

On 5/21/2020, on a motion by Commissioner Durkin, seconded by Commissioner Lawrence, the Commission voted 6-0-2, to approve these minutes as amended, with Phil Johnston and David Bernstein abstaining.

## CONSERVATION COMMISSION MEETING MINUTES

April 16, 2020

**Members Present:** Ed Hoopes (Chairman), Tom Durkin (Vice Chairman), Patricia Mulhearn, Ellie Lawrence, Rick Bishop, and Paul Huggins.

**Member(s) Absent:** Phil Johnston

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

**Start Time:** 4.30pm

YARMOUTH TOWN CLERK  
120 JUN 10 PM 11:13 REC

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CA Kelly Grant moderated the meeting reading the following into the minutes:

The April 16, 2020, meeting of the Yarmouth Conservation Commission is about to be convened. As a precautionary measure to reduce the spread of coronavirus, all Town buildings are closed to the public; therefore, this meeting will be held by remote participation. My name is Kelly Grant, and I will be moderating participation for this meeting. I will now turn it over to the Chair of the meeting:

Chairman Commissioner Hoopes opened the meeting, taking a roll call for quorum. The following members confirmed their presence:

Ed Hoopes, Tom Durkin, Ellie Lawrence, Rick Bishop, Paul Huggins, Patricia Mulhearn

CA Kelly Grant provided the following instructions for the meeting:

Pursuant to Governor Baker's March 12, 2020, Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 23, 2020, Order imposing strict limitations on the number of people that may gather in one place, this meeting of the Yarmouth Conservation Commission is being conducted via remote participation. No in-person attendance will be permitted, but every effort will be made to ensure that the public can adequately access and participate in the proceedings as provided for in the Order. Persons who would like to view this meeting while in progress may do so by watching via this virtual meeting or the live feed on the Town of Yarmouth YouTube Channel. You may also listen to the meeting by dialing in to the number provided on the Notice of Meeting. We will also post a recording of this meeting on the Town of Yarmouth website as soon as we are able.

Please be patient as we work to overcome any technological challenges with the virtual meeting. To reduce confusion during the meeting, all participants of the virtual meeting are muted by the moderator. As participants are called upon to speak they will be unmuted.

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Applicants can use the "Raise Hand" button or press \*9 on their phone to identify themselves to the chair. The meeting host will then un-mute applicants when they are called upon to speak. During the portion of the hearing designated for public comment, the Chair or moderator will ask who in the audience has any public comments or questions. Members of the public attending this meeting virtually will be able to make comments using the "Raise Hand" button within the virtual meeting. If you are dialed in to the phone number provided, you can press \*9 on your phone to indicate that you would like to comment. Please wait for the chairman to recognize you before speaking. As an alternative to making comments via the online audio or phone, you may also submit comments to the moderator via the virtual meeting "chat" function. To do this click on the "chat" icon and type your message. When prompted, the moderator will read comments and questions into the record.

Members of the public who wish to provide comment are asked to identify themselves by first and last name and affiliation for the public record and then provide their comment.

If you wish to speak during a hearing please consider the following guidelines:

- Do not use speakerphone
- Do not use Bluetooth devices
- Mute all background noises
- Clearly state your name each and every time prior to speaking

Prior to concluding opportunities for discussion, comment, or question, the Chair will ask:

"At this time I did not hear any requests for additional comment, if you wish to speak, please indicate now and I will ask this final time if there is anyone who wishes to speak on the matter at hand."

All votes must be roll call votes. After a motion is made and there is a second, the Chair will ask the moderator to take the roll call vote. The moderator will report the roll call vote. All motions, decisions, documents, and letters will be verbally read into the record. If it appears the meeting cannot or should not proceed, then the moderator will recommend that the Chair request to continue the hearing to a later date and time and/or until public meetings can resume normally. I will now hand the meeting back to the Chair.

### **AGENDA ITEMS:**

#### **Request for Extension of Order of Conditions:**

*Continued from 3/19/2020, SE83-2112, The Ocean Club, 329 South Shore Drive, South Yarmouth, MA.* Mr. Don Munroe of Coastal Engineering appeared before the Commission seeking an extension to close out outstanding orders and complete work on the bulkhead. The CA explained that the work was permitted three years ago and in the process it was determined that part of the work was on abutting town property. The applicant has been working with the town to resolve this issue. CA recommends that the Commission issue Extension with the condition that the applicant receive approval from the Town prior to starting any work.

