

On 9/17/2020, on a motion by Commissioner Durkin, seconded by Commissioner Huggins, the Commission voted unanimously, 7-0, to approve these minutes as presented.

## CONSERVATION COMMISSION MEETING MINUTES

June 18, 2020

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

YARMOUTH TOWN CLERK

**Member(s) Absent:**

Staff: Kelly Grant

'20SEP21PM3:14 REC

Start Time: 4.30pm

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

The June 18, 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

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. During the portion of the hearing designated for public comment, the Chair or moderator will ask

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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. Continued from 5/7/2020, 5/21/2020, 06/04/2020, 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. CA reported that this hearing was continued for an updated plan and has not heard from Down Cape Engineering.

Commissioner Bernstein made a Motion to continue to the July 2, 2020 hearing. Motion seconded by Commissioner Lawrence. Carries 6-0

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

### **Notice of Intent:**

2. Continued from 5/7/2020, 5/21/2020, 06/04/2020 **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. John O'Dea from Sullivan Engineering represented the homeowner on this project. Mr. O'Dea gave a history of the pier, ramp and float that was built in the 90's, the property owner has owned it since 1998 and has been in

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existence as it is today. The homeowner received an Enforcement Order that the floats are not in compliance. They prepared a plan in the winter when they were not in yet and called them 10 x 20 floats but they are only 8 x 20 floats as they exist today. Three piles hold it in place and what was permitted was 2 piles and 2 6 x 10 floats. At one time there was a Jet Ski boat and a connection to it, but when the violation went out they were removed. Waterways heard it last evening and they prefer that we get closer to the Commissions float sq. footage that is 200 sq. ft. Waterways discussed the possibility of some flexibility given the history and the boat that is at this float has been at this float for over 10 years. They discussed two 6 x 18's equaling 216 sq. ft. The property owner would like to keep what he has but acknowledges the situation. An old photograph was submitted to the CA today showing this pier and floats that predate the current owner's ownership.

Mr. Davis addressed the Commission stating they were before Waterways last evening and inquired of Commissioner Lawrence if Waterways made a recommendation or resolution last evening. Ms. Lawrence replied that Waterways is an advisory board and it was a recommendation to shorten it to get closer to the Conservation Commission Regulations.

Mr. Davis continued stating he is an established resident here and when he received the Enforcement he immediately contacted the CA and removed the Jet Ski.

Chairman Hoopes reconfirmed the configuration, inquired as to the size of the boat and Mr. Davis replied it is a 43 foot with outboard totaling 47 feet. Mr. O'Dea responded that the recommendation of the Waterways, as he understood it was, 1 extra tie off pile if needed and 2 6x18 piles.

Commissioner Lawrence agrees with Waterways that it should be shortened up and go with the 6 x 36. Chairman Hoopes also agreed with Waterways findings.

Mr. Davis would like to see the 8 x 20's stay and received a call today from Karl vonHone suggesting Mr. Davis find anything that supports that time showing the 8 x 20's and why they should stay.

Commissioner Bishop voiced his agreement with Waterways findings. Chairman Hoopes agreed, the 200 foot regulation will be upheld and appreciated Mr. Davis efforts in making it work.

Discussion regarding continuing the hearing for a new plan or have the CA accept it and close the hearing. Mr. Davis expressed that he may have some difficulty in obtaining someone at this time to do the work, it may take a while to engage someone.

Commissioner Lawrence made a Motion to have the CA accept the new plan showing two 6 x 18 floats with proposal of an additional piling along with the third one that is not regulation and to have it done within this season if possible and if not by next season. Commissioner Bishop seconded the Motion. Motion carries 7-0

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

### **Enforcement:**

**Let the record reflect that Commissioner Bishop abstained from the following hearings.**

3. Red Jacket Beach Ltd Partnership, **28 South Shore Drive**, South Yarmouth, unpermitted activity on a coastal beach.

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4. Blue Water LTD Partnership and Edge of the Sea Inc, **291 and 301 South Shore Drive**, South Yarmouth, unpermitted activity on a coastal beach.
5. Riviera Beach Ltd Partnership, **327 South Shore Drive**, South Yarmouth, unpermitted activity on a coastal beach.

