

On 4/16/2020, on a motion by Commissioner Durkin, seconded by Commissioner Huggins, the Commission voted unanimously, 4:0:2 (abstain Lawrence/Bishop), to approve these minutes as presented.

## CONSERVATION COMMISSION MEETING MINUTES

March 5, 2020

**Members Present:** Ed Hoopes (Chairman), Tom Durkin (vice Chairman), Phil Johnston, Patricia Mulhearn, and Paul Huggins.

**Member(s) Absent:** Ellie Lawrence and Rick Bishop

**Staff:** Kelly Grant – Conservation Administrator (CA)

**Start Time:** 6.30pm

YARMOUTH TOWN CLERK  
20JUN19AM11:27 REC

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### Request for Determination of Applicability:

Mary-Joe Perry, Mass Department of Transportation – Highway Division, **Route 6**, Yarmouth, vegetation cutting for road safety. Mr. David Goldstein of MassDOT presented the proposed work. Tree trimming work is about 50 feet from the wetland resource area. Mr. Tom Baron addressed the Commission as a member of the public. From his previous professional experience he suggested that this tree work should be done routinely rather than as a major project. He also suggested doing it in the fall or winter when there was less foliage. Commissioner Mulhearn made a motion to issue Negative 3 determination. The motion was seconded by Commissioner Durkin. The motion carries unanimously.

### Notice of Intent:

**SE83-2225**, Mark Haggerty, **12 Jessie's Lane**, South Yarmouth, proposed boathouse and piling replacement within the riverfront area of Bass River. Mr. Kieran Healy of BSC Group represented the applicant and presented the proposed work. Commissioner Durkin asked how the new structure would be more storm resilient. Mr. Healy responded that the pilings are in poor conditions and will be replaced. Commissioner Durkin made a motion to issue an Order of Conditions approving the project SE83-2225 at 12 Jessie's Lane with the following standard conditions: 1-8, 10-12, 17-19, 25, 26, 36, 37, and the following Special Conditions:

- There shall be no habitable space within the boathouse;
- There shall be no storage of chemicals, fuel or other hazardous materials;
- A construction protocol be submitted prior to commencement of work;
- Flood Vents are to be added

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

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*Continued from 2/20/2020, SE83-2218, Maryellen Mara, Acres of Pines Association, Inc., 65 Lewis Bay Blvd., West Yarmouth, proposed beach nourishment and maintenance in Lewis Bay. Commissioner Durkin recused himself from the hearing. Mr. Mark Burgess of Shorefront Consulting represented the applicant and presented the proposed work. The beach was nourished about twenty years ago and the association wishes to increase to the old profile. All nourishment will be above the mean high water line and is limited to 100 cubic yards. Commissioner Huggins pointed out the negative impacts of removing the stone from the beach. Commissioners Johnston and Hoopes agreed with leaving the stones in place. The Commission agreed that raking should be limited to trash and excess seaweed, to be raked by hand. Commissioner Mulhearn made a motion to issue an Order of Conditions approving project SE83-2218 at 65 Lewis Bay Blvd. (Acres of Pines Beach) with the following standard conditions (as edited): 1-8, 11, 12, 19, 21, 25, 26, 37, and the following Special Conditions:*

- Markers should be placed at the limits of beach nourishment prior to beach nourishment taking place and the CA shall be called for pre-nourishment meeting onsite. Grain size analysis shall be provided five days out to demonstrate nourishment material is compatible. Immediately following completion of each nourishment activity, the project engineer/surveyor shall confirm in writing the volume and grading has been completed per the approved plan.
- This Order of Conditions does not permit the removal or artificial relocation of any stones and cobble with the resource area.
- Grading of the nourishment material shall not impact abutter beach access.
- Raking shall be done by hand only during the season and shall leave some wrack for foraging habitat.

