

On 8/6/2020, on a motion by Commissioner Durkin, seconded by Commissioner Mulhearn, the Commission voted unanimously, 5-0, to approve these minutes as presented.

CONSERVATION COMMISSION MEETING MINUTES

June 4, 2020

YARMOUTH TOWN CLERK
20AUG25PM2:14 REC

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

Member(s) Absent:

Staff: Kelly Grant

Start Time: 4.30pm

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

The June 4, 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, David Bernstein

*For the record, Commissioners Bishop and Huggins joined the meeting at 4:40 pm

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.

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.

On 8/6/2020, on a motion by Commissioner Durkin, seconded by Commissioner Mulhearn, the Commission voted unanimously, 5-0, to approve these minutes as presented.

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:

1. Initial Review of Proposed Revised Local Stormwater Regulations. Consultant Rebecca Balke of CEI provided a presentation on the proposed changes to the Yarmouth Stormwater bylaw as required under the Town NPDES permit. Commissioner Durkin asked why phosphorous removal is included but not nitrogen. Ms. Balke responded that the NPDES permit currently only requires phosphorous removal, however they must choose BMPs optimized to remove nitrogen if they are discharging to a nitrogen impaired water. Gives the Commission flexibility. The Commission can include a nitrogen removal requirement. Commissioner Durkin commented that nitrogen is significant issue on the Cape and any regulations should recognize that. Ms. Balke responded that septic systems are the major contributor to the nitrogen issue and that Stormwater has been found to be a very small contributor in comparison.

Commissioner Bernstein asked for clarification on the requirements for swimming pools, particularly where pools are discharged to the street, fill storm drains and overflow to a water body. He asked how we know that people have dechlorinated the pool water. Ms. Balke responded that it is a matter of trust unless the Commission wants to require a permit for such

On 8/6/2020, on a motion by Commissioner Durkin, seconded by Commissioner Mulhearn, the Commission voted unanimously, 5-0, to approve these minutes as presented.

a discharge. She commented that sump pumps can cause a similar issue and the Town was looking at a separate regulation to deal with those. Commissioner Bernstein would like to see a permit for dechlorinating and discharging pool water and sump pumps. Commissioner Bishop commented that he would also like see nitrogen removal requirements.

Request for Determination of Applicability:

- Continued from 5/7/2020, 5/21/2020 Aunt Edith's Neighborhood Association, Aunt Edith's Road, South Yarmouth, Replacement in-kind of 10 12" pilings associated with a licensed pier in Bass River. The CA reported that the hearing was for a revised RDA to bring existing pier and float into compliance. Dan Ojala, Down Cape Engineering, commented to the Commission that the Association had a meeting and agreed to put the pilings back to the original configuration. Mr. Ojala requested a continuance to prepare the plans. Commissioner Durkin made a motion to continue to June 18, 2020. Commissioner Lawrence seconded the motion. The motion carried unanimously.

Roll call vote:

Aye: Hoopes, Durkin, Bishop, Lawrence, Mulhearn, Huggins and Bernstein.

*For the record, Commissioners Bishop and Huggins joined the meeting at 4:40 pm

Notice of Intent:

- Continued from 5/7/2020, 5/21/2020 SE83-2232 Christopher Haley, 190 Blue Rock Road, South Yarmouth, Proposed reconfiguration of dock within Bass River. Request to continue to July 16th to wait for the Waterways Committee hearing. Commissioner Lawrence made a motion to continue to July 16th. The motion was seconded by Commissioner Bishop. The motion carried unanimously.

Roll call vote:

Aye: Hoopes, Durkin, Bishop, Lawrence, Mulhearn, Huggins and Bernstein.

Commissioner Bishop is recused from the following 3 hearings.

- Continued from 5/7/2020, 5/21/2020 **SE83-2230** Red Jacket Beach Ltd Partnership, **28 South Shore Drive**, South Yarmouth, Beach raking and beach nourishment on a coastal beach. Bob Perry, Cape Cod Engineering, represented the applicant. The CA reported that Natural Heritage comments have been received and that the notes on plan should match the conditions in the Order. Mr. Perry will send electronic and hard copies.

