

On 10/15/2020, on a motion by Commissioner Bernstein, seconded by Commissioner Durkin, the Commission voted unanimously, 7-0, to approve these minutes as presented.

CONSERVATION COMMISSION MEETING MINUTES

October 1, 2020

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

Member(s) Absent:

Staff: Kelly Grant

YARMOUTH TOWN CLERK

Start Time: 4.30pm

'20OCT16AM8:53 REC

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

The October 1, 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:

Tom Durkin, Paul Huggins, Patricia Mulhearn, David Bernstein, 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 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:

Continued Request for Determination of Applicability

1. *Cont. from, 9/17/2020* 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.

Tom Durkin, Vice Chair of the Conservation Commission Opened the meeting.

Richard Fagan Representing.

The applicant would like to replace the old deteriorating railroad retaining wall with a stone wall.

The CA point out that the previous plan presented did not reflect the updated flood zone was different and with the new delineation the area where the wall would be reconstructed is now a regulatory coastal bank. The project would be work on a coastal bank, however it is replacement of an existing structure well landward of the BVW and the salt marsh.

Commissioner Lawrence made a motion to approve a negative 2 determination but not approve of the wetlands delineation as presented in the plan. The motion was seconded by Commissioner Mulhern

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

The motion carried unanimously 5 - 0

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2. *Cont. from, 9/17/2020 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 representing.

A test hole was done on the NW corner of 17 Angus Ave of 37 inches. Mr. Shea pointed out the vegetation was mostly Japanese knotweed and other assorted upland species.

Mr. Shea asked for approval for the project based on LSCF.

Comm. Lawrence commented that the ongoing drought might have an effect on the water level.

Comm. Bernstein mentioned that there was water at the bottom of the test hole.

The CA agreed with Mr. Shea on the wetland delineation.

Commissioner Bernstein made a motion to Accept a negative 2 determination. The motion was seconded by Commissioner Huggins

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

The motion carried unanimously. 5 - 0

(Comm. Bishop joined the hearing)

Request for Determination of Applicability

3. *Adam and Ellen Rataj, 4 Seaside Village, Yarmouth, MA, Proposed four bedroom single family dwelling, title 5 septic system and paved driveway with drainage.*

Dan Ojala representing.

LSCSF Building is proposed to be built on a concrete slab with an at grade crawl space and a slight mounding of 2 foot elevation, roof drywells and a paved drive with a drain on the end near the road.

Comm. Durkin inquired about the paved drive as opposed to a permeable drive.

Mr. Ojala responded that it would be for long term maintenance purposes.

Comm. Lawrence asked about the amount of tree clearing on the lot and to delineate the WLL on the plan.

Mr. Ojala responded that there is no specific clearing plan was made and some trees may remain on lot 37.

Comm. Bernstein agreed with Comm. Durkin for a permeable drive.

Comm. Mulhern asked about the amount of fill.

Mr Ojala stated that there would not be a lot, about 2 feet of fill on the east side of the proposed building and a little to level the drive and septic system.

Commissioner Bishop made a motion to accept a negative 2 with a pervious drive, proper drainage and WLL line delineated on the plan. The motion was seconded by Commissioner Lawrence.

On 10/15/2020, on a motion by Commissioner Bernstein, seconded by Commissioner Durkin, the Commission voted unanimously, 7-0, to approve these minutes as presented.

Roll Call: Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.
The motion carried unanimously. 6 - 0

Chairman Hoopes joined the meeting

Notice of Intent:

4. Anthony Feola, 1 Malfa Road, Yarmouth, MA proposed construction of coir log erosion control on eroding bank, sand nourishment and plantings and a coastal bank and LSCSF.

Dan Ojala presenting.

Concrete wall failing. The Applicant is proposing a soft solution of coir logs to protect the existing peat, densely packed and anchored with plantings. The failing concrete wall will be removed by equipment on the landward side.

Crawford land & management is the project engineer.

Comm Bishop thanks the applicant for the soft solution but questioned the minimal elevation change.

Mr. Ojala responded that they looked at the conditions and believes if it was built up more it would cause washouts in storm events.

Mr. Crawford mentioned that this type of installation, with proper sand covering and beach grass growth, could last 10 – 15 years.

The CA commented that there is no DEP file # for the project, there is also an old COC that needs closing out and suggested some beach nourishment to be required in front of the coir rolls until the beach grass takes hold.

Mr Crawford proposed to plant the beach grass at the end of March to avoid storm washouts over the winter season.

Mr. Ojala agreed that ongoing sand nourishment and planting above MHW would ensure the success of the project.

