

On 2/6/2020, on a motion by Commissioner Durkin, seconded by Commissioner Bishop, the Commission voted unanimously, 6-0, to approve these minutes as presented.

## CONSERVATION COMMISSION MEETING MINUTES

January 16, 2020

**Members Present:** Rick Bishop (Chairman) Tom Durkin (vice Chairman), Patricia Mulhearn, Ellie Lawrence, Phil Johnston, Paul Huggins, Ed Hoopes

**Member(s) Absent:**

Staff: Kelly Grant – Conservation Administrator (CA)

Start Time: 6.30pm

YARMOUTH TOWN CLERK  
20FEB13 PM 2:30 REC

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Commissioner Lawrence recused herself from the following two items.

### **Request for Certificate of Compliance:**

**SE83-62**, Bass River Yacht Club, Inc., **22 Frothingham Way**, South Yarmouth. Attorney Matthew Fitzsimmons represented the applicant and presented the request. The work being completed per the Order of Conditions, Commissioner Durkin made a motion to issue a Certificate of Compliance. The motion was seconded by Commissioner Hoopes. The motion carried unanimously.

### **Request for Determination of Applicability:**

Bass River Yacht Club, Inc., **22 Frothingham Way**, South Yarmouth, proposed repair and rebuild of foundation within the riverfront area of Bass River. Mr. Matthew Fitzsimmons represented the applicant and presented the proposed work. Most of the work shall be completed from the interior of the building. The work area and staging area will be fenced in with sediment control fencing. They will also complete the planting of the beach grass along the top of the bulkhead. A sand vacuum will be used as a first choice for the removal of sediment under the building. Commissioner Durkin requested notification to the CA should any modification to the plan occur. Commissioner Hoopes made a motion to issue a Negative 3 determination. The motion was seconded by Commissioner Durkin. The motion carried unanimously.

Edward & Arlene Lynch, **42 Acres Avenue**, West Yarmouth, proposed addition within land subject to coastal storm flowage. Mr. Mark Flaherty of Flaherty & Stefani, Inc., represented the applicant and presented the proposed work. Also present was builder Mr. John Duggan. Commissioner Lawrence made a motion to issue a Negative 2 determination. The motion was seconded by Commissioner Huggins. The motion carried unanimously.

Capewide Construction, Inc., **194 Berry Avenue**, West Yarmouth, proposed foundation repair or replacement, and renovations within land subject to coastal storm flowage and the buffer zone to a coastal bank. Mr. Dan Ojala of Down Cape Engineering represented the applicant and presented the proposed work. Sediment removed will be trucked off site. Roof drains and drywells will be replaced. Home owner Ms. Joan White addressed the Commission and commented the request for certificate of compliance for the revetment project will be filed in the next month. Commissioner Durkin made a motion to issue a negative 2 and 3 determination. The motion was seconded by Commissioner Hoopes. The motion carried unanimously.

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**Notice of Intent:**

**SE83-2216**, Brian Serpone, **148 Wendward Way**, West Yarmouth, proposed upgrade of septic system, deck replacement, and foundation repair in the buffer zone to an isolated wetland. Mr. Robin Wilcox of Sweetser Engineering represented the applicant and presented the proposed work. Commissioner Hoopes asked what the plans are for the back yard. He suggests some native plantings. Commissioner Lawrence asked about the retaining wall. Mr. Wilcox responded that the wall is relatively new, along with the fill and will be removed as a part of the project. Commissioner Lawrence expressed concern about the impact of changing the gradient on runoff. Commissioner Durkin commented that approving a replacement rather than a repair will limit the contractor's options. The CA recommended restoration plantings from 10 feet off the house to the existing vegetation with native plantings. Commissioner Lawrence made a motion to issue an Order of Conditions approving the project with the following conditions: 1-13, 15, 17, 30, 31, 32, (native plantings 10 feet off the structure in any disturbed areas), 37, and the deck cannot be enclosed for future habitation. The motion was seconded by Commissioner Mulhearn. The motion carries unanimously.

Commissioner Hoopes recused himself from the following item as he was not at the previous meeting.

**SE83-2214**, *Continued from 12/19/2019*, Lance & Pamela Willsey, **27 Aunt Edith's Road**, South Yarmouth, proposed landscape improvements within the buffer zone to a coastal bank, land subject to coastal storm flowage, and riverfront area. Mr. Brad Holmes of Environmental Consulting represented the applicant and presented the proposed work. The 35 and 50 foot setbacks were added to the plan and additional mitigation plantings were added. The site was staked. Commissioner Bishop commented that the Commission will need to address the stone patio and fire pit that was completed without a permit. Mr. Holmes responded that the previous permit allowed a wood deck on the coastal bank. The stone patio was build landward of the coastal bank. Commission Huggins had concerns with the extent of the lawn walkway. Commissioner Lawrence suggested the lawn walkway could be reduced in size and still allow access. The patio is also of concern and the steps from it appear to be in poor condition. The CA commented that the patio is outside the 35 foot setback but the walkway is within the setback and the mitigation is required to enable a variance. She suggested a condition that the salt marsh be left to regrow and there be no further disturbance in the future. She commented that the plantings are largely replacing existing landscaping with some expanded areas. The CA suggested the lawn walkway be reduced in width. Commissioner Bishop commented that the gas fire pit could remain if the walkway was reduced in size. Mr. Holmes responded that the association has easement rights and they did not want to cause access concerns. Commissioner Durkin made a motion to issue an Order of Conditions approving the project with the following conditions: 1-6, 7, 8, 10, 11, 12, 13, 29, 31, 32, no further disturbance of salt marsh, 37, and MassDEP condition:

*310 CMR 10.58(5)(g) prohibits further alteration within the mitigation area, except as may be required to maintain the area in its restored or mitigated condition. Prior to requesting the issuance of the Certificate of Compliance, the applicant shall demonstrate the mitigation has been successfully completed for at least two growing seasons.*

The motion was seconded by Commissioner Lawrence. The motion carried unanimously.

