

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.

YARMOUTH TOWN CLERK  
20SEP21PM3:14 REC

## CONSERVATION COMMISSION MEETING MINUTES

September 3, 2020

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

**Member(s) Absent:**

Staff: Kelly Grant

Start Time: 4.30pm

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

The September 3, 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, Paul Huggins, Patricia Mulhearn, David Bernstein, Rick Bishop, and Ellie Lawrence.

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 who in the audience has any public comments or questions. Members of the public attending

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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:**

#### **Business Item:**

1. Recommendation for Conservation Restriction (CR) – Simpkins Bog property, **555 Route 6A**, Yarmouth. Mr. Mark Robinson of The Compact of Cape Cod Conservation Trusts presented the request for support for the Conservation Restriction. Commissioner Durkin made a motion to issue a memo to the BOS in support of the CR. The motion was seconded by Commissioner Lawrence.  
Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.  
The motion carried unanimously.

#### **Notice of Intent:**

2. Robert Griffin, Sweetheart Creek Association, **Sweetheart Creek**, Off Great Island Road, Yarmouth, MA, proposed maintenance dredging of Sweetheart Creek. Commissioner Bishop made a motion to continue to the September 17 meeting to allow for Waterways Committee, and DMF comments and a DEP File number. The motion was seconded by Commissioner Bernstein.  
Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.  
The motion carried unanimously.

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3. Constance Wright, **23 Circuit Road**, Yarmouth, MA, proposed phased shoreline protection, dormer, retaining wall and grading within a coastal beach, coastal bank and land subject to coastal storm flowage. Mr. Mark Burgess of Shorefront Consulting represented the applicant and presented the proposed work. Lindsay Strode of Cape Organics was also present. Commissioner Hoopes suggested delaying the project until the Parker River Bridge project was complete to allow for more accurate tidal data. Mr. Strode commented that the existing wall is in disrepair and is exacerbating erosion. The toe can be stabilized now and upper bank plantings made. The intertidal plantings can be completed once the bridge project is completed. Commissioner Bishop made a motion to continue to September 17, 2020 for the DEP file Number, a stamped plan, protocol for transition between proposed phases, planting plan and contour lines for the transition to the neighboring property. The motion was seconded by Commissioner Durkin.  
Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.  
The motion carried unanimously.
4. *Continued from 8/20/2020* 114 Upper County LLC, **160 Wood Road**, Yarmouth, MA, proposed and after-the-fact construction of a retaining wall, stairs and deck and tree work within the buffer zone to a bordering vegetated wetland. Mr. Darren Myer of Myer and Sons, Inc represented the applicant and presented the changes to the plan per the Commissions comments at the previous hearing. Commissioner Bernstein made a motion to issue an Order of Conditions approving the project with conditions per the Conservation Administrator. The motion was seconded by Commissioner Lawrence.  
Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.  
The motion carried unanimously.
5. *Continued from 7/16/2020, 8/20/2020* John Muscatel, **44 Grandview Drive**, Yarmouth, MA, Proposed changes to an existing pier and float facility on Bass River. At the request of the applicant, Commissioner Lawrence made a motion to continue to the September 17, 2020 meeting. The motion was seconded by Commissioner Durkin.  
Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.  
The motion carried unanimously.

#### **Enforcement Orders:**

6. *Continued from 8/20/2020* Francesco Melandri, **35 Aunt Dorah's Lane**, Yarmouth, MA, Restoration work on a coastal beach, coastal bank, land under a salt pond and associated buffer zone to satisfy Enforcement Order. As the updated plan was received in electronic form only and the day before the meeting, Commissioner Hoopes recommended continuing the item to the following meeting. Commissioner Lawrence made a motion to continue to September 17, 2020. The motion was seconded by Commissioner Bernstein.  
Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.  
The motion carried unanimously.

#### **Certificate of Compliance:**

7. *Continued from 8/20/2020*, **SE83-2225**, 12 Jessie's Lane, Yarmouth, MA. The work being completed per the Order of Conditions, Commissioner Durkin made a motion to issue a Certificate of Compliance. The motion was seconded by Commissioner Lawrence.  
Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.  
The motion carried unanimously.