The CA inquired of the use on non-natural material in the coir rolls. MR. Crawford replied that they could tag their material so that if it washed out it could be identified and retrieved.

The CA suggested greater buffer zone vegetation be added to help with erosion, annual monitoring be added after large storms and monitoring and maintenance plan be included in the order. The CA requested that the perpendicular concrete slab on the east side of the property be removed to enhance sediment flow.

The CA recommended that the OOC include that Crawford is the contractor for this project and if the contractor for this project is changed it has to come before CON COMM again to be approved due to the complexities of the project.

Commissioner Bishop made a motion to continue to the Oct. 15th meeting for the DEP # and closing of the old COC. The motion was seconded by Commissioner Bernstein

Roll Call: Hoopes, Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.
The motion carried unanimously. 7 – 0

On 10/15/2020, on a motion by Commissioner Bernstein, seconded by Commissioner Durkin, the Commission voted unanimously, 7-0, to approve these minutes as presented.

5. Paul G Muzyka, 45 Crosby St Ext & 15 Ship Shops Way, Yarmouth, MA, Extension of existing stone revetment on a coastal bank and Riverfront Area.

Chairman Hoopes resumed Chair

Bob Perry representing.

The proposed project is an extension of a prior project completed at 15 Ship Shops way.

Mr. Muzyka chose, at the time, to wait and see if a wall was needed.

The project would include two properties, 20 feet on 15 Ship Shops Way and approximately 53 feet on the shore front of 45 Crosby st Ext. the CES would taper down south to north and the north end would consists of five feet of coir logs and sand fill. A buffer is proposed on the cap of the CES.

The CA would like to see a bio-engineered solution as opposed to a hard solution. Coir logs at the toe of the bank to stabilize with salt tolerant planting on the bank and a substantial buffer on top of the bank to stabilize the ground and control runoff.

Comm. Bishop would like to see a mitigation plan.

Consensus of the Board is to see a soft solution.

A DEP file number is still required for this filing

Mr Muzyka stated that at the north end of the CES on 15 Ship Shops Way has caused significant erosion.

Chair Hoopes responded that the erosion is likely cause by the existing CES to the south and the request of this project would move the problem further up river.

The CA suggested bringing in Mr. Bergman to get his input on the project.

Commissioner *Durkin* made a motion to *continue to November 5th*. The motion was seconded by Commissioner *Lawrence*

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

The motion carried unanimously. 7 - 0

Continued Notice of Intent:

6. *Cont. from 7/16/2020, 8/20/2020, 9/3/2020, 9/17/2020* John Muscatel, 44 Grandview Drive, Yarmouth, MA, Proposed changes to an existing pier and float facility on Bass River.

Bob Perry presenting.

Comm. Lawrence inquired about float stops due to the depth of water.

Comm. Bishop proposed float stops at 1.6 feet to match the MLW.

Jet ski lift info was not available at the time of the meeting and will be sent to the CA for the record.

Commissioner *Lawrence* made a motion to *Accept with 1.6 foot float stops and Jet ski lift info sent to the CA*. The motion was seconded by Commissioner *Durkin*

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

The motion carried unanimously. 7 - 0

On 10/15/2020, on a motion by Commissioner Bernstein, seconded by Commissioner Durkin, the Commission voted unanimously, 7-0, to approve these minutes as presented.

7. *Cont. from, 9/17/2020* 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.

A COC was issued and the It was discovered that the existing deck was added later and is not a permitted structure.

The request for an enclosed sunroom on the deck was therefore denied but due to the changing ownership of the property and any repairs needed during construction of the dormers would be allowed with consent of the CA and Chair

Commissioner Bernstein made a motion to Approve with revise plans eliminating the enclosed sunroom on the deck The motion was seconded by Commissioner Durkin

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

The motion carried unanimously. 7 - 0

8. *Continued from 9/17/2020*, Christian G. Heiter, Trustee, FEH Nominee Trust, 3 Cape Isle Drive, Yarmouth MA, proposed maintenance dredging within land under ocean.

Rob Braman presenting

Proposed 95 CY of dredged material to be removed by mechanical method, silt skirts, and a dewatering steel container with hay bales to be trucked off site

DMF – TOY restriction, January 15 – May 31

CA comments, remove shellfish in the footprint of dredging that will occur.

Commissioner Lawrence made a motion to Accept the project. The motion was seconded by Commissioner Bishop

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

The motion carried unanimously. 7 - 0

9. *Cont. from 9/3/2020, 9/17/2020* Robert Griffin, Sweetheart Creek Association, Sweetheart Creek, Off Great Island Road, Yarmouth, MA, proposed maintenance dredging of Sweetheart Creek.