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Commissioner Durkin made a Motion to grant the extension for SE83-2112 for 3 years with the condition that the applicant seek approval from the Town prior to starting any work and that within the next 30 days the applicant files a request for a Certificate of Compliance for outstanding Orders to be taken care of or a Violation letter from the CA will be issued. Commissioner Lawrence seconded the Motion.

Moderator called roll call: Hoopes, Durkin, Lawrence, Bishop, Huggins and Mulhearn. Motion carries unanimously.

**Notice of Intent:**

*Continued from 3/19/2020, SE83-2226, Stephen Gatto, 28 Aunt Edith's Road, South Yarmouth, proposed modifications to existing pier in Bass River; add jet ski lift.*

Mr. Gatto was in the audience and was represented by Dan Ojala, Down Cape Engineering, who gave the Commission history of the pier taking them through past to present of the re-build of the pier, ramp and float. Tonight looking for a minor modification to the end of the pier and the addition of a jet ski lift. Distance to the channel is approximately 180 feet. This project has been approved by the Waterways Committee. The abutter distances meet the regulations. They have recently requested a COC for the pier rebuild. The pier is fixed and cantilevered on the north side running parallel with the channel which creates a slight angle off the end of pier.

Commissioner Bishop voiced his concern with removal of the floating dock system and replacing with a floating system. Originally there were two pilings and under this modification they are adding 8 new pilings which does not seem like a minor change. Mr. Ojala responded that the footprint now is almost identical to before and the greenheart pilings have been known to last forever and supports their use. Commissioner Lawrence raised the point that the river is used in both summer and winter by and the size of the pier limits navigation. Mr. Ojala maintained the project passed Waterways who look at the navigation, he understood her questions but felt it is not a big impediment. Mr. Gatto, homeowner, agreed that navigation in this area should not be an issue and disagrees with Commissioner Lawrence's concern. Commissioner Mulhearn felt that taking seasonal floats and making them permanent is setting a poor precedent.

Commissioner Durkin inquired if Waterways had made any comment on the permanence of the dock. The CA replied that she had been told it was unanimous but learning tonight that Commissioner Lawrence did not vote in favor of it at the Waterways meeting. Commissioner Huggins inquired if there was another kind of material that could be suggested to avoid using greenheart. Mr. Ojala replied that the vote of the Waterways Committee was an affirmative vote by all at that meeting and the committees charge is hazard and navigation. In terms of another type of piling, there are other options that don't last that long. They agreed to look at alternatives and make sure replacement plantings will be made.

Commissioner Huggins made a motion to approve SE 83-2226-28 Aunt Edith's Road with the following conditions: 1-6, 19, 22-28, 36, 37 and special conditions related to the jet ski: single jet

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ski lift; ski lift for single family residential recreational use, it is the only permanent vessel lift on the property; lift shall be designed to allow the free flow of water and shall not interfere with navigation or use of the water body by others; the lift shall be open sided with no covers roof or sides; it shall be the smallest lift for the designated purpose and the jet ski shall not enter less than 3 feet of water when entering or exiting the lift.

CA stated that the conditions are available for discussion. The Chairman opened it up for discussion. Mr. Gatto addressed the Commission informing them that he has two jet skis on one lift. He detailed how the lift works with the jet skis and they use the safety channel while entering and exiting. This operation operates off the exact pilings that are part of the pier. Mr. Ojala reiterated what Mr. Gatto stated regarding the jet skis and the lift.

Commissioner Bishop questioned that maybe the requests before us should be on separate applications. Chairman Hoopes felt that it is too late for that now. Commissioner Mulhearn questioned if the jet skis come off during the winter months. Mr. Ojala stated the jet skis will be stored and the lift will remain in place. Commissioner Lawrence had questions regarding the tray and Mr. Ojala explained that there is a button and the lift goes down and hit it again and the lift goes up. Mr. Ojala explained that they really need the fixed section, Mr. Gatto has a 50 ft. boat and needs the 36 ft. length of the pier.