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

*Continued from 2/20/2020, SE 83-2221 Sheryl Locke, 36 Mayflower Terrace, South Yarmouth, proposed reconstruction and relocation of existing dock on Dinah's Pond. Commissioner Durkin returned to the meeting. Mr. Mark Burgess of Shorefront Consulting represented the applicant and presented the proposed work. Commissioner Hoopes had a problem reading the plan due to the overlapping detail and requested more detail on the invasive management and vista pruning plan. The CA commented that there is conflicting information on the coastal bank delineation in the profile and plan view. The CA recommended reducing the float size. It was originally licensed at 40 square feet. It is now being designed at 200 square feet. Given the close proximity to the neighboring dock the float could be reduced in size to lessen the impact. The Commission considered that the benefit of reducing the float size was minimal and therefore allowed the 20 square foot float. The CA asked for more details on the proposed rain gardens. Mr. Burgess stated that they are designed to intercept stormwater flow from the neighboring property. Commissioner Huggins made a motion to continue the hearing to March 19<sup>th</sup> to enable updates to be made to the plan. The motion was seconded by Commissioner Durkin. The motion carries unanimously.*

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*Continued from 2/20/2020, SE 83-2219* Matthew Clark & Xin Zhang, **72 Mayflower Terrace**, South Yarmouth, proposed reconstruction of existing pre-1978 dock in Dinah's Pond. Mr. Mark Burgess of Shorefront Consulting represented the applicant and presented the proposed work. There is 2.5 feet of water at the landward end of the float, so float stops were recommended by the waterways committee. The existing deck will be removed. The beach area has white sand that was added at some point. There has been a bare spot here since the 1970s. Commissioner Huggins suggested that the sand be removed. The CA responded that the enforcement order required the sand be removed and the vegetation be restored. Commissioner Huggins suggested buffer plantings be added. The Commission agreed that an area of buffer vegetation with a 4 foot wide access pathway would be appropriate. The float stops are required per the planned design.

Commissioner Huggins made a motion to issue an Order of Conditions approving project SE83-2219, at 72 Mayflower Terrace with the following standard conditions: 1-6, 10-12, 17, 19, 22-28, 36, 37, and the following Special Conditions:

- Incompatible sand shall be removed along with the cobble berm which has been added to the edge of the sand. A 4 foot deep buffer of plantings shall be added between the lawn and the "beach" area (about 14 feet wide). A four foot wide path shall be allowed in addition to the 14 feet. The property owner shall allow the natural recolonization of salt marsh to occur.
- Debris in the water should be removed and allowed to naturalize.
- TOY restriction February 15- April 30
- Ramp and float should be removed seasonally and stored above the 35 foot setback
- Floats and ramp should not be dragged across the intertidal area or salt marsh (or buffer vegetation or bank).
- Pier shall be designed to be 4.5 feet above marsh per DMF comments.
- No dredging is proposed or permitted by this Order
- Float stops at 3 feet shall be used to stop the float bottoming out at the landward end. Per the Waterways Committee comments, since the float runs perpendicular to the contour, the entire float would need to meet the 3' standard.

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

*Continued from 2/20/2020, SE 83-2220*, Deborah & Richard Carrus, **122 Mayflower Terrace**, South Yarmouth, proposed pier, ramp, and float on Dinah's Pond. Mr. Mark Burgess of Shorefront Consulting represented the applicant and presented the proposed work. An alternate plan was provided to the Commission to address concerns brought up by the abutters at 126 and 130 Mayflower Terrace. The angle of the dock was changed to increase the distance to their property. Mr. Burgess visited the property at 126 Mayflower Terrace and measured that there is 3 feet of water available for a dock on 130 Mayflower Terrace. Commissioner Hoopes suggested a shared use dock would be appropriate in this instance. Mr. Burgess commented that shared use docks can be problematic in terms of ownership issues. Shared use with the owner to the west is not possible because there is not the required depth of

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water. Mr. Burgess stated he previously did an evaluation of the property at 116 Mayflower Terrace and there was not enough depth of water. The Commission agreed to review the revised plan. The CA commented that the DMF comments require the dock to be raised to 6 feet in height above the salt marsh. She also commented that there were a number of trees removed from the property sometime around 2018. Mr. Richard Carrus, the home owner, addressed the Commission and stated trees were removed. No permit was sought. The CA suggested there be replacement plantings, to be included as part of a revised plan. Mr. Carrus agreed to provide the name of the landscaper who removed the trees. She suggested the float stops could be placed at 2.75 feet to reduce the slope of the ramp. Mr. Carrus agreed to reduce the width of the float to 16 feet to help meet the neighbors need.