CA gave history of the work that was carried out prior to permits issued and work slightly different to what was approved on: 28 So. Shore Dr.; 291 & 301 So. Shore Dr.; 327 So. Shore Drive. CA had a meeting with Christian Davenport who will be overseeing these sites prior to each season opening and any work that is carried out.

Commissioner Huggins had questions on the amount of work that was done on 291 & 301 South Shore Drive. Jamie Vieira, Davenport Companies, addressed the questions explaining that this kind of activity was standard operating procedure as far back and 2001 and pre dating permitting before that. This activity was moving sand and how it was done in the past. Now the CA has an open communication with Christian Davenport and they will keep in communication as to how it is done and make sure that something like this does not happen again. Commissioner Bernstein made 3 points of concern for him: 1) letting a permit lapse; 2) movement; 3) changes. He observed at 28 South Shore Drive a machine on the beach moving from one end to the other rather rapidly. A corporation, as large as this is, should be on top of permits and not let them lapse and changes in regulations etc. happen and they should be aware of updates. Commissioner Lawrence asked for an explanation of where the proposed dune reconstruction area is that is noted on the plan. The CA addressed Commissioner Lawrence's question and noted that there were a lot of discrepancies on what was intended to happen and what did happen.

Chairman Hoopes addressed the CA as to how should the Commission move forward on these projects. CA responded that everyone needs to be on the same page and the sand that builds up in the off season remains undisturbed. Discussion continued on the options that the Commission has to achieve the goal of rebuilding and the direction to take. CA explained that at the last meeting the dune restoration plan was provided.

Commissioner Huggins questioned whether this is setting a case of precedence. This is a violation and should fines be imposed. Other commissioners weighted in and agreed that fines should be imposed. CA reported that according to the by-law \$300/ property is allowed.

Commissioner Huggins made a Motion approving fines of \$300 per property for each of the 4 properties and all instructions of the maintenance of the beach be followed by the owners. Commissioner Bernstein seconded the Motion. Motion carries 6-0 with 1 abstain

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

6. Ocean Vacations LLC, **4 Glenwood Street**, unpermitted vegetation removal within the buffer zone to a coastal bank. Mike Aucoin, All Cape Septic & Survey, was present for this property. CA explained that this property was on the last agenda and the representative was not available. CA received a Restoration Plan today, the plan was shown on the screen for the Commissioners. CA felt that the plan was somewhat lacking, it did not address the water side of the property. Chairman Hoopes felt that the planting is inadequate, and needs to be improved. Commissioner Lawrence agreed it is not sufficient for what was removed. Commissioner Huggins comments included that the work was done without a permit, the restoration plan submitted is not sufficient and fines should be imposed. All members agreed.

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Chairman Hoopes suggested that this be continued to a date certain, that date being July 31<sup>st</sup> with a new plan that covers all sides of the property cut and they use native plantings.

Mike Aucoin stated that he is working with the CA to get a new plan, his company was just brought on to this project and he will relay to the homeowner what the Commission wants.

Discussion amongst the Commission regarding fining landscapers, how successful it is or isn't and possibly more discussion needs to happen on this subject.

Commissioner Durkin made a Motion to issue an Enforcement Order that includes a new Restoration Plan be received by July 31, 2020 and the homeowner and landscaper are each fined \$200.00 apiece. If the Restoration Plan is not received by July 31<sup>st</sup> new fines will be applied. A 3 year monitoring period for the plantings. Commissioner Bernstein seconded the Motion. Motion carries 7-0.