Mr. Gatto explained how the cantilever came into existence when we were requested to move the float and gangway design into deeper water and keep the angle consistent. With the angle of the Association dock it required that the other cantilever was needed to affix the frame of the gangway and the float which is the reason this inside piece was added in order to accommodate that. The rest of it was approved previously.

Rick Bishop asked if the Petitioner would be willing to use composite pilings as opposed to the greenheart. Mr. Gatto, was not familiar with this product but as long as it is similar in nature he would be willing to explore it. Commissioner Bishop has had personal experience with the composite pilings, there is no leaching and strongly urged Mr. Gatto to explore other options than the greenheart.

Mr. Ojala stated in his opinion the fiberglass is good unless you hit a rock, they are more expensive than greenheart, but we will consider it and perform some test piles to make sure there are no boulders in the area. Mr. Gatto confirmed that if the structure and cost are the same, he is willing to consider the suggestion.

From the audience, Mark Burgess, stated that he is familiar with the fiberglass (Pearson Pilings) and they last forever, has heard different rates for cost and the only downside is if they hit a structure they could splinter.

Commissioner Lawrence addressed the Commissioners that bigger docks bring bigger boats and is this the path the Commission wants to take. Her feeling is it is a slippery slope. Chairman Hoopes responded that this should be an item to be discussed at our regulation change meeting.

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At this time, CA read the current regulation that are in place into the minutes. Commissioner Bishop inquired if the regulations have language as to the length of a permanent dock? CA confirmed that the regulations read "distance from mean high water line" which currently is 80 feet.

Mr. Ojala stated that this project fits in the identical footprint of what is on the ground today, and supported the project before the Commission.

Commissioner Durkin seconded the Motion.

Moderator called roll call: Hoopes, Durkin, Lawrence, Bishop, Huggins and Mulhearn. In favor: Hoopes, Huggins and Durkin. Voting Nay: Lawrence, Bishop and Mulhearn. Motion fails.

For clarification, Commissioner Lawrence stated that at the Waterways meeting she did vote against this Application.

Mr. Ojala supported the project empathizing the timeline the pier was in place, the addition of a fixed tee to support a large boat and keep it safe during inclement weather, the pilings create a reef, the Waterways Committee approved the project and did not find any navigational issues. Requesting the Commission to look at the big picture and reconsider.

CA explained the various options the Commission could look at providing a reason for the denial or the applicant can continue and submit a revised plan with changes.

Chairman Hoopes asked the Commission what was the reason they intend to use for the denial.

Commissioner Lawrence suggested denial under Recreation use, it's a permanent structure, navigation issues, hazard to the safety of the boaters. Commissioner Huggins, speaking to what Commissioner Lawrence supported her denial with, expressed his thoughts that Waterways would have denied it if issues with navigation were observed. Under what regulation or why are we preventing it to go forward. Commissioner Bishop supported his decision for denial based on the facts that 1) Applications should have been separate; 2) already have an existing permanent structure over 100 feet long when our regulations only go to 80 feet; 3) now requesting an additional 36 ½ feet to that. For these reasons I have a fundamental problem with this request. I do appreciate the fact that they were willing to look at other options than the greenheart.

Chairman Hoopes concurred from the comments made it appears the denial is under the Yarmouth By-law, not the state.

Mr. Ojala commented that the Commission cannot look at navigation, this project was approved by Waterways; the Commission's regulation from mean high water exceeds the regulation and this was licensed prior; where the tee goes out it does not get any further out, it actually gets closer to mean high water and more in compliance with the by-law. There is a licensed pier and float right there in the exact same footprint. He asked the Commission to reconsider their decision.

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Mr. Gatto expressed his hope that the Commission would re-consider, the project meets the regulations, judging this request against what a previous Commission approved is not fair. The pier is approved, there is no intent to lengthen or move into the navigational channel. I took into consideration many factors and actually shortened the current pier by 3 feet making an additional 3 feet towards the Association dock. This Commission approved 75 feet and I pulled it back to 70 feet making it better for others.