Chairman Hoopes raised the issue of the equipment on the beach. The CA stated the equipment and work done outside the permitted area are still an issue and should be handled separately. Chairman Hoopes felt the order before us tonight should be closed out and enforcement issues handled at the next meeting. The CA received a request from the applicant today asking to move ahead with the work prior to recording given the timing for the season opening. All sitting members agreed that the Order once issued, should be filed with the Registry of Deeds and a pre site visit scheduled prior to any work started.

Commissioner Lawrence made a motion to approve the Order of Conditions with the Order filed with the Registry of Deeds and a pre site visit scheduled prior to any work started. The motion was seconded by Commissioner Bernstein.

Roll call vote:

Aye: Hoopes, Durkin, Lawrence, Mulhearn, Huggins and Bernstein. Motion carries 6-0 with 1 member recused (Bishop).

On 8/6/2020, on a motion by Commissioner Durkin, seconded by Commissioner Mulhearn, the Commission voted unanimously, 5-0, to approve these minutes as presented.

A motion was made by Commissioner Bernstein to discuss enforcement at the next meeting. The motion was seconded by Commissioner Huggins.

Roll call vote:

Aye: Hoopes, Durkin, Lawrence, Mulhearn, Huggins and Bernstein. Motion carries 6-0 with 1 member recused (Bishop).

5. *Continued from 5/7/2020, 5/21/2020* 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. Mr. Perry, Cape Cod Engineering, was present representing this hearing. Response was received from NHES. The CA informed the Commission a supplemental narrative for the dune creation was received today. Mr. Perry summarized the narrative informing the Commission that as soon as the Order is issued the fence will go in.

A motion was made by Commissioner Bernstein to approve the Order of Conditions. The motion was seconded by Commissioner Lawrence. The motion carried 6-0 with 1 member recused.

Roll call vote:

Aye: Hoopes, Durkin, Lawrence, Mulhearn, Huggins and Bernstein. Motion carries 6-0 with 1 member recused.

A motion was made by Commissioner Lawrence to pursue enforcement action for Blue Water LTD Partnership and Edge of the Sea Inc, South Yarmouth and Riviera Beach Ltd Partnership, South Yarmouth as an agenda item on the next meeting. The motion was seconded by Commissioner Durkin.

Roll call vote:

Aye: Hoopes, Durkin, Lawrence, Mulhearn, Huggins and Bernstein. Motion carries 6-0 with 1 member recused (Bishop).

CA will contact Mr. Vieira for submittal of comments prior to the next hearing.

6. *Continued from 5/7/2020, 5/21/2020* **SE83-2231** Riviera Beach Ltd Partnership, **327 South Shore Drive**, South Yarmouth, Beach raking and beach nourishment on a coastal beach. **See comments above on status.**
7. *Continued from 5/7/2020, 5/21/2020* **SE83-2228** William McDermott, **5 Salt Meadow Road**, West Yarmouth, Raze and replace of an existing single family dwelling with appurtenances.

Lynn Hamlyn represented the homeowner and explained the reason for the continuance was due to the concerns of the CA and the neighbors in regards to the raze and replace of this single family dwelling. The only change made from the original plan is the preservation of perimeter vegetation on the property. The only BVW resource is a salt march across from Salt Meadow Road. The property is 64 feet away from this BVW. The fill on the property is driven by Title 5 and FEMA Regulations. All of this resulted in a change in the landscape plan. They are now going to be saving the mature trees along the perimeter and establishing a work limit line interior of those perimeter trees and limiting access into the site in the area of the existing and proposed drive. Another concern was the impact of new construction on an existing water problem in the area. A PE was retained to perform an analysis of the site both existing and post construction. Results showed post construction there will be less water coming off the site than what is coming off the site now. The revised plan shows two drainage systems installed to contain the roof runoff of the new dwelling.

