

On 6/18/2019, on a motion by Commissioner Bernstein, seconded by Commissioner Lawrence, the Commission voted unanimously, 7-0, to approve these minutes as amended.

## CONSERVATION COMMISSION MEETING MINUTES

May 7, 2020

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

**Member(s) Absent:**

**Staff:** Dawn-Marie Flett, Kathy Williams

**Start Time:** 4.30pm

YARMOUTH TOWN CLERK

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Kathy Williams moderated the meeting reading the following into the minutes:

The May 7, 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 Kathy Williams, 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, David Bernstein

Kathy Williams 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.

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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.

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 Determination of Applicability:**

1. Janet Gilmore, **80 Mayflower Terrace**, South Yarmouth, Replacement of an existing fire-damaged single family dwelling partially within the buffer zone to a wetland resource area and land subject to coastal storm flowage.

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This project was represented by Bob Perry, Cape Cod Engineering. Mr. Perry explained that this is a demolition/reconstruction of the house within the exact same footprint. The dwelling is 60-100 feet to the wetland. A silt fence will be installed on the downhill side and no adverse impact is anticipated.

Chairman Hoopes mentioned the CA, on a site visit to the property, noticed items within the 35 foot and these need to be removed. Mr. Perry mentioned he had a conversation with the Builder regarding this situation and will follow up that this has been taken care of.

Commissioner Bishop expressed his support for the items to be removed and that the existing dock is over the property line and should be looked into.

David Dovell, builder for this project, shared with the Commission that the applicant is currently in the hospital, and he will see that the items within the buffer zone are cleaned up.

Commissioner Durkin made a Motion to approve a Negative 2 for the flood zone and a Negative 3 for the buffer zone. Motion seconded by Commissioner Lawrence.

Roll call: Hoopes, Huggins, Lawrence, Bishop, Mulhearn, Bernstein and Durkin. Unanimous 7-0

2. Aunt Edith's Neighborhood Association, **Aunt Edith's Road**, South Yarmouth, Replacement in-kind of ten 12" pilings associated with a licensed pier in Bass River.

The project was represented by Dan Ojala, Down Cape Engineering, who presented a brief history of this small community of 7 homes with a dock association. The current pilings are in need of replacement and an older COC to be closed out. The length towards the north is the same but the south float has been extended.

Chairman Hoopes reiterated the CA has suggested that a revised RDA be submitted to match the permitted plan bringing the floats into compliance.

Chairman Hoopes agreed that this is a community dock and it is being used as such, but the added 16 feet was not part of the permit.

Commissioner Durkin suggested that the hearing be continued to allow the applicant to respond, what is in place is not in accordance with what has been approved.

Commissioner Lawrence shared that the homeowner who uses the float also has a mooring they could use.

Commissioner Bishop expressed his concerns that the project returns under the permitted work. He also inquired as to the type of pilings and shared his thoughts on greenheart pilings.

Mr. Ojala will return before the Commission on May 21<sup>st</sup> with a revised plan and it will include the type of pilings to be used.

Roll call: Hoopes, Huggins, Lawrence, Mulhearn, Bishop, Bernstein and Durkin. Unanimous 7-0

### **Notice of Intent:**

**Chairman Hoopes read into the minutes the following 6 Petitions.**

On 6/18/2019, on a motion by Commissioner Bernstein, seconded by Commissioner Lawrence, the Commission voted unanimously, 7-0, to approve these minutes as amended.

**The following 6 Petitions #SE83-2227; 2230; Blue Water; 2231; 2228 and 2229 are all being continued to May 21<sup>st</sup> due to either applicant request or response from Natural Heritage.**

Motion made by Commissioner Lawrence to continue 6 Petitions to May 21<sup>st</sup> – Motion seconded by Commissioner Durkin.