Chairman Hoopes opened the hearing up to see if anyone who voted against the project would change their vote after more testimony from Mr. Ojala and Mr. Gatto.

Commissioner Bishop is willing to change his vote if the Applicant is willing to use composite for pilings. Mr. Gatto is in agreement if it is within the same price range.

Commissioner Lawrence commented that the Waterways Committee is not regulatory but advisory.

Based upon the existing motion the Moderator re-called the vote.

In favor: Hoopes, Durkin, Huggins and Bishop. Voting Nay: Lawrence and Mulhearn. Motion carries 4-2.

*Continued from 3/19/2020, **SE83-2227**, Green Harbor Village LTD Partnership, **182 Baxter Ave.**, West Yarmouth, proposed beach management, raking and nourishment on Lewis Bay.*

Commissioner Bishop was recused from this hearing.

Bob Perry, Cape Cod Engineering, represented the Applicant. Mr. Perry gave a history of the property including the on-going project of raking and beach nourishment. A sieve test was performed given current information. The raking is performed during recreational months only. The access route is 8 feet wide and will be used once or perhaps twice a year and we would like to add a volume of sand to that route. The raking, nourishment and the addition of 500 cubic yards of sand will augment the dune. This work has been done numerous times at this site and the owners would like to keep it up to date.

Jamie Veara, representing Davenport Companies, addressed the Commission by reviewing the initial Order of Conditions dated June 2001, reading the conditions on the project. Presently we are requesting a 10 foot wide access, the equipment is about 8 feet wide, and this was the access route from the conception of the Order of Conditions.

CA reported that the dune was not staked in the field. Using the photos submitted the dune should be clarified. Discussion continued between the CA and Chair resulting in the total dune be delineated and the ramp itself appears new and not permitted.

Commission was not in favor of opening up a new path, use of a smaller machine suggested, appears to be some pedestrian walking near dune, and this should be addressed. Appearance

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of a pipe of some sort that should be identified. The addition of sand is fine and all cleaning of beach is typically done in the early morning hours.

Mr. Veara addressed the Commission stating the pipe was not part of the playset and believes it has been there for decades.

CA added that the dune is flexible from year to year and that it should be marked on a plan; the nourishment and raking area marked as 10 foot off the toe of the existing dune so the intent is very clear. Baseline profiles be done on the east and west side and trigger point included for nourishment so it helps with monitoring its effectiveness.

Motion made by Commissioner Lawrence to continue SE83-2227 to May 7, 2020. Motion seconded by Commissioner Huggins.

Moderator called roll call: Hoopes, Durkin, Lawrence, Huggins and Mulhearn. Motion carries 5-0

*Continued from 2/20/2020, 3/5/2020, 3/19/2020, SE83-2221, Sheryl Locke, 36 Mayflower Terrace, South Yarmouth, proposed reconstruction and relocation of existing dock on Dinah's Pond.*

Mark Burgess, Shorefront Consulting, representing Ms. Locke gave a brief summation of the history of the project. A letter was submitted March 12, 2020 and a revised plan with changes making the plan more readable, more information and sketches on the rain garden.

Mr. Burgess spoke with the CA regarding the clearance of the ramp and found the elevation detail shows the limit of the marsh way above the high tide line and the reason for this was a delineation on the drawing that shows salt marsh in between mean high water and the BVW. He spoke with Dan Ojala and misinterpreted the labeling and the landward edge salt marsh should be delineated at the bottom of the coastal bank. Currently the ramp isn't proposed to be graded but we would do so, or raise the dock 6 inches and have 5 feet of clearance over the marsh.

Mr. Ojala felt Mr. Burgess explained it perfectly and we should prepare a new plan, easy to correct.

Commissioner Bishop would like to see the greenheart pilings changed to something else. Mr. Burgess was agreeable and will switch to fiberglass.

If part of the dock is raising 5 ft. than we should also have maximum light penetration there. Recommend we include the DMF conditions and I recommend that we include the requirement for a monitoring report by the property owner in 12 months to see the extent of the invasive vegetation removal and how the healthy vegetation is going. More information is needed on the rain garden.