Abutter at 126 Mayflower Terrace, Ms. Laura Bozeman, addressed commission and provided history of the property and asked for the revision to the plan to allow them to have a shared use dock. Looking to have a shared use dock between their two properties.

Mr. Robin Wilcox addressed the commission representing the abutter to the west (Mr. Fanara). He had an amnesty license for a dock that has lapsed. He requested additional time to review the revised plan. Commissioner Huggins asked how this is typically handled where one property owner limits the ability of others to have a dock. Commissioner Hoopes responded that the first to receive a dock will set the setbacks for the neighboring properties.

Commissioner Durkin made a motion to continue the hearing to March 19<sup>th</sup> to allow time for the plan to be updated and reviewed. The motion was seconded by Commissioner Mulhearn. The motion carries unanimously.

**SE83-2222**, Olaf & Deborah Weidhaas, **79 Webster Road**, West Yarmouth, proposed phragmites removal and management within the buffer zone and salt marsh to Lewis Bay. Mr. Olaf Weidhaas addressed the Commission and presented the proposed work. The Commission discussed the process of removal of the phragmites and suggested options which achieve the best results. The CA informed the applicant that the end of July is the best time to cut, remove the material off site or burn on site, if the Commission issues an approval the permit is good for 3 years and you can request an extension prior. Mr. Weidhass stated that the work will be performed by him and his wife. They do not wish to use any chemicals on the property. Commissioner Hoopes commented that he is not comfortable with digging out the root system as it will disturb the soil surface. Mr. Weidhass responded that they are cutting and pulling the root rather than digging the root system out. Commissioner Johnston commented that the phragmites will continue to grow back. Mr. Weidhass commented that grasses below the wall have grown in naturally from the seed bank and has out competed the phragmites in most areas. Commissioner Huggins asked how long it took for the native grasses to take hold. The CA commented that there is a shed, wall and drainage pipe on site that have not been permitted. Mr. Weidhass commented that the wall was there but it was railroad ties and he replaced the wall with the stone. The Commission advised the applicant that he needs to file an RDA for these items in order to rectify them. An enforcement order will be issued for the shed and the drainage pipe. The wall can be addressed by an RDA. The CA commented that the

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area below the wall should be left natural and there should be no cutting or storage of furniture in that area.

Commissioner Huggins made a motion to issue an Order of Conditions approving SE 83-2222, at 79 Webster Road, with the following conditions: 1-6, 10, 11, 29-31, 37 and the following Special Conditions:

- The area seaward of the retaining wall shall be revegetated with native vegetation. That area should remain undisturbed except for the hand cutting of phragmites in late July. The grasses in that area should be allowed to grow or native plants should be replanted.
- No lawn shall exist beyond the retaining wall.
- Landscape Debris, including leaves, grass clippings, brush, or other shall not be allowed within the wetland resource area.
- Cutting and pulling is an excepted method of control for phragmites. Cutting shall be done at the end of July. Cutting at other times may increase stand density. The stems shall be cut below the lowest leaf, leaving six (6) inches or less of a stump. Hand held cutters and hedge trimmers or weed whackers with a circular blade may be used.
- Cut or pulled material shall either be burned onsite, or be removed from the site and composted or allowed to decay in an upland area.
- Heavy equipment shall not be used to 'scalp' the marsh surface.
- A monitoring report shall be provided at the end of each growing season for the lifetime of the project. In three (3) years the applicant shall either request an extension to the permit or request a Certificate of Compliance with ongoing conditions to continue maintenance of the area.
- If the area is not maintained and invasives are allowed to reestablish outside the term of the Order, a new Notice of Intent shall be required to begin the work again. Such work shall not be considered maintenance.