Roll call: Hoopes, Huggins, Lawrence, Mulhearn, Bishop, Bernstein and Durkin. Unanimous 7-0

3. *Continued from 3/19/2020, and 4/16/2020, SE83-2227* Green Harbor Village LTD Partnership, **182 Baxter Ave.**, West Yarmouth, Proposed beach management, raking and nourishment on Lewis Bay. This item will be continued to the May 21, 2020 meeting.
4. **SE83-2230** Red Jacket Beach Ltd Partnership, **28 South Shore Drive**, South Yarmouth, Beach raking and beach nourishment on a coastal beach. This item will be continued to the May 21, 2020 meeting.
5. Blue Water LTD Partnership and Edge of the Sea Inc, **291 and 301 South Shore Drive**, South Yarmouth, Beach raking and beach nourishment on a coastal beach. This item will be continued to the May 21, 2020 meeting.
6. **SE83-2231** Riviera Beach Ltd Partnership, **327 South Shore Drive**, South Yarmouth, Beach raking and beach nourishment on a coastal beach. This item will be continued to the May 21, 2020 meeting.
7. **SE83-2228** William McDermott, **5 Salt Meadow Road**, West Yarmouth, Raze and replace of an existing single family dwelling with appurtenances. This item will be continued to the May 21, 2020 meeting.
8. **SE83-2229**, Robert J and Rita M Davis, **177 River Street**, South Yarmouth, To maintain two existing 10' x 20' floats in place of the 6' x 10' permitted floats and one existing additional float pile. This item will be continued to the May 21, 2020 meeting.

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9. **SE83-2213**, James and Tammy Saben, **66 Nottingham Drive**, Yarmouth Port, Construction of landscaping features, including stone retaining walls, stone patios, fire pit, spa, and associated plantings within the buffer zone to a coastal bank and salt marsh.

Jim Saben addressed the Commission stating there is an issue with the plan, the fire pit is no longer proposed.

Phil Cheney, landscape designer, represented the homeowners and described the project pointing out on the plan submitted by Down Cape Engineering the resource area, bordering vegetated wetland and end of a coastal bank behind the house.

The project proposes a two level patio, one off the back of the house, a retaining wall to the east with steps leading down to a small patio which will support a portable swim spa. The project features a bi-level hardscape area keeping outside 50 foot from the BVW while working within 35 feet of the coastal bank. In our opinion, this does not truly function like a coastal bank. The mitigation planned is to completely vegetate the first 35 feet from the BVW and will be mixed planting as shown on the plan. The balance of this area running up to the new patio down below will remain as a meadow only with annual mowing.

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Chairman Hoopes reviewed with Mr. Cheney the area of the Coastal Bank, mitigation calculations that totaled 1100 sq. ft. (598 stone patio; 493 swim spa) and total additional hardscape 1100 and 2400 mitigation.

Commissioner Bishop mentioned a large hardwood tree on his site visit not shown on the plan and hopes it will remain. Mr. Cheney did not put it on the plan but it will remain in place.

Commissioner Lawrence noted on her site visit runoff on the street side of the driveway going into the wetlands. Mr. Saben explained that the new house construction on the lot above them during a recent storm event washed out into their driveway. That homeowner is currently landscaping which will help and Mr. Saben intends to put drywells in to prevent any runoff onto his property.

CA noted an outstanding Order and Mr. Cheney informed the Commission that it dates back to the original construction in 1997 and the homeowner at that time. He is trying to rectify the situation, which is the reason the mitigation is so large, in efforts to return the property back to what the original Order approved. The original Order called for drywells on the house which were not done, we have a note on the plan to include those at this time. The original Order stated, no disturbance beyond the 35 feet, which you can see was not adhered to and happened prior to the Saben's ownership.

Chairman Hoopes reviewed that the area now as considered "the meadow", you plan to mow it once a year?

Commissioner Lawrence summarized that in the old COC was supposed to be up to the 35 foot line and you are going to be bringing it back to that and the new mitigation for the hardscape would be the field that you are only going to mow once a year.

Chairman Hoopes did not see this as "new mitigation" in the original Order it was supposed to be left "undisturbed". At some point it was disturbed, not by present owners. Now you plan on replanting that area and then for 1100 ft. of hardscape you are allowing a grassy area to grow back and we are not even getting a 2-1 ratio. Chairman Hoopes felt that more plantings of vegetative diversity, not all through out, and more mitigation on sides and borders of that area was needed..