Commissioner Bishop made a Motion to approve SE83-2221, 36 Mayflower Terrace with the following conditions: 1-8;10-12,17,19,22-28,31,36,37 and special condition to replace greenheart with a composite material for pilings, a monitoring report in 12 months and, DMF recommended requirements.

Moderator called roll call: Hoopes, Durkin, Lawrence, Huggins, Bishop and Mulhearn.

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Commissioner Lawrence seconded. Motion carries unanimously.

This Motion was recalled and made by Commissioner Lawrence with the same stated conditions and seconded by Commissioner Durkin.

Moderator called roll call: Hoopes, Durkin, Lawrence, Huggins and Mulhearn. Motion carries 5-0

*Continued from 2/20/2020, 3/5/2020, 3/19/2020, SE83-2220, Deborah & Richard Carrus, 122 Mayflower Terrace, South Yarmouth, proposed pier, ramp, and float on Dinah's Pond.*

Commissioner Lawrence has reviewed the meeting she missed and signed the Affidavit.

Commissioner Bishop has not reviewed tape for missed meeting and will not be voting.

Mark Burgess, Shorefront Consulting, representing Deborah and Richard Carrus, 122 Mayflower Terrace, South Yarmouth. Mr. Burgess reviewed the changes that have been made from the original plan. The dock was rotated to be in the center of the lot, it complies with all the local by-laws, depth and length fine, at the request of the abutters to the east we shortened the float by 4 feet to give them some extra room when they apply for a joint dock. The dock will be raised up to 5 feet over the marsh.

In the audience, Lucy Hulse, co-owner with her sisters of property at 126 & 130 Mayflower Terrace thanked Mr. Burgess and the Carrus for revising the plan leaving enough room to have a shared dock at their property.

Mr. Carrus thanked Lucy Hulse and her family.

Commissioner Durkin made a Motion to approve the Order of Conditions for SE83-2220 with the following conditions: 1-6, 10-12, 17,19,22-28,36 & 37 along with Special Conditions: Time of year restriction is February 15 – April 30; ramp and float should be removed seasonally and stored above the 35 foot setback, the float and ramp should not be dragged across the intertidal areas or salt marsh or buffer vegetation or the bank specific instructions should be included for the removal of the float and ramp. Pier should be 5 feet above the marsh. The dock is currently designed at 4 feet but that has been adjusted and grading will be performed to allow for light penetration. The dock shall be elevated to meet the DMF recommendations, no dredging is proposed or permitted by this Order.

CA added the condition that float stops landward edge @ 3 feet be added. Commissioner Bishop asked Commissioner Durkin if he would specify something other than greenheart pilings for the project. Commissioner Durkin agreed to this request.

Motion seconded by Commissioner Lawrence

Moderator called roll call: Hoopes, Durkin, Lawrence, Huggins and Mulhearn. Motion carries.

Mr. Carrus inquired if he could go ahead with the tree planting and the CA stated that it was fine.

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

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**SE83-2198, Derek Johnson, 37 Moss Road, Yarmouth**

Stephanie Sequin, Engineer with Ryder & Wilcox representing Derek Johnson. This Commission issued an Order of Conditions in July 2019 allowing the removal of the existing building and construction of new building, septic upgrade, driveway construction, landscaping and hardscaping. The building is under construction now and the owner has had a chance to work with a landscape designer and has decided to make some changes to what was originally approved. The approved plan allowed for a 2 car attached garage and the owners are not going to go forward with the 2 car attached garage and that deletes 952 sq. ft. The original plan had a circular drive and the owners now do not need that much and now show a 22 foot wide straight driveway coming in from the road, resulting in a 680 sq. ft. reduction, now the new driveway is outside of the 100 ft. buffer to BVW. Proposed is a patio area off the southeast corner of the building measuring 735 sq. ft. constructed with stone pavers. A retaining wall is part of this amendment at the edge of the fill slope creating a level area around the building. No changes are proposed to the original mitigation plantings.