Commissioner Mulhearn seconded the motion. The motion carried unanimously.

Mr. Dan Ojala of Down Cape Engineering represented the applicant and requested to present two identical Orders of Conditions SE 83-2223 and SE 83-2224. Chairman Hoopes accepted the request.

**SE83-2223**, Kathleen Fargo, **4 Marsh Point**, Yarmouth Port, proposed ecological restoration project and vegetation management within the riverfront area of White's Brook. Mr. Jeremy Sharp, Wilkinson Ecological Design provided the methodology for managing the invasive and non-invasive plants. Shrubs will be planted in the upland area where invasive species are removed. The CA informed the representative that there is an outstanding Order of Conditions that the homeowner was notified of and needs to be closed out.

**SE83-2224**, Thomas & Rebecca Killion, **10 Marsh Point**, Yarmouth Port, proposed ecological restoration project and vegetation management within the riverfront area of White's Brook work. Similar project as 4 Marsh Point. Pictures and diagrams were shown. The area totals 7100

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sq.ft., partially invaded with phragmites. This area is well vegetated with natives and the plan is to cut, treat and no planting is planned as it is well vegetated. The Commission was comfortable with the project. No mowing will be done in the sparse areas.

Commissioner Mulhearn made a motion to issue an Order of Conditions approving project **SE83-2223** at 4 Marsh Point with the following standard conditions: 1-6, 10-12, 30, 31, 37 ...and the following Special Conditions:

- Removal of invasive plant material must be carried out so as to not impact existing native vegetation. Hand cutting will be necessary in some areas.
- A monitoring report shall be carried out at the end of each growing season to report on the progress of the project and how well native species are recolonizing the wetland area. The pre-project areal extent of vegetated area in the upland area shall remain, i.e. it shall not be converted to lawn.
- If the project area is not maintained and invasive species are allowed to reestablish outside the permit period, a new Notice of Intent will need to be filed for a new project.
- If the landscape contractor (Wilkinson Ecological Design) changes, the applicant shall notify the Commission prior to the new contractor beginning work and schedule an onsite meeting with the CA.

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

Commissioner Huggins made a motion to issue an Order of Conditions approving project **SE 83-2224** at 10 Marsh Point with the following standard conditions: 1-6, 10-12, 30, 31, 37 and the following Special Conditions:

- The area of sporadic phragmites shall be cut by hand to avoid damage to established native vegetation.
- A monitoring report shall be carried out at the end of each growing season to report on the progress of the project and how well native species are recolonizing the wetland area. The pre-project areal extent of vegetated area in the upland area shall remain, i.e. it shall not be converted to lawn.
- If the project area is not maintained and invasive species are allowed to reestablish outside the permit period, a new Notice of Intent will need to be filed for a new project.
- If the landscape contractor (Wilkinson Ecological Design) changes, the applicant shall notify the Commission prior to the new contractor beginning work and schedule an onsite meeting with the CA.
- A native tree shall be planted in the location of the 24" tree removed from the buffer zone.

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

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

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*Cont. from 1/16/2020, 2/6/2020, SE83-2125, Robert & Marianna Giglio, 44 Mattachee Road, W. Yarmouth*

Dan Ojala, Down Cape Engineering, representing Mr. Giglio gave a review of the property and a new revised plan had been submitted. Mr. Ojala is confident that the design will handle the runoff.

Arlene Wilson, of A.M. Wilson present on behalf of the O'Sheas, the immediate abutters to the south, and submitted a copy of a memo to the CA. A sump pump was installed in the fall but was disconnected when it flooded the street. Nothing is currently coming from the house through the sump pump. There is concern with the wall, no one knows how it was constructed and it is already separating, appears to have been built in sections. Without more detail in the survey there is no way to know that the water won't run over the edge of the swale and onto the O'Shea's property. She expressed concerns with the driveway and grading also.

Mr. Ojala responded to Ms. Wilson and felt that lowering the grades would not solve any problems. The wall isn't failing, plans are to cover it with more support. The driveway will be addressed as discussed and shown on the plan. The yard will be improved with grass, shrubs and will look pleasant.

