

On 3/5/2019, on a motion by Commissioner Durkin seconded by Commissioner Mulhearn, the Commission voted unanimously, 4-0, to approve these minutes as presented.

CONSERVATION COMMISSION MEETING MINUTES

February 6, 2020

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

Member(s) Absent: Phil Johnston

Staff: Kelly Grant – Conservation Administrator (CA)

YARMOUTH TOWN CLERK

Start Time: 6.30pm

'20APR10PM4:30 REC

Notice of Intent:

SE83-2217, Jeff Colby, Town of Yarmouth DPW, **146 Standish Way**, West Yarmouth, proposed stormwater BMP within the buffer zone to a coastal wetland and coastal beach. Mr. Nicholas Aguiar, Engineer for the Town, and consultant Mr. Nick Cristofori of CEI represented the applicant and presented the proposed work. Since the application was submitted they have decided to move the outfall approximately 20 feet onto the Town property. This is so that the outfall will no longer be on the neighboring property, making maintenance simpler and avoiding salt marsh impacts. The project is almost entirely subsurface. The project must be constructed by the end of June 2020 under the terms of the grant. Commissioner Bishop commented that ideally they would treat more than the first half inch of the rain storm. Commissioner Lawrence confirmed that the same channel through the marsh would exist. Mr. Cristofori confirmed there would be a new headwall or manhole but the same channel would be used for discharge. Commissioner Mulhearn asked about maintenance of the pavement area. Mr. Cristofori responded that the Operation and Maintenance Plan includes vacuuming out of any sediment from the permeable pavement twice a year. The CA asked how the town will go about that maintenance. Mr. Aguiar confirmed that the Town owns a vacuum truck that will be scheduled for maintenance. Commissioner Hoopes commented that a new plan will be required showing the new outfall location.

Commissioner Huggins made a motion to issue an Order of Conditions approving the approving the project at 146 Standish Way under Massachusetts 310 CMR 10.00 and the Yarmouth wetland protection regulations, to include all applicable standard bylaw conditions and the following special conditions (if any):

- updated plans that move the outfall location be provided and approved by the CA prior to issuing the Order.

The motion was seconded by Commissioner Durkin. The motion carries unanimously.

Request for an Amended Order of Conditions:

Cont. from 1/16/2020, **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.

Mr. Ojala commented that a note has been added to plan with regard to runoff from the property. There is history with the abutting properties as the applicant assisted the neighbor by leveling of their lot with fill. There is extremely high groundwater in the area that casues challenges. The flood zone elevations required him to elevate his home. He added in walls to

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reduce the slope from the house with gravel added under the walls for infiltration and under the porch to infiltrate roof runoff. A trench drain is to be added to the driveway to capture runoff that is directed toward the road and the Cape Cod berm is designed to channel water away from the neighboring property. The runoff conditions should be the same or better than the preconstruction conditions once completed per the plan.

Commissioner Bishop expressed concerns with the asphalt driveway. The original application was approved with half round pervious driveway. Mr. Ojala responded that the runoff has been addressed with a trench drain to a leaching area. He asked if it is an aesthetic issue. Mr. Giglio commented that he had to change the design because the house needed to be elevated more than originally planned. He commented that he has added loam to the edge of the driveway to blend it into the lawn area.

Commissioner Lawrence expressed concern that the side of the driveway pitches toward the neighbor on the side of the driveway. Commissioner Huggins asked if the issue is mainly visual rather than runoff related. Mr. Ojala responded that the runoff will be contained so it is likely a visual concern. Commissioner Huggins asked if the driveway can be reduced in size. Mr. Ojala responded that it could be reduced but this is not preferable due to the cost and the utility. They would prefer to manage the runoff. Mr. Giglio commented that the contractor increased the thickness of the driveway without his knowledge. He did it in response to complaints from the neighbor about runoff. Commissioner Durkin confirmed that the abutter had had the opportunity to view the revised plans. Commissioner Hoopes suggested reducing the size of the driveway to provide more area for infiltration. Mr. Ojala said it was possible to reduce the driveway by at least a foot, but there would be little to no benefit in terms of reducing runoff. Commissioner Hoopes asked if the engineer would be comfortable certifying the project does not increase runoff. He also commented the aesthetics are not a consideration for the Commission. Mr. Ojala responded that he would want to wait a year before a Certificate of Compliance is requested to allow the site to recover and the lawn to become established. Attorney Edward W. Peitnik, Jr. represented the O'Sheas, abutters to the project at 50 Mattachee Road. He commented that the driveway was supposed to be horseshoe and pervious, but has been changed to a thick black rectangle butting up against the O'Shea's property. The O'Sheas would like to sell their house and the driveway will impact that. He commented that the driveway and should be removed. Cost should not be a consideration as the property owner created the problem. He provided photos of flooding of the property for the Commission's consideration. He commented that the wall was built closer to the property line than the permitted plan and that the changes to the property have increased groundwater and surface flooding on the O'Shea's property. Previously the O'Sheas had about two weeks of groundwater flooding in the crawl space in the spring. It has now become so bad that they needed to buy a fifteen thousand dollar pumping system to remove water from the crawl space. It became so bad that they had to stop pumping because they flooded the street. Attorney Peitnik listed the violations of the Order of Conditions carried out by the applicant. He commented that the no fines were issued, while the neighbors have had to pay for the pump. He commented that the runoff from the driveway is running directly into the O'Shea's property. He commented that due to the increased water on the property, they now have a mold issue. He commented that the applicant has ignored almost 50% of the conditions in the Order. Property owner Ms. Regina O'Shea addressed the commission and expressed concern with impacts of the water on her septic system. Commissioner Hoopes commented that this is a flood zone-only filing, so the Commission does not have performance standard to apply. He confirmed that the sump pump was releasing water to the front corner of the lot. Ms. O'Shea confirmed that she pumped constantly for two weeks until she had to stop because she was flooding the whole street. Commissioner Hoopes commented that this neighborhood has known