CA questioned in the north of the property there is a grading that goes from 7 down to 4 sloping directly towards the neighbor's property. How is the runoff proposed to be handled? No grading elevations from the house to the wall have been provided. Ms. Sequin stated around the house the elevation is 8-9 and the top of the wall is elevation 7 which would be a 1 ft. drop to the wall. CA concerned with any run off problems to neighbor and suggested a vegetated swale on north part of property to catch any kind of run off. Ms. Sequin suggested continuing the retaining wall to the east and tied into proposed septic containment wall which would mimic the retaining wall proposed on the other side. CA would like to see the erosion controlled on the property.

Commissioner Lawrence made a Motion to approve Amendment to Order of Conditions for SE 83-2198 with the retaining wall going all the way around to the septic containment wall, the silt fence repaired/maintained for the life of the project and if upon review of the plan the CA can bring it before the Commission if she feels it necessary. Commissioner Bishop seconded.

Moderator called roll call: Hoopes, Durkin, Lawrence, Bishop, Huggins and Mulhearn. Motion carries unanimously.

*Cont. from 1/16/2020, 2/6/2020, 3/5/2020, 3/19/2020, SE83-2125, Robert & Marianna Giglio, 44 Mattachee Rd, W. Yarmouth*

CA reported to the Commission that new information was received today, leaving no time for the Commission to review. Information submitted was a revised plan and updated drainage calculations.

Chairman Hoopes asked the Commission if they would want to continue the hearing to a new date or go through the new materials submitted tonight.

CA offered to put the plan and drainage calculations on the screen and Mr. Ojala could explain the changes.

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Mr. Ojala apologized to the Commission for the late submittal due to limited staff dealing with the COVID 19 situation. The plan was reviewed by the Town Engineer and comments made I concurred with. The only change to this plan is the addition of the 6" gravel strip, 12" deep, along the edge of the walkway. As a licensed engineer, this drainage design is adequate, it will not increase runoff, nor will it run off on other properties. Mr. Ojala reviewed the past history of the property and the misunderstandings that have happened. A swale has been put in on Mr. Giglio's side of the retaining wall that can handle a substantial amount of run off. Drainage calculations were reviewed by Mr. Ojala and explained to the Commission how they will improve the situation.

From the audience, Arlene Wilson, recalled from the last meeting we acknowledged that drainage calculations were to be reviewed by the Town Engineer prior to this meeting. We would have liked to have had time to review them. One of the problems that I have is at the drainage basin there are not enough spot grades to really determine that the line around DA1, which is the back yard area, is as big as it should be. I recall in at least 2 previous hearings the Board has asked for the concrete walkway to be removed and it is still on the plan. There are no drainage calculations for the walk or driveway on the plan. I find this plan significantly different, not just a little, like we are being lead to believe. Previously the land was low and flat but when you introduce slopes you create run off problems. If you reviewed the grading plan for the house you approved, a lot of these issues disappear because those grades were much flatter. This house is bigger even without the driveway from what you approved. The back porch was not on the original plan, that was where the patio was and the patio now is beyond the limit of what you approved. This plan is a problem for the Commission and sends a bad message to the community.

Mr. Ojala responded to Ms. Wilson's comment stating that there are no performance standards in a flood zone only project. A 6 foot retaining wall has been planned all around the property. FEMA changed the regulations which added a foot to the elevations and we were required to meet code. Mr. Ojala reviewed the changes that had to be made on the plan.

Attorney Edward Pietnik, representing the O'Sheys, rebuttal to Mr. Ojala's comments were in regards to the performance standards, they violated 8 out of 17 requirements originally. On the February 6, 20 meeting it was agreed that the driveway should be removed, changed to pervious and the walking path removed per the original plan. So far it has never been done. It appears that they are not willing to work with the Board and have not done what was requested of them. The O'Shey's had never had problems before this project started with run-off.

Chairman Hoopes at this time addressed Attorney Pietnik stating that we are going over the same information that we have heard previously. Attorney Pietnik did not care for this comment and expressed his feelings that he was not allowed the same consideration. Chairman Hoopes inquired if he had anything "new" to add. Attorney Pietnik replied that there is nothing new on this plan, everything still remains on the plan, this hearing was continued for weeks and we get a new plan 1 ½ hours prior to the start of the meeting. Chairman Hoopes stated the Board just received it as well.