Mr. Cheney responded that his attempt was to create a nice mix of habitat in this area near the salt marsh with the open meadow, woody shrubs, and mow portions of it for a better habitat value.

Chairman Hoopes agreed with his intention and is not concerned with adding more in the large area within the 35 foot, it was not to be disturbed in the first place, but more square footage to mitigation planting around the sides and borders. This would achieve a 2-1 planting ratio and along with the gutters and downspouts that were omitted in the original Order and locate them on the plan as well.

Chairman Hoopes opened it to Commissioners comments. All Commissioners agreed that achieving a 2-1 ratio would be acceptable.

Mr. Cheney responded that he felt he was able to get the most available in that area with the 1930 sq. foot accounted for and not sure he would reach the 2-1 ratio.

Chairman Hoopes suggested less meadow and more diversity.

Mr. Cheney expressed he might get more along the fringe and maintain the "meadow" feeling and eliminate lawn below the patio areas.

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Mr. Saben suggested to reduce the size of the patio rather than the expense of planting more vegetation. Chairman Hoopes felt the way to achieve the 2-1 ratio would be to plant all over or reduce the hardscape thus reducing the mitigation. Mr. Saben explained that the elimination of lawn in that area and installing a pervious patio would eliminate fertilizers and chemicals and encourage more sensitivity to the environment. Chairman Hoopes stated less hardscape, less mitigation you have to do. The pervious patio at that distance is a 50/50 wash that you have to decide your economic situation.

From the audience, Dan Ojala, Down Cape Engineering, suggested in the meadow area using New England Wild Flower mix makes a nice habitat.

Motion was made by Commissioner Lawrence to continue the hearing for two weeks till May 21<sup>st</sup>, Motion seconded by Commissioner Durkin.

Roll call: Hoopes, Huggins, Lawrence, Mulhearn, Bishop, Bernstein and Durkin. Unanimous 7-0

10. Christopher Haley, **190 Blue Rock Road**, South Yarmouth, Proposed reconfiguration of dock within Bass River.

Mark Burgess, Shorefront Consulting, represented Mr. Haley, proposing to fix a dock configuration that for some reason was not installed in the permitted and licensed location. Returning it to the licensed location is not the best option either. The property changed hands about 1-2 years ago. The new homeowner received a Violation Letter and was unaware that the existing dock was not in compliance. The plan on the screen that you are looking at shows existing vs proposed. When the dock was built it was built shorter. It was permitted in 1988 and at that time it is possible someone decided they wanted more floats than docks. We are proposing to extend the dock by 21 feet using the existing ramp and two of the existing floats. The outer float will be turned 10 feet to the north so it is an ell not a tee. The reason for this changes is for separation from the small Blue Rock Marina so we can maintain 75 ft. of separation from them. The water depth is adequate as is and the proposed dock and floats do not extend any further beyond mean high water than what was previously approved and will at 80 feet.

This project has not been before Waterways yet, they have not scheduled any meetings at this time. This is a rental property that includes the use of the dock so for this season only, we are proposing a temporary fix, to put the ramp and floats in without the extra float on the north. In the fall we will start the process that has been proposed so that the start of the 2021 boating season everything will be completed.

Commissioner Bishop inquired what the total float measurement will be and if any pilings were to be replaced what type is proposed. Mr. Burgess stated under 200 for the floats and he will have a conversation with the homeowner regarding the type of pilings. Commissioner Lawrence questioned what the original permitted length of the pier, ramp and float were and Mr. Burgess replied it was 80 feet beyond mean high water. The proposed will not be beyond 80 feet of mean high water.

Motion made by Commissioner Bishop to continue to June 4, 2020 – Commissioner Lawrence seconded.

Roll call: Hoopes, Huggins, Lawrence, Mulhearn, Bishop, Bernstein and Durkin. Unanimous 7-0.

On 6/18/2019, on a motion by Commissioner Bernstein, seconded by Commissioner Lawrence, the Commission voted unanimously, 7-0, to approve these minutes as amended.