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high-groundwater issues. Mr. Ojala added that the testimony of Ms. O'Shea confirms that she was pumping groundwater to the surface rather than runoff from the abutting property. There is not enough rain in a year to require constant pumping for two weeks. This proves that Ms. O'Shea is pumping from the water table, which is unfortunate, but not caused by the applicant. Attorney Pietnik responded that Ms. O'Shea says she has not had this issue prior to the project starting apart from the two weeks in the spring. Ms. O'Shea commented that she now has ten months of water in her crawl space. Mr. Ojala responded that it would not be an issue if she did not pump it. He confirmed that during construction some water has left the site but the project has not caused the higher groundwater. The rainfall in the entire drainage area contributes to the height of the water table.

Commissioner Durkin commented that there was an approved site plan and that plan was not followed. Changes to the plan cannot be approved until the project meets the approved requirements. Commissioner Bishop commented the project differs considerably from the approved plan. Commissioner Hoopes suggested more soft solutions could be used to absorb runoff and the driveway should be reconfigured. Commissioner Lawrence commented that the back yard is also considerably different than the approved plan. Mr. Ojala responded that the changes to the plan actually reduce runoff from the property more than the original design. He reiterated that making these changes will not solve the abutters' issue, as they are pumping ground water to the surface and flooding their own property. He understands that Mr. Giglio should have sought permission before making changes, but he did make efforts to assist the abutters by adding fill to level their lot. The abutter is in an unfortunate situation that the house is so low-lying. The CA commented that there are a number of procedural violations of the Order and fines may be appropriate; however, the revised design of the project does not appear to increase runoff post-construction, and this will be confirmed by the engineer's certification. Commissioner Hoopes commented that he would prefer to see the property owner's money spent on addressing the issues with the driveway rather than on fines. Commissioner Huggins responded that making changes to the project will somewhat alleviate the problem but will not solve the problem for the abutter due to the high groundwater. Mr. Ojala responded that this is a flood zone project and many of the conditions are designed to address wetland interests that are not present at this site. There is data available showing the record high groundwater. They are willing to make some changes to further reduce runoff. Mr. Ojala is prepared to certify that as designed the project will generate no further runoff than the preconstruction conditions, if the work is completed per the plan. Commissioner Bishop suggested the project should be changed to a pervious driveway and walkway per the original plan. The rear of the property could remain as it is. The other Commissioners agreed. Mr. Ojala confirmed that the plan will be revised to include a small retaining wall at the front of the property, an increase in the grade against the house and a circular pervious driveway and walkway. Commissioner Hoopes commented that the project should still be completed within the permitted three years. Ms. O'Shea asked if the changes to the project will reduce the surface flooding. Mr. Ojala responded that the wall around the septic system was removed and loam was added to the property and perhaps the loam is not as pervious as the previous surface. Aeration of the soil may help along with establishing a healthy lawn. Mr. Ojala added that the addition of swales will help with infiltrating water.

Commissioner Bishop made a motion to continue the hearing to the March 5th, 2020 meeting with the plan to be received at least seven days prior to the meeting. The motion was seconded by Commissioner Lawrence. The motion carries unanimously.