From the audience, Mary Connolly, 7 Cove Road, who resides behind the subject property was concerned with water issues. Ms. Hamlyn addressed this matter informing the abutter

On 8/6/2020, on a motion by Commissioner Durkin, seconded by Commissioner Mulhearn, the Commission voted unanimously, 5-0, to approve these minutes as presented.

and Commission that a swale is on the plan that will capture runoff from this site and the mature trees will also help contain all the runoff. Ms. Connolly's property has ground water issues.

Chairman Hoopes explained to Ms. Connolly that there are ways for her to handle existing groundwater problems and it may be considered a civil matter.

Ms. Hamlyn reemphasized, making it understood, that this construction is not going to alleviate Ms. Connolly's current flooding problems. Ms. Connolly stated she understood that.

Commissioner Mulhearn made a Motion to approve an Order of Conditions for SE83-2231 with conditions provided by the CA and any additional conditions. The motion was seconded by Commissioner Lawrence. The motion carried unanimously.

Roll call vote:

Aye: Hoopes, Durkin, Bishop, Lawrence, Mulhearn, Huggins and Bernstein.

Continued from 5/7/2020, 5/21/2020 **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 hearing is going before Waterways Committee on June 16, 2020. A motion was made by Commissioner Durkin to continue to June 18, 2020. The motion was seconded by Commissioner Bernstein. The motion carried unanimously.

Roll call vote:

Aye: Hoopes, Durkin, Bishop, Lawrence, Mulhearn, Huggins and Bernstein.

8. *Continued from 5/21/2020* **SE83-2234** Andrew & Cynthia Richards, **1069 Great Island Road**, West Yarmouth, proposed raze and replace of a single-family dwelling in the buffer zone to a coastal beach and coastal bank on Nantucket Sound. Bob Perry, Cape Cod Engineering, representing the homeowner, stated that details of the project were outlined in the letter submitted. The CA reported that she is satisfied with the 200 sq. feet of mitigation area. A motion was made by Commissioner Bishop and seconded by Commissioner Lawrence. The motion carried unanimously.

Roll call vote:

Aye: Hoopes, Durkin, Bishop, Lawrence, Mulhearn, Huggins and Bernstein.

Request for an Amended Order of Conditions

9. **SE83-2041** Jeffrey Chizmas, **66A River Street**, South Yarmouth, request to amend an existing Order of Conditions with re-grading of mitigation area to reduce stormwater runoff. Chairman Hoopes reviewed the amendment that was for an updated plan with contours. The CA reported that an updated plan with contours and the area of vegetation that is to be replaced with details of the species has been received. Commissioner Durkin requested that this project be completed in a timely manner by October 1, 2020 and that the CA review plantings no later than October 31, 2020. Bob Perry, Cape Cod Engineering, addressed the Commission and noted that the homeowner wants to move ahead to completion and that the last extension by this Commission on the Order of Conditions is until 12/21/2021. Commissioner Lawrence questioned the removal of the mature bushes and replacement with smaller ones that could possibly contribute to runoff into the river. Mr. Perry explained the work limit line for the original project went right through the shrubs. When the project started

On 8/6/2020, on a motion by Commissioner Durkin, seconded by Commissioner Mulhearn, the Commission voted unanimously, 5-0, to approve these minutes as presented.

they tried to spare those shrubs but they had developed and were “leggy” so they were replaced in kind with new smaller ones that will develop over the years. Commissioner Lawrence asked what will protect the new ones from the same situation. Mr. Perry responded that the new ones aren’t just planted in pure sand and they are surrounded by new plantings all around them. Commissioner Bernstein commented on his site visit where the patio location was it looked like a swimming pool. Mr. Perry stated it is indeed a pool and it was on the original plan and approved.

Commissioner Durkin made a motion to approve the Amended Order of Conditions with the condition that the plantings be completed by October 1, 2020 and the CA will do a compliance review by October 31, 2020. Discussion: Commissioner Lawrence expressed concern and a possible added condition regarding how the runoff would be prevented from going into the river. Mr. Perry responded that a trenched in place silt fence will remain in place until ground plantings have been completed. Commissioner Durkin raised the suggestion of a silt fence and hay bales be added. It was agreed that the added condition would be: 8” straw wall be added to existing silt fence at the work limit line. Commissioner Huggins seconded the Motion. Motion carried 5-2.