Matt Creighton presenting;

Have not received Natural Heritage input.

Plans submitted to waterways comm. and plans presented to said committee did not concur, ergo, the Waterways committee decision was based wrong information.

DMF -dredging no closer than 25 feet from salt marsh

Shellfish survey was not performed.

The dredging area appears to be larger than what was previously permitted.

Currently there are 7 COC's that are outstanding and 6 float violations that need to be addressed in the area requested for dredging.

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Mr Creighton stated that the 25 foot offset cannot be accomplished in the limitations of the channel and that the dredge area may look bigger because the plan shows the side slope of the channel.

Section B-B has a permit and was added to the plan.

The last permit had a 15 foot buffer to the salt marsh, this new plan requests a 10 foot buffer.

Comm. Bishop questioned the disposal of materials.

Mr C stated it would be utilizing a mechanical dredge, clam shell on a crane and offloading on an existing pad to be trucked off site.

The de-watering would be on site

Comm. Bernstein would like to see a shellfish survey and remarked on the unpermitted docks in the area.

Mr. C replied that in the dredge area there is not a significant amount of shellfish due to the past dredging of the area.

The Chair clarified that the float violations should not be a consideration on this application.

The CA replied that the larger floats could cause the demand for dredging due to larger boats utilizing the area but it is a separate process.

The CA would recommend 15 feet off the salt marsh

Commissioner Bernstein made a motion to continue to Oct 15 for NH review, no work until COC's are closed out and a 15 foot set back from the salt Marsh. The motion was seconded by Commissioner Mulhern.

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

The motion carried unanimously. 7 - 0

Certificate of Compliance:

10. **SE83-1767**, 7 Powers Lane, Yarmouth

The project exceeded the OOC.

Comm. Durkin voiced his concern of the size and material construction of the driveway.

The driveway needs to be replaced with pervious material and reduced 4 feet on each side, the removal of all paver walkways, removal of the stone wall and the adjoining dune restored with beach grass replanted.

Commissioner Bishop made a motion to Continue to Nov 5. The motion was seconded by Commissioner Lawrence

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

The motion carried unanimously.

11. **S83-2183**, 25 Wharf Lane, Yarmouth

Commissioner Bishop made a motion to Approve the COC. The motion was seconded by Commissioner Durkin

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

The motion carried unanimously. 7 - 0

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Enforcement Orders:

12. 182 Baxter Ave

Comm. Bishop recused himself

Stan Humphries, coastal geologist with CR presenting.

The plan presented proposed a dune restructuring of 850sf on the east side at a gap between phragmites growth and the west jetty of mill creek, twice the sf area that was acknowledged as removed on the west side of the property.

The plan identified 3 areas of phragmites on the east, dense, moderate, and sparse and would implement a 3 year eradication program and supplement with salt tolerant species and dune augmentation.

Chairman Hoopes exited the meeting and Vice Chair Durkin resumed the Chair

Violations:

13. 56 Pleasant Street – dock violation

The property owner had the floats removed. He proposes 2 floats reduced in size but bigger than permitted. Size of 120sf to 192sf.

The CA asked the owner to file an RDA with an updated plan

14. 70 Grandview Drive – removal of buffer zone vegetation

Paul Tardiff representing

The owners removed the buffer as the roots were invading the seawall and foxes were using the brush for a den and cleared the bushes.

The property owners would like to keep the full yard to the seawall

The CA suggested a 5 foot buffer with appropriate native plantings.

Commissioner Bishop made a motion to add a 5 foot buffer. The motion was seconded by Commissioner Lawrence

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

The motion carried unanimously. 6 - 0

Other Business:

Approval of Minutes August 6, 2020. Commissioner Durkin made a motion to approve the minutes of August 6 as written.

The motion was seconded by Commissioner Huggins

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

The motion carried unanimously. 6 - 0

Approval of Minutes August 20, 2020. Commissioner Durkin made a motion to approve the minutes of August 20 as written. The motion was seconded by Commissioner Lawrence

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Roll Call: Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.
The motion carried unanimously. 6 - 0

Approval of Minutes September 17, 2020. Commissioner Durkin made a motion to approve the minutes of Sept. 17 as written. The motion was seconded by Commissioner Lawrence

Roll Call: Durkin, Huggins, Mulhearn, Bernstein, Bishop, and Lawrence.
The motion carried unanimously. 6 - 0

Commissioner Bernstein made a motion to enter Executive Session and not return to regular session. The motion was seconded by Commissioner Lawrence

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

Posted By (Name):	Kelly Grant
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