

On 10/1/2020, on a motion by Commissioner Durkin, seconded by Commissioner Lawrence, the Commission voted unanimously, 6-0, to approve these minutes as presented.

## CONSERVATION COMMISSION MEETING MINUTES

September 17, 2020

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

**Member(s) Absent:**

YARMOUTH TOWN CLERK

**Staff:** Kelly Grant

'20OCT2AM11:17 REC

**Start Time:** 4.30pm

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

The September 17, 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. The live feed on the Town of Yarmouth YouTube Channel is not currently working. 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:**

The Commission received a request to go out of Order for 35 Aunt Dorah's Lane to accommodate a scheduling conflict. The Chair agree to hear 35 Aunt Dorah's Lane after the first scheduled agenda item.

### **Request for Determination of Applicability**

Richard J. Fagan Jr., **301 Mayfair Road**, Yarmouth Port MA, proposed replacement of existing retaining wall within the buffer zone to a wetland resource area.

No one attended to present the request. The Chairman decided to proceed with rest of the meeting to allow the applicant to attend later in the meeting.

### **Enforcement Orders:**

*Continued from 8/20/2020, 9/3/2020* 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. Jen Crawford of Crawford Land Management presented the restoration plan changes.

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Commissioner Lawrence made a motion to approve the restoration plan with salt marsh restoration to begin no later than spring 2021. The motion was seconded by Commissioner Bernstein. Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence. The motion carried unanimously.

Marie Caron, **14 Angus Ave**, South Yarmouth MA, proposed construction of a three bedroom dwelling, septic system and landscaping features within land subject to coastal storm flowage.

Paul Shea represented the applicant and presented the proposed work. Commissioner Hoopes asked if the wetland delineation worksheets or other evidence had been provided. Mr. Shea had provided a sketch of a test hole dug that confirmed upland soils. He confirmed there are no wetlands present within 100 feet of the project locus. The CA commented that the test hole location is in an area indicated to be upland on the state wetlands map but that there is an area of wetlands indicate adjacent to this area. A previous wetland delineation at 22 Angus Ave confirmed the presence of a wetland. The Commission asked that Mr. Shea revisit his site investigation and provide further evidence. Commission members indicated that would attend a site visit to be scheduled with the CA.

Commissioner Bishop made a motion to continue to the October 1, 2020 meeting. The motion was seconded by Commissioner Lawrence.

Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence. The motion carried unanimously.

**Notice of Intent:**

Christian G. Heiter, Trustee, FEH Nominee Trust, **3 Cape Isle Drive**, Yarmouth MA, proposed maintenance dredging within land under ocean.

The Applicant requested a continuance.

Commissioner Durkin made a motion to continue to October 1, 2020. The motion was seconded by Commissioner Mulhearn.

Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence. The motion carried unanimously.

S. Robert Fish, Jr. Trustee, 29 Lewis Bay BLVD Unit 4 Nominee Trust, **29 Lewis Bay Blvd, Unit 4**, proposed construction of addition over existing garage and sunroom on existing deck within the buffer zone to a wetland resource area and land subject to coastal storm flowage.

Danny Gonsalves of Down Cape Engineering represented the applicant and presented the proposed work. Commissioner Lawrence commented that the expanded structure is within both the 35 and 50 foot setback and she does not support this aspect of the project. Mr. Gonsalves commented that the expansion is over existing patio. Other members of the Commission expressed their concern with the proposed structure expansion that does not meet the regulations. The question was raised as to whether the structure in its current location is permitted. Mr. Gonsalves commented that the house was built in about 2005.

The CA commented that looking at the old file, the house was rebuilt using a pre-existing footprint. The deck does not appear on the previously permitted plan but is within the approved patio. She suggested continuing the meeting to review the previous permit further.

Commissioner Hoopes suggest the plan be revised to remove the enclosed deck.

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Commissioner Bernstein made a motion to continue to October 1, 2020. The motion was seconded by Commissioner Mulhearn.

Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.  
The motion carried unanimously.

Derick Mullikin, Mullikin Building and Remodeling, **11 North Cove Landing**, South Yarmouth MA, proposed renovations to existing dwelling, replacement of deck, and septic system upgrade within the buffer zone to a wetland resource area, riverfront area and land subject to coastal storm flowage. Robin Wilcox of Sweetser Engineering presented the applicant and presented the proposed work.