SE83-2206, Great Island Ocean Club Homeowners, Powers Lane Beach Parcel, W. Yarmouth

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Mr. Dan Ojala of Downcape Engineering represented the applicant and presented the revised work plan. NHESP has provided additional conditions for the project. Commissioner Bishop asked if they had a photo of the machine to be used. Mr. George Doble of the Great Island Ocean Club provide photos and video of the machine to be used. Commissioner Bishop asked for details of where the material removed will be disposed of. Mr. Goble responded that it will either go to the Town landfill, Child's, or S & J's licensed facilities. Commissioner Bishop asked for the approximate timeframe planned for raking. Mr. Goble responded that they would do an initial raking near the end of March, and then only when needed, maybe twice more during the summer. Commissioner Lawrence asked about the planned access point. Mr. Goble responded that there are four access points to the beach through GIOC property. The most suitable access point is the center access point on Powers Lane. There is a three-foot wide and a five-foot wide machine. They will decide which is most appropriate. Commissioner Hoopes commented that there should not be an expectation that access points could be widened for machine access. Commissioner Lawrence asked for confirmation of the frequency of raking. Mr. Goble confirmed that there would be an initial raking prior to April 1st and then between April 1st and August 31 raking would only be done if needed. Mass Audubon monitors would be present during any raking. Commissioner Lawrence commented that she would like to limit the raking to once during the summer. Commissioner Hoopes commented that raking should be timed to occur before the chicks hatch and then would not need to be done until after the chicks have fledged. Commissioner Huggins asked if the stakes of the raking area would remain in place to guide the person raking to stay within the approved areas. Mr. Goble commented that the nesting areas will be roped off. The raking should only occur within the previously permitted areas. The CA commented that the raking should be to pick up excess seaweed and trash debris only, not shells and stones that make up the composition of the sand. Commissioners Hoopes and Durkin responded that a finer material will be removed from the sand also, similar to that done at Seagull Beach. Ms. Elaine Gambrazzio of 19 Powers Lane addressed the Commission and expressed concern with the way they would access the beach. She is concerned with erosion impacts to her property due to the access path abutting her property. She asked that the existing fences not be widened for access. Commissioner Hoopes responded that they will not be allowed to widen the access path. Ms. Sciavonne of 11 Powers Lane commented that beach raking has occurred in areas that were not permitted for raking. She asked that the CA be available to monitor the raking areas. She also commented that two of the access points have stairs and a gazebo, so would not be suitable for access.

Commissioner Huggins made a motion to issue an Amended Order of Conditions with the existing conditions, the additional NHESP conditions, that access to the beach be via existing GIOC access points, and the CA be present prior to commencement of raking. The motion was seconded by Commissioner Bishop. The motion carried unanimously.

Request for Certificate of Compliance:

SE83-2002, John C. O'Dea, **177 River Street**, South Yarmouth. The work approved under the Order was never started. Commissioner Durkin made a motion to issue a Certificate of Compliance. The motion was seconded by Commissioner Mulhearn. The motion carried unanimously

SE83-2064, Richard Bishop, **17 Point of Rocks Road**, Yarmouth Port. The work approved under the Order was never started. Commissioner Durkin made a motion to issue a Certificate of Compliance. The motion was seconded by Commissioner Mulhearn. The motion carried unanimously.

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The Chairman called a four minute recess, returning at 8.20pm.

Violations:

104 River Street, vegetation removal. Commissioner Lawrence described the violation. Some vista pruning and invasive removal was approved by the CA. After the property was recently sold, additional vegetation removal was carried out without approval. The property owner was not present at the meeting. The Commission discussed the violation in their absence. The Commission decided that no further cutting of vegetation shall be allowed and the undergrowth shall be allowed to regrow. Commissioner Huggins expressed to desire for the Commission to issue fines as a matter of course for any new violation. There was a general discussion about the issuing of fines. Commissioner Lawrence asked if automatically issuing fines should be the new policy moving forward. Commissioner Hoopes responded that it should be handled on a case-by-case basis. Commissioner Durkin suggested allowing the CA to determine to the applicability of issuing fines. The CA suggested the Commission review each violation and determine if a fine is appropriate. Commissioner Huggins asked when it wouldn't be appropriate to issue a fine. He suggested it would be more consistent to issue fines in each instance and it would send a clear message to violators. Commissioner Hoopes suggested he would support a \$100 fine in this instance. He commented that fines have not typically been issued where the property owner incurs a cost to rectify the violation. He thinks the fines should be based on the severity of the event. Commissioner Huggins reiterated that there should be a fine issued for every violation to be consistent. The word will spread fast and deter future violations. Commissioner Huggins made a motion to issue a \$300 fine. The motion was seconded by Commissioner Lawrence. Vote: For: 3 (Huggins, Mulhearn, Lawrence), Against: 3 (Hoopes, Bishop, Durkin). The motion does not carry.

26 Pondview Ave and 34 Pondview Ave, vegetation removal. The CA has contacted the property owners to request a meeting to discuss a potential violation. The violation was reported by a neighbor and has not yet been confirmed.

