second story roof work. Commissioners Bob Lean and John Geiger reminded the Commission of their membership to the Club, documentation of their membership on file at the Town Clerk's office. **Unanimous approval.**
- **36 Sears Point Rd, The Bovey Nominee Trust:** "After the fact" filing for tree removal. Plan provided. **Unanimous approval.**
- **34 Nickerson Ln, Sears:** Planting trees, Contractor George Malone will be doing the work. **Unanimous approval.**
- **657 Fox Hill Road-** Planting, contractor Countryside Landscaping. **Unanimous approval.**

87 Battlefield Road, Shakin: An Administrative Review application was reviewed for the creation of a pathway at 87 Battlefield Rd. Tidal Henry, Schumacher Landscape Co, contractor. There is an open Order of Conditions under SE 10-2610. **It was moved, seconded and unanimously voted to have the applicant file an Amended Order.**

Certificates of Compliance were signed for the following projects:

- 4 Port View Rd, SE 10-2539, Piper Realty Trust
- 44 Cedar Street, SE 10-2545 and CWP 01-05, Tishman- 2 Certificates
- Battlefield Rd & 35 & 43 Sears Rd, SE 10-2499-3 Certificates
- 110 Old Salt Works Rd, SE 10-2582, Goodrich Chatham Realty Tr
- Lot 1 Crows Pond Rd, SE 10-1444, Japowitz

- Lot T-3 Crows Pond Rd, SE 10-1480, Japowitz
- 20 Shore Road, SE 10-2593, Pinkert
- 175 Balfour Ln, SE 10-2631, Lubber & Stein
- Sears Point Rd, SE 10-2724, Bovey
- 85 Capris Lane, SE 10-, Lenihan

Approval of Minutes: The Minutes of May 4 & May 11, 2011 were approved as amended at the table. The minutes of May 18, 2011 were approved as written.

Discussion: The Commissioners talked about future agenda items and issues that should be addressed by the Commission.

- Review of the current regulations with revision of the regulations as a goal
- Issuance of fines
- Ways to shorten the agenda

Adjourn: It was moved, seconded and unanimously voted to adjourn the meeting at 6:30 PM.

Respectfully submitted,
Mary Fougere, Secretary