**Request for an Amended Order of Conditions:**

**SE83-2125**, Robert & Marianna Giglio, **44 Mattachee Road**, West Yarmouth. Mr. Dan Ojala and Mr. Giglio were present and presented the changes to the plan. The Request for Amendment was a result of an Enforcement Order due to the violation of an Order of Conditions. Mr. Ojala

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commented that changes in the building code required that the design be changed. The retaining wall added at the back has levelled the lot and will allow more rainfall to be infiltrated. The driveway was changed from a horseshoe to a "straight in" design. A Cape Cod berm and a trench drain has been added to the plan to capture runoff from the driveway. The neighbors' concerns with runoff are due to naturally high and recently record high groundwater conditions. The lowest elevation at the site is about 5 feet and the adjusted groundwater is at 4 feet, so groundwater is very close to the ground level. Residents with a basement and a sump pump will experience higher levels of groundwater in their basement. Mr. Giglio confirmed that he has experience of the neighbor's basement flooding over many years when he went to turn their water and sump pump on each season. Mr. Ojala commented that they would add wattles while the site stabilizes. Roof runoff is being captured and infiltrated. Commissioner Hoopes commented that the revised plan made sense. The high groundwater issue is unfortunate. Commissioner Huggins clarified that there was a violation because the Order was not followed. He asked whether it was necessary for the driveway to be all paved and very thick. Mr. Giglio responded that when the paved driveway was put in he asked the contractor to put in a Cape Cod berm on each side. The contractor instead lifted the side of the driveway up 6 inches to pitch it toward the inner part of the driveway. Commissioner Huggins asked if a non-permeable driveway is the best solution. Mr. Ojala responded that a permeable driveway would have infiltrated more runoff to groundwater. The paved driveway will instead drain to a strip drain that will infiltrate to a dry well. Commissioner Durkin asked for clarification from the CA as to whether a plan has been provided that certifies that runoff will be retained on site. Mr. Ojala confirmed that he could provide this. It can be added as a note on the plan now and certification can be provided in a letter when the work is completed. Mr. Giglio commented that when the retaining wall was built a drywell and 20 inches of stone was added first so that any water would infiltrate before it leaving the property and so water won't build up behind the wall. Commissioner Durkin suggested continuing the hearing to allow the updates to the plan to be made. Commissioner Lawrence expressed concern that the substantial changes to the plan were not presented to the Commission at the time. The Chairman read a letter from Mr. Peter Conley with a concern over the property line. The Chairman commented that a property line dispute is a civil matter and will not be addressed by the Commission. Attorney James O'Brien acting for the abutter at 50 Mattachee Road addressed the Commission. He expressed the neighbor's concern that improvements to the land were done in violation of the Order of Conditions. They have not had the opportunity to review the revised plan. He commented that his client has owned the property since 1995. He commented that water runoff from the property has been unreasonable and has been carried out under a violation. He asked to provide photos to the Commission. The Chairman responded that the photos could be given to the CA for review and distribution, as the hearing was to be continued. Commissioner Durkin made a motion to continue the hearing until February 6<sup>th</sup> 2020 to allow the abutter to review the plans and for Mr. Ojala to provide an updated plan. The motion was seconded by Commissioner Hoopes. The motion carried unanimously.

**Request for Approval of an Updated Plan:**

Shari Lopilato, **75 Sullivan Road**, West Yarmouth. Shari and Steve Lopilato addressed the commission and presented the proposed changes to the plan. Commissioner Lawrence made a motion to approve the updated plan. The motion was seconded by Commissioner Huggins. The motion carried unanimously.

**Request for Certificate of Compliance:**

**SE83-2105**, David Tagliavini, **126 Breezy Point Road**, South Yarmouth. The work being completed per the Order of Conditions, Commissioner Hoopes made a motion to issue a

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Certificate of Compliance. The motion was seconded by Commissioner Durkin. The motion carries unanimously.

**SE83-1909**, Richard Bishop, **17 Point of Rocks Road**, Yarmouth Port. Mr. Rick Bishop and Mary-Ann Agresti presented the request. The work being completed per the Order of Conditions, Commissioner Lawrence made a motion to issue a Certificate of Compliance. The motion was seconded by Commissioner Hoopes. The motion carries unanimously.

**Meeting Minutes:**

December 19, 2019. Commissioner Durkin made a motion to approve the minutes as written. The motion was seconded by Commissioner Lawrence. The motion carried unanimously.

**New Business**

MACC Conference - The Conference is February 29, 2020. Commissioner Bishop and Hoopes may be able to attend.

Commission positions for 2020. Commissioner Bishop announced his resignation as Chairman. Commissioner Durkin expressed his thanks for his hard work in the position. He made a motion that the positions and procedures of the Commission be reviewed each January. The motion was seconded by Commissioner Lawrence. The motion carried unanimously.

Election of new Chairman. Commissioner Johnston nominated Commissioner Durkin to be chairman. Commissioner Durkin declined the nomination. Commissioner Johnston nominated Commissioner Hoopes to be chairman. Commissioner Hoopes accepted the nomination with a condition that the position be reviewed in one year. Commissioner Lawrence made a motion to appoint Commissioner Hoopes as the new chairman. The motion was seconded by Commissioner Huggins. The motion carried unanimously.

Commissioner Lawrence made a motion to adjourn at 8.16pm. The motion was seconded by Commissioner Huggins. The motion carries unanimously.