Mr. Ojala commented that the plan has on it that the asphalt driveway will be removed and replaced with gravel and the walkway has a gravel strip edge along the walkway solving the run off problem.

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Commissioner Huggins made a Motion to issue an Amended Order of Conditions for SE83-2125 approving the revised plan with the previously approved conditions standing and the special conditions as follows: A 5 foot wide buffer or vegetated swale shall be planted along the top of the retaining wall; a Monitoring Report be provided by a certified drainage engineer in one year to access the site drainage conditions, the health of buffer vegetation and general soil filtration conditions at the site and the impervious driveway be removed as described and removal of the walkway.

Chairman Hoopes opened the hearing to the Commissioners. Commissioner Lawrence is not in favor of the walkway. She listened to the video of her missed meeting and signed the Affidavit. Commissioner Bishop also listened to the video of the missed meeting and will send the Affidavit to CA. Commissioner Huggins expressed concern of the removal of the walkway and the effects on the Applicant. Chairman Hoopes felt that we had repeatedly asked for them to remove it and the Commission has made concessions with the driveway.

Commissioner Bishop raised the point that a patio was not on the original plan and there is one on this plan. Mr. Ojala explained that the patio is stone set and semi pervious and will not cause any problems. The patio was on the original house. Mr. Giglio does want to keep the walkway, he put it in himself and he has mobility issues.

Chairman Hoopes polled the Commission with regards to the removal of the walkway and it was a unanimous decision to remove it.

Commissioner Lawrence seconded the Motion by Commissioner Huggins.

Moderator called roll call: Hoopes, Durkin, Lawrence, Bishop, Huggins and Mulhearn. Motion carries unanimously.

Mr. Ojala thanked the Commission for their consideration and going forward on projects he will be more careful in his review.

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

#### **SE83-1366, 6 Fairwind Circle, Yarmouth**

The CA gave the history of this property and the change of ownership. On a site visit the CA observed restoration issues which were shown to the Commission with various photos of the property. The homeowner, Jay Imad, was in the audience and stated he cleaned up debris left from the previous owner in the yard and that the tornado had done some damage that was part of the cleanup.

Commissioner Durkin made a Motion to issue the Certificate of Compliance for SE 83-1366, seconded by Commissioner Bishop.

Moderator called roll call: Hoopes, Durkin, Lawrence, Bishop, Huggins and Mulhearn. All Commissioners voted nay. Motion fails.

Commissioner Lawrence made a Motion to issue an Enforcement Order and Non-Criminal Citation in the amount of \$300.00. Motion seconded by Commissioner Huggins.

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Moderator called roll call: Hoopes, Durkin, Lawrence, Bishop, Huggins and Mulhearn. Motion carries unanimously.

**SE83-1553**, Green Harbor Resort, **182 Baxter Ave**, Yarmouth

Commissioner Bishop was recused from this Application.

Commissioner Lawrence made a Motion to issue the Certificate of Compliance for SE83-1553. Motion seconded by Commissioner Mulhearn.

Moderator called roll call: Hoopes, Durkin, Lawrence, Huggins and Mulhearn. Motion carries 5-0.

**Request for approval of an updated plan:**

**SE83-2041**, 66A River Street, Yarmouth

Mr. Chizmas described the work that has been completed on the property and now he is seeking a fence to secure the property and proceed with the vegetation of the bank using the plan by Wilkinson.

CA has concerns with using this access path and it doesn't feel it looks good. She would prefer access from the water for dredging if it's a viable option. The fence should have clearance under and open fencing rather than a solid fence, and using the performance standards for flood zone and wildlife. Is it possible to dredge from a barge and move off site? And the area now plain (shown on photo) should be vegetated.

Mr. Chizmas explained that they haven't been using mats because they knew it would be re-vegetated. Going forward he intends to put mats down and it will look a lot better. Getting a barge in there is complicated. We are not able to take the sand to Windmill Beach and get it off the barge. What I prefer is using the mats and getting it off of there, I believe where it is now is preferable.

Motion made by Commissioner Bishop to grant approval for the Request for Updated Plan for SE 83-2041 and that the Conservation Commission is notified of the date of dredging; dredging access; to inspect the site and to require matting and restoration if needed. Commissioner Lawrence seconded.