76 Harbor Road, retaining wall. A retaining wall was constructed in the flood zone to replace and expand an existing wall. The CA will visit the site and may be able to sign off on the building permit application. Commissioner Huggins suggested this is another example that warrants a fine. Ignorance of the rules is not a defense. Commissioner Bishop suggested that having a reputation for being difficult can encourage people to avoid the permitting process. Commissioner Huggins responded that people should not be allowed to disregard the rules. Commissioner Hoopes commented that with enough resources the conservation office could be more stringent, but with limited resources the CA has to prioritize efforts where they will have the most benefit. Commissioner Huggins agreed but suggested where the CA is able to address violations, they are addressed more strictly with regard to fines.

38 Lookout Road, vegetation removal. The CA has a site visit scheduled with the property owner to assess the extent of the violation.

Commissioner Huggins asked for an item on a future agenda to further discuss fines for violations. He also asked that violations be included in the Commission's site visits.

Other Business:

Michael O'Donovan, 98 Wilfin Road, Permission to carry out work on Run Pond conservation property (Map/Lot 34/238). Mr. O'Donovan addressed the Commission and presented his request. He is asking for permission to control phragmites on marsh adjacent to his property

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that is encroaching on his property. The phragmites is overtaking the native vegetation and blocks his view of the pond. Commissioner Hoopes asked if he is controlling the phragmites on his own property. He responded that the phragmites is spreading from the north and is beginning to strangle out the pond. The CA clarified that the spread of phragmites is due to the high nutrient levels in the pond largely due to septic system discharges. She commented that there are three aspects to this project. Firstly, there is the permission from the Town required to perform work on the Town property. Town Counsel has advised a formal agreement for this would be appropriate. Secondly, there is the wetland permitting required to carry out the work within a resource area. Thirdly, there is the fact that work has already been carried out without permitting which constitutes a violation. Mr. O'Donovan apologized and stated that he cut the seed heads from the phragmites and disposed of them in trash bags. He anticipates the phragmites will return again this year. Commissioner Hoopes asked if the property owner was aware of the process involved with permitting such an ecological restoration project. Mr. O'Donovan asked if he could have permission to cut in the short term until a longer term solution was sought. The Commission agreed to allow the work to take place on the Conservation property. The property owner would still need to go through the permitting process. The CA commented that there needs to be a long-term commitment to the project so that the problem is not made worse. A management plan should be developed by someone experienced and qualified to manage invasive vegetation. The CA pointed out that there is a dock on the property and that it does not appear to have a permit or license. Mr. O'Donovan responded that Brad Hall told him he could put a dock on the property when he first purchased the property. The sand area has been maintained since the property was purchased. The CA responded that the owner was still required to have a license for the dock as it is on a Great Pond. The property owner responded that he has deeded rights to the pond. The CA responded that on reading the deed there is deeded access to Nantucket Sound from South Shore Drive and rights of the public in the use of Run Pond as a Great Pond. Commissioner Hoopes suggested that the property owner take a month to explore their options and contact the CA on how they would like to move forward.

The CA commented that there is a Town project that is scheduled to begin in early 2021 that would address phragmites on Run Pond. Mr. McDonovan suggested he would be willing to make a financial contribution to the project if this area of Run Pond could be included in that project. The CA responded that this could simplify the approvals and permitting process and could be looked at as an option.

2020 Seagull Beach Maintenance Plan. The plan is mostly unchanged from last year. There is evidence of equipment driving over the toe of the dune. The Commission asked for a letter to be sent to the Town requesting they follow the maintenance plan requirements or face enforcement. The Director of the Health Department commented that the Town should designate a disposal location for excess seaweed.

Regulations Update – Schedule separate workshop. The Commissioners agreed to schedule a workshop on March 10 at 6pm to work on updates to the regulations.

Meeting minutes of January 16, 2020. Commissioner Durkin made a motion to approve the Minutes as written. The motion was seconded by Commissioner Bishop. The motion carries unanimously.

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Staff Updates:

The CA asked for approval to spend funds from the Conservation Fund for signage at Conservation properties.

The CA brought the Eversource Right-of-Way pruning plan to the attention of the Commission.

Commissioner Durkin made a motion to adjourn from the regular meeting at 9.26pm and enter executive session. The Commission will not return to regular session. The motion was seconded by Commissioner Mulhearn. The motion carries unanimously.

Executive Session:

Discussion on litigation - Green Harbor Village Ltd v Yarmouth Conservation Commission

Commissioner _____ made a motion to adjourn open session at _____pm., and to enter executive session. The motion was seconded by Commissioner _____. The motion carries unanimously.

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