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

7. Seaside cottages, **135 South Shore Drive**, unpermitted fence on a coastal beach. CA reported that fences have been existing for a long time on this property, periodically replaced and never permitted and not suitable fences for a coastal bank. A smaller split rail fence is more suitable. The current fences went up a few weeks ago and on one the length was increased. Chairman Hoopes suggested that the fence be removed within 10 days and replaced with a split rail fence. Commissioner Lawrence agrees and there is an extra panel on the stockade fence. Commissioner Durkin expressed his opinion that the Conservation Commission has a dual responsibility to the community 1) regulation of the by-laws and maintenance of the regulations; 2) educational responsibility, which we have as a Commission an obligation to be fulfilled. These fences have been up for a long time and no one has been held responsible so education is definitely required. Commissioner Huggins agreed with the fence removal and a split rail installed with native vegetation to be planted. Commissioner Bishop disagreed with asking the homeowner to replace vegetation. The armored bank on the town beach contributes to the scouring.

Lauren, first year of managing the property and from photos the fence has been up for many years. It is a misunderstanding on our end, she apologized and will correct the situation. Chairman Hoopes stated this is an unpermitted fence, submit a RDA to the Commission, remove stockade within 10 days of the issuance of the Order, apply for a split rail fence, and this needs to be accomplished by July 31<sup>st</sup>.

Commissioner Bishop made Motion for the stockade fence to be removed within 10 days and replaced with a split rail fence. Commissioner Bernstein seconded.

Commissioner Durkin made an Amendment to the Motion that the existing fence can stay in place to the end of this season and be replaced by the next season. This Amendment failed.

Roll call: Hoopes, Bishop, Mulhearn, Bernstein and Huggins all votes aye. Commissioner Durkin voted nay. Motion carries 5-1 and 1 absent.

Commissioner Lawrence left the meeting at 6pm. and did not vote.

8. Lee Ann and Thomas O'Connor, **6 Roads End**, Unpermitted vegetation removal within the buffer zone to Long Pond. New property owners began cutting vegetation in the buffer zone. They had trees pruned in front of the house and were removing vines in the buffer zone. The CA asked them to cease and desist and file an RDA for any further work. Asked them to address an erosion issue along the side of the house also.
9. Jodi Redd, **46 Beach Road**, Yarmouth, unpermitted cutting within the buffer zone to an isolated wetland. New property owner began removal of tree leaning toward the house. A

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lot of trash is being removed from the wetland. CA gave approval to continue tree removal and to clear trash but with no heavy equipment. Removal by hand only. Allowed no further yard encroachment.

**Other Business:**

Discussion on PWC Roll N Go Ramp for Jet Ski use (184 Blue Rock Road, Steve Trulli). Mr. Trulli addressed the Commission and presented his material. He wishes to use a roll and go ramp in his beach area to add and remove jet skis. It will be a lightweight seasonal structure. Commissioner Bishop expressed concern with the idea. It would be considered a dock structure and would not meet the current regulations. Commissioner Hoopes commented that a dock would be required to provide public access in the intertidal area. Commissioner Huggins asked if this would be similar to pulling a boat up on the shore. The property owner commented that the jet ski would need to be elevated. The CA commented that it would need to be permitted/licensed through MassDEP Waterways. It would also need to be reviewed by DMF for impacts to shellfish habitat. They have expressed concern with the use of jet skis in shallow intertidal area. The CA commented that a Notice of Intent would be required to review the request formally. The recommended speaking with MassDEP waterways to get their input on their permitting process.

Discussion on Meeting Time. The Commission agreed to continue meeting at 4.30pm for remote meetings. Commissioner Bishops asked to return to the later meeting time once we return to in-person meetings.

Discussion on Wetland Bylaw fees. The CA asked if the Commission wants to look at fee increases. A past review was done in 2018 but it was not accepted to the Board of Selectman's agenda. Yarmouth is on the low side relative to other Towns. Commissioner Huggins commented that he considers fees to be a tax and there needs to be a justification for increasing the fees. The Commission agreed to a cost analysis for the basis of the fee increases. They will continue the discussion at a later date.

Approval of May 21, 2020 minutes. Commissioner Durkin asked for additional review of the minutes before approving. The CA will review the minutes for the next meeting.

Staff Updates. The CA updated the Commission on the Drive-In site use for the summer.

Commissioner Bernstein made a motion to adjourn at 7pm. The motion was seconded by Commissioner Bishop. Motion carries 6:0

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

Posted By (Name):	Kelly Grant
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