#### **Violations:**

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8. *Continued from 8/20/2020* 222 Pleasant Street. Commissioner Bishop recused himself from the discussion. Commissioner Lawrence commented that there is no permitting on file for any of the structures on this property, boats are being stored in the beach vegetation and there are too many boats stored in the beach area. Mr. Lloyd commented that they use many small boats for sailing with their grandchildren. Mrs. Lloyd commented that the beach grasses were cut due to concerns with ticks. Commissioner Lawrence made a motion to issue an Enforcement Order requiring an after-the-fact Notice of Intent for the structures, recommending that NOI include only the upright boat rack and the bench, cease and desist with cutting of resource area vegetation and boats to be stored outside the resource area and buffer vegetation. The Notice of Intent shall be filed with 8 weeks of the Enforcement Order. The motion was seconded by Commissioner Bernstein.  
Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, and Lawrence.  
The motion carried 6:0.
9. 94 Pleasant Street – Update. Unpermitted floats have been removed.
10. 22 Mayflower Terrace – Update. Unpermitted floats have been removed.
11. 140 Mayflower Terrace – Update. Unpermitted floats have been removed.
12. 56 Pleasant Street – unresolved dock violation. Mr. Amorello addressed the Commission and asked for additional time to address the issue. Commissioner Lawrence made a motion to continue to the October 1st, 2020 meeting for an update from Mr. Amorello. The motion was seconded by Commissioner Mulhearn.  
Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.  
The motion carried unanimously.
13. 12 Jessie’s Lane – return of unpermitted floats. The CA relayed her conversation with the property owner who says the jet ski floats will be registered as a vessel to avoid the local float regulations. Commissioner Bernstein made a motion to issue an Enforcement Order requiring the unpermitted floats be removed within 10 days. If the floats are not removed within 10 days there will be a fine of \$300 per day thereafter.  
Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.  
The motion carried unanimously.
14. 202 Pleasant Street – Enforcement Order. The attorney for the property owner submitted correspondence to the Commission stating that the unpermitted jet ski floats have been registered as a vessel and as such are not in violation of the float regulations. The Commission discussed the matter and concluded that regardless of whether they are registered as a vessel, they are still considered floats under the wetland regulations. Commissioner Durkin made a motion to issue a \$300 fine under the local bylaw, for failure to respond to the Enforcement Order and required the floats be removed within 10 days or be subject to further fines of \$100 per day thereafter.  
Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.  
The motion carried unanimously.
15. 10 Surfside Terrace - Enforcement Order. Mr. Grimes confirmed by email that the additional float has been removed. The CA commented that the remaining float is larger than that permitted but is below 200 square feet. Commissioner Bernstein made a motion to request

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an as-built plan for the current structure with 30 days. The motion was seconded by Commissioner Lawrence.

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

The motion carried unanimously.

16. 361 Great Island Road. The Commission discussed the oversized float at the property. Commissioner Durkin made a motion to send a letter to the property owner requesting removal of the oversized floats and for them not to return in the 2021 boating season unless approved by the Commission. The motion was seconded by Commissioner Lawrence. Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence. The motion carried unanimously.

**Other Business:**

Request for Approval of Minor Modification **SE83-2143**, Parkers River Restoration Project. Commissioner Lawrence made a motion to approve the request for a modification to the Time of Year restriction, citing DMFs support of the modification. The motion was seconded by Commissioner Durkin.

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

The motion carried unanimously.

Approval of Minutes 7.16.2020. Commissioner Durkin made a motion to approve the minutes as written. The motion was seconded by Commissioner Lawrence.

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

The motion carried unanimously.

Request for approval of vista pruning on town owned conservation property abutting 27 Longview Dr. The Commission requested a site visit before making a decision. Commissioner Lawrence made a motion to continue to September 17, 2020. The motion was seconded by Commissioner Huggins.

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

The motion carried unanimously.

Staff Updates. The Commission asked for an update on the filling of the office assistant position. The CA responded that the meeting with Town Administration was postponed.

Posted By (Name):	Kelly Grant
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