The Chairman expressed his unhappiness with the time spent and the infractions that have occurred on this property. Mr. Ojala stated that in his opinion the proposed correction to the site will work, especially if the neighbor stops discharging the pipe. He went on to apologize for not coming back with an updated plan sooner, but they are committed to making this right. A wall will be improved to match the stucco on the house, and they will plant bushes along it.

Attorney Pietnik representing the O'Shea's addressed the Commission and reiterated that there were 17 paragraphs in the Order of Conditions and the applicant violated 8 of them. The O'Shea's have done nothing different on their property, the only thing different is this house. He stated that the situation should go back to what it was before.

Mr. Ojala stated that to say nothing has changed is incorrect. The driveway and a retaining wall were removed and the grading was changed. They would like to keep the wall as he believes it is the best solution. They will remove it if it causes problems in the future.

Chairman Hoopes reviewed the conditions for clarification. Discussion between the Chairman, Commissioner Huggins and the CA regarding how this situation evolved, who was overseeing it and what the responsibility of the town is.

Mr. Ojala stated there wasn't a problem until the loam went down and then we had the biggest rain fall anyone has seen on the Cape. Commissioner Huggins responded that the driveway was a problem and wasn't supposed to be paved in the first place. Commissioner Durkin stated he has the utmost respect for Mr. Ojala and asked the CA if it was possible to enlist the services of the town Engineer to evaluate the plan that Mr. Ojala has suggested as an amendment. The CA agreed to ask the town engineer to look at the plans with the understanding that this is a private

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project and the request may be denied. Chairman Hoopes asked that the walkway be removed. Mr. Ojala suggested that they keep the walkway and do a 6 inch trench filled with crushed stone to capture any runoff.

Commissioner Durkin was opposed, and requested to wait for the independent opinion of the town engineer. Commissioner Huggins agreed that the Town engineer should review the plan.

A motion was made by Commissioner Durkin to continue to March 19, 2020. The motion was seconded by Commissioner Huggins. The motion carries unanimously.

### **Violations:**

82 and 86 Harbor Road, re-grading and tree cutting. The CA issued an Enforcement Order and asked the Commission to ratify it. CA was contacted by the property owner and told that a survey is going to be performed. Commissioner Huggins requested an explanation of the Enforcement Order which the CA provided. Commissioner Durkin made a motion to ratify the Enforcement Order. The motion was seconded by Commissioner Mulhearn. The motion carried unanimously.

35 Aunt Dorah's Lane. CA provided an update on the violation for the Commission. The CA received a call from a land surveyor that they have been retained to perform the survey and are requesting more time for the field work and will file on April 2<sup>nd</sup>. Commission agreed to the extension.

### **Meeting Minutes:**

Meeting minutes of February 6, 2020. Commissioner Durkin made a motion to approve the Minutes as written. The motion was seconded by Commissioner Mulhearn. The motion carries unanimously.

### **Staff Updates**

The CA provided an update on the property at 300 Long Pond Drive. It currently has 5 outstanding Orders of Conditions. Current owners purchased the property with the outstanding orders. The CA requested that they closed out the existing Orders before they submit any new applications. She met the surveyor on site and identified that buffer vegetation has been removed. The CA showed the Commission the property and outlined the infractions. To resolve this, two different scenarios were explained to the Commission and the Commission choose to allow the path, remove the hardscape and revegetate to the edge of the 35 foot buffer.

The CA re-visited the Thacher Shore Road tree removal request before the Planning Board. These trees are 75-95 feet from the wetland resource area. If someone came to the Commission and these were on their property the Commission would likely approve their removal. The deed for the Conservation parcel includes language that gives them the right to cut on town property to maintain their view. After lengthy discussion it was agreed that the Commission would allow one tree to be taken down.

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Commissioner Durkin made a motion to adjourn from regular session and go into executive session and not return to regular session. The motion was seconded by Commissioner Huggins. The motion carries unanimously.

Commissioner Johnston recused himself and left the meeting.