Commissioner Lawrence made a motion to issue an Order of Conditions approving the project as presented, with conditions and pending the issuance of a MassDEP file number. The motion was seconded by Commissioner Durkin

Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.  
The motion carried unanimously.

**Continued Notice of Intent:**

*Continued from 9/3/2020* Robert Griffin, Sweetheart Creek Association, **Sweetheart Creek**, Off Great Island Road, Yarmouth, MA, proposed maintenance dredging of Sweetheart Creek.

Commissioner Lawrence made a motion to continue to October 1, 2020 to received, DMF, NHESP and Waterways Comments. The motion was seconded by Commissioner Bernstein.

Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.  
The motion carried unanimously.

*Continued from 9/3/2020* 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. Mark Burgess of Shorefront Consulting presented the proposed plan changes.

Commissioner Lawrence made a motion to issue an Order of Conditions approving the project with conditions, adjustments as required due to changes in water level, and milestone/annual reports. The motion was seconded by Commissioner Bishop.

Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.  
The motion carried unanimously.

*Continued from 7/16/2020, 8/20/2020, 9/3/2020* John Muscatel, **44 Grandview Drive**, Yarmouth, MA, Proposed changes to an existing pier and float facility on Bass River.

The revised plan is ready for review and discussion at the following meeting.

Commissioner Lawrence made a motion to continue to the October 1, 2020 meeting. The motion was seconded by Commissioner Durkin.

Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.  
The motion carried unanimously.

**Certificate of Compliance:**

**SE83-1750, 28 Television Lane**, Yarmouth

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The CA summarized: The previous COC was denied, the property owner was given time to rectify the issues. Down Cape Engineering confirmed that plans/work are in place to resolve the matter.

Commissioner Bishop made a motion to allow until October 15, 2020 for the work to be completed under administrative approval. The motion was seconded by Commissioner Durkin. Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence. The motion carried unanimously.

**SE83-1936, 3 Cape Isle Drive, Yarmouth**

Work being completed per the approved Order, Commissioner Bishop 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.

**SE83-2194, 72 Massachusetts Ave, Yarmouth**

Work being completed per the approved Order, Commissioner Bishop 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.

**Enforcement Orders:**

**202 Pleasant Street** – unpermitted floats have been removed

**12 Jessies Lane** – update unpermitted floats have been removed

**182 Baxter Ave** – review of latest memo

Commissioner Lawrence made a motion to continue to Oct 1, 2020 to discuss the memo in Executive Session. The motion was seconded by Commissioner Bernstein.

Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence. The motion carried unanimously.

**Violations:**

**355 Great Island Rd** – unpermitted float, open Order of Conditions

CA presented the details of the violation – expanded floats and no COC for Order. The property owner requested a continuance to review their files.

Commissioner Huggins made a motion to continue to October 15, 2020. The motion was seconded by Commissioner Durkin. Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence. The motion carried unanimously.

**40 Crosby St. Ext** – unpermitted floats, open Order of Conditions

Unpermitted floats have returned to the property in 2020 season.

Commissioner Lawrence made a motion to issue a \$300 citation and an Enforcement Order requiring removal of unpermitted floats. Daily fines should be imposed if the floats return in the next season.

The motion was seconded by Commissioner Bernstein

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Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop (abstain), and Lawrence.  
The motion carried 6:0 (1 abstain)

**70 Grandview Drive** – removal of buffer zone vegetation

CA has issued a violation notice requiring replanting before end of the fall growing season. Will add to the October 1 agenda to allow property owner discussion with the Commission if requested.

**Other Business:**

Approval of Minutes June 18, 2020. Commissioner Durkin made a motion to approve the minutes as presented. The motion was seconded by Commissioner Huggins.

Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.  
The motion carried unanimously.

Approval of Minutes September 3, 2020. Commissioner Durkin made a motion to approve the minutes as presented. The motion was seconded by Commissioner Huggins.

Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.  
The motion carried unanimously.

**Staff Updates**

Commissioner Durkin reported a violation at the home of Howard Safford on South Shore Drive. It appears that vegetation has been removed between the house and the wetland. He asked the CA to investigate.

Commissioner Bernstein asked for a copy of the marked up regulations.

Commissioner Lawrence made a motion to adjourn at 6.24pm. The motion was seconded by Commissioner Mulhearn.

Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.  
The motion carried unanimously.

Posted By (Name):	Kelly Grant
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