Roll call vote:

Aye: Hoopes, Durkin, Mulhearn, Huggins and Bernstein in favor.

Nay: Bishop and Lawrence

Request for Certificate of Compliance:

10. **SE83-1227** 1069 Great Island Road, Yarmouth. Request for a partial Certificate of Compliance (COC) (for this property only) was approved on a motion made by Commissioner Bernstein and seconded by Commissioner Bishop. The motion carried unanimously.

Roll call vote:

Aye: Hoopes, Durkin, Bishop, Lawrence, Mulhearn, Huggins and Bernstein.

Commissioner Bishop was recused from SE83-1552 & 1555.

11. **SE83-1552**, 291 South Shore Drive, Yarmouth. Commissioner Lawrence made a Motion to approve a full COC, seconded by Commissioner Bernstein. The motion carried 6:0 with 1 member recused (Bishop).

Roll call vote:

Aye: Hoopes, Durkin, Lawrence, Mulhearn, Huggins and Bernstein

12. **SE83-1555**, 327 South Shore Drive, Yarmouth. Commissioner Lawrence made a Motion to approve a full COC, seconded by Commissioner Bernstein. The motion carried 6:0 with 1 member recused (Bishop).

Roll call vote:

Aye: Hoopes, Durkin, Lawrence, Mulhearn, Huggins and Bernstein

Other Business:

Violation – 4 Glenwood Street. CA reported that this property was brought to her attention by DNR. Slides were shown of the vegetation removed from the top of coastal Bank and the revetment to the house. Chairman Hoopes suggested a full Enforcement Order and Restoration Plan with fines be imposed. The landscaper was Campbell Landscaping and a citation should issue to them as well. The homeowner was not successful in joining in to the hearing.

On 8/6/2020, on a motion by Commissioner Durkin, seconded by Commissioner Mulhearn, the Commission voted unanimously, 5-0, to approve these minutes as presented.

Commissioner Lawrence made a motion for the CA to draw up the Enforcement Order and continue the matter to the June 18, 2020 meeting. Commissioner Huggins seconded. Motion carries unanimously.

Roll call vote:

Aye: Hoopes, Durkin, Bishop, Lawrence, Mulhearn, Huggins and Bernstein.

Approval of Conservation Restriction for Starbuck Lane Property. The Restriction is only for conservation use and will be held by the Conservation Trust. Commissioner Lawrence made a motion to approve the Conservation Restriction for Starbuck Lane. The motion was seconded by Commissioner Bishop. The motion carried unanimously. Roll call vote: Hoopes, Durkin, Bishop, Lawrence, Mulhearn, Huggins and Bernstein.

Minutes of 5/7/2020 for approval. Corrections to be made on page 1- date 4/26 should be 5/7; 1st paragraph, 4th line Kathy Williams was the Moderator; 3rd page Aunt Edith's Association, minutes read "Commissioner Lawrence said homeowner added the extra float", should be changed to "he had a mooring and suggested he may be able to use it".

Commissioner Bernstein made a Motion to Amend the minutes of 5/7/20 – Commissioner Lawrence seconded. Motion carries unanimously.

Roll call: Hoopes, Durkin, Bishop, Lawrence, Mulhearn, Huggins and Bernstein.

Staff Updates:

Commissioner Durkin shared his 3 year reappointment but noted it was with 1 abstention from the BOS.

Discussion for next meeting: Change of meeting time.

Commissioner Lawrence made a Motion to adjourn at 6:23 p.m. – Commissioner Bernstein seconded. Motion carries unanimously.

Roll call: Hoopes, Durkin, Bishop, Lawrence, Mulhearn, Huggins and Bernstein.

Posted By (Name):	Kelly Grant
-------------------	-------------