Moderator called roll call: Hoopes, Durkin, Lawrence, Bishop, Huggins and Mulhearn. Motion carries unanimously.

**Other Business:**

Violation - 82 and 86 Harbor Road

**On 5/21/2020, on a motion by Commissioner Durkin, seconded by Commissioner Lawrence, the Commission voted 6-0-2, to approve these minutes as amended, with Phil Johnston and David Bernstein abstaining.**

No one was present in the audience for this hearing due to COVID 19 issues. CA has been in touch with the homeowners and they have installed an erosion control line. They are working on getting a survey and restoration plans together.

CA will stay in touch with homeowners and update the Commission at the next meeting.

Violation – Show cause discussion for 54 Station Ave

CA showed photos of the area and gave the background that the property owner lost 27 trees during the tornado in July 2019. Property owner had cleaned up the area and brought in fill to level and unfortunately the CA was not contacted that they were going to perform this work and subsequently a lot of the fill went down into the wetland.

Marie Caron, property owner, addressed the Commission stating that she had no idea who dropped the fill their, she had made inquiries with several people but never contracted anyone.

While on vacation she received information that someone had dropped off fill on the property. On her return from vacation she checked with several excavators but never learned who did it. She contacted Childs to take all that he could out and after meet with CA and walked the property. Loam has been placed and trees will be planted but Ms. Caron was waiting until this meeting to proceed.

CA stated this is an isolated wetland over 3,000 sq. ft. The amount of trees lost were 27. A Violation Notice had been sent to Ms. Caron.

Commission discussed best ways to stabilize the bank preventing erosion into the wetland.

Commission agreed to give Ms. Caron 30 days (June 1<sup>st</sup>) to complete the following work: to stabilize the bank using bio-degradable netting, loam, erosion control mix and perennial seed mix.

Violation – Show cause discussion for 31 Nauset Road

CA explained property purchased by new homeowner, Lisa Whiting, who was unaware of the isolated wetland and the 35 ft. no disturb zone.

Ms. Whiting explained that she was unaware and was only trying to clean up dead trees, and briars. Chairman Hoopes explained the benefit of the dead trees, providing wildlife habitat and nutrients provided.

Discussion continued amongst the CA and Commission resulting in a decision that a split rail fence at the 35 foot would be permissible. The CA will meet with the homeowner in the field and assist in marking the line.

Approval of Meeting Minutes: February 20, March 5, 2020 and April 2<sup>nd</sup>

**On 5/21/2020, on a motion by Commissioner Durkin, seconded by Commissioner Lawrence, the Commission voted 6-0-2, to approve these minutes as amended, with Phil Johnston and David Bernstein abstaining.**

The minutes of February 20, 20 will be tabled to the next meeting so that Commissioners Lawrence and Bishop can review.

Minutes of March 5, 20 minor corrections will be made by CA

Commissioner Durkin made Motion to approve, seconded by Commissioner Huggins.

Moderator called roll call: Hoopes, Durkin, Huggins and Mulhearn. Motion carries.

Minutes of April 2, 20 approved with 1 correction.

Commissioner Durkin made Motion to approve, seconded by Commissioner Lawrence.

Moderator called roll call: Hoopes, Durkin, Lawrence, Bishop, Huggins and Mulhearn. Motion carries unanimously.

Staff Updates:

CA received a letter of resignation from Phil Johnson effective April 17, 2020. CA will recommend to Mark Forest that David Bernstein be appointed to the Commission.

David was in the audience and is looking forward to becoming a member of the Commission.

CA reported that the representative for the property owner regarding the Violation on Aunt Dorah's Lane has contacted her and they are still trying to find a surveyor and with COVID it has been difficult.

Commissioner Bishop hopes that after COVID the Commission can recognize Phil for his years of service.

Commissioner Lawrence made a Motion to adjourn seconded by Commissioner Huggins @ 8:45 pm.

Moderator called roll call: Hoopes, Durkin, Lawrence, Bishop, Huggins and Mulhearn. Motion carries unanimously.

Posted By (Name):	Kelly Grant
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