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

11. *Continued from 4/16/2020*, **SE83-2198**, Derek Johnson, **37 Moss Road**, Yarmouth. This item will be continued to the May 21, 2020 meeting.

Commissioner Lawrence made a Motion to continue to May 21, 2020 – seconded by Commissioner Durkin.

Roll call: Hoopes, Huggins, Lawrence, Mulhearn, Bishop, Bernstein and Durkin. Unanimous 7-0.

**Request for Certificate of Compliance:**

Chairman Hoopes reported that the CA has certified that the following SE #'s have been certified by the CA and the Engineers.

**The following were all approved for a Certificate of Compliance by a Motion made by Commissioner Bernstein and seconded by Commissioner Mulhearn: SE 83-2132, 2109; 1337, 2108, 1828, 807, 1377, 1470 and 1581.**

**Roll call: Hoopes, Huggins, Lawrence, Mulhearn, Bishop, Bernstein and Durkin. Unanimous 7-0.**

12. **SE83-2132**, 16 Pleasant Street
13. **SE83-2109**, 12 Pleasant Street
14. **SE83-1337**, 11 Prince Road
15. **SE83-1349**, 11 Prince Road
16. **SE83-2108**, 28 Aunt Edith's Road
17. **SE83-1828**, 19 Sagamore Road
18. **SE83-807**, 329 South Shore Drive
19. **SE83-1377**, 329 South Shore Drive
20. **SE83-1470**, 329 South Shore Drive
21. **SE83-1581**, 329 South Shore Drive

**SE 83-1349- 11 Prince Road.** Chairman Hoopes read notes from the CA summarizing the floating platform at the landward end of dock was requested to be removed and that has been taken care of; in the Order the Con Com requested that the applicant remove the float from the plan, in a 2010 aerial a 16 x 6 float appeared and is currently on the driveway, the property owner does not plan to put the float in the water instead they are going to be looking into a lift.

Mark Burgess was present representing the applicant and explained to the Commission that all the issues mentioned have been taken care of. Currently they have a filing with Waterways to be heard when they schedule meetings.

Commissioner Bernstein made a Motion issue the COC – seconded by Commissioner Lawrence.

Roll call: Hoopes, Huggins, Lawrence, Mulhearn, Bishop, Bernstein and Durkin. Unanimous 7-0.

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**Other Business:**

Violation - 82 and 86 Harbor Road. Chairman Hoopes read the Enforcement Order issued by the CA on February 26, 20 citing work done without the benefit of approval on both properties. Lengthy discussion amongst the Commission regarding the homeowner's non-response to the Enforcement Order, issuance of fines and process of the court.

Commissioner Durkin made a Motion to issue a \$300.00 fine with a letter that the homeowner must file a NOI within 21 days of date on ticket for fill and grading @ 82 Harbor Road. Commissioner Lawrence seconded the Motion.

Roll call: Hoopes, Huggins, Lawrence, Mulhearn, Bishop, Bernstein and Durkin. Unanimous 7-0.

MA Coastal Railroad, 2020 Vegetation Control plan. Chairman Hoopes explained the plan to Commissioner Bernstein. (No vote was needed).

Meeting Minutes: February 20, 2020 (Rule of Necessity)

Commissioner Durkin made a Motion to approve the minutes of February 20, 20. Motion seconded by Commissioner Lawrence.

Roll Call: Durkin, Bishop and Lawrence.

Staff Updates:

Commissioner Durkin gave an appreciative welcome to David Bernstein, we appreciate your expertise and commitment to the Commission. All Commissioners agreed.

Chairman Hoopes explained to Mr. Bernstein the MACC guidelines and importance as a new Commissioner.

Motion by Commissioner Lawrence to adjourn at 6:31 p.m. – Motion seconded by Commissioner Huggins.

Roll call: Hoopes, Huggins, Lawrence, Mulhearn, Bishop, Bernstein and Durkin. Unanimous 7-0.

Posted By (Name):	Kelly Grant
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