

CONSERVATION COMMISSION MEETING MINUTES

February 16, 2023

Members Present: Ed Hoopes (Chairman), Ellie Lawrence (Vice Chairman), Patricia Mulhearn, Thomas Durkin, David Bernstein, Paul Huggins

Absent: Rick Bishop

Staff: Brittany DiRienzo

Start Time: 5:00 pm

1. Natural Resources Department Project announcement -Trail marker additions and improvements, map updates for conservation areas
Victoria Cotone from Natural Resources and Ana Rolfe, intern from Barnstable High School, presented their plan to mark the conservation area trails in Yarmouth. Trail markers will be within line of sight. This will be completed by the end of March. Commissioners showed their support and thanked Ana for her initiative.

Request for Determination of Applicability

2. Daniel A. Ojala, Down Cape Engineering, Inc., for Jacob Simmons [137 Run Pond Road](#)
Proposed raze and replace of a single family dwelling partially located within land subject to coastal storm flowage. The existing septic system and driveway will remain.

Presenting: Dan Ojala

Discussion: Will keep septic system that is there. A new ventilation system will be added to allow water to flow under house in case of a flood.

Commissioner Bernstein made a motion to issue a negative 2 determination.

The motion was seconded by Commissioner Lawrence, and the motion carried unanimously 6-0.

Updated Plan Request

3. **SE83-2289** Kieran Healy, BSC Group, for the Parkers River Realty Trust, [668 Route 28](#)
(Captain Parker's Pub) – Previously installed stormwater system instead of bioswale, along with handicap ramp and walkway

Presenting: Kiernan Healy

Discussion: Presented need to add a handicap ramp and path in back which will be for emergency use only. Will add mitigation to cover for path within current plantings.

Commissioner Lawrence made a motion to approve updated plan. The motion was seconded by Commissioner Durkin, and the motion carried unanimously 6-0.

Continued Notice of Intent

4. Thomas Young, [71 Arrowhead Rd.](#), Proposed 15 x 28 and 9x9 decks on sonotubes in the buffer zone to a bordering vegetated wetland

Commissioner Bernstein made a motion to continue to March 2, and the motion was seconded by Commissioner Mulhearn. The motion carried unanimously 6-0.

On 03/02/2023, on a motion by Commissioner Bernstein, seconded by Commissioner Mulhearn, the Commission voted 5 - 0, to approve these minutes as written.

5. **SE83-2371** Bob Perry, Cape Cod Engineering, for Susan and Dewitt Davenport [62A Pleasant Street](#) Proposed swimming pool in the riverfront area (inner riparian zone), land subject to coastal storm flowage, and the buffer zones to a salt marsh and coastal bank
An email request was read into the record.

Commissioner Lawrence made a motion to continue to March 16, and the motion was seconded by Commissioner Durkin. The motion carried unanimously 6-0.

Continued Stormwater Management Permit Application

6. Town of Yarmouth, [669 Route 28](#) Proposed event space and park with trails, parking, bath house and art shanties.

Presenting: Kathy Williams. The peer reviewing engineer has completed his peer review and noted that the project is in compliance with the stormwater regulations.

Commissioner Lawrence made a motion issue the stormwater permit with special conditions. The motion was seconded by Commissioner Huggins, and the motion carried unanimously 6-0.

Certificate of Compliance

7. **SE83-609**, [11 Park Ave](#), Yarmouth

Commissioner Bernstein made a motion to issue a Certificate of Compliance, which was seconded by Commissioner Lawrence. The motion carried 6-0.

8. **SE83-1442**, [8 Many Oaks Circle](#), Yarmouth Port

Presenting: Frank Mellace, Homeowner

Discussion: Drywells were never installed, were required in the order of conditions, and there is evidence of erosion. Homeowner was given to June 16 to install the drywells so a Certificate of Compliance could be issued. No vote taken.

Continued Enforcement

9. [110 River Street](#), South Yarmouth, Review of restoration planting plan

Presenting: David McCarthy, homeowner

Discussion: The plan presented meets the 5 to 1 mitigation required. Commission asked for replacement of Creeping Juniper. Homeowner wants to add additional plantings on the south side of low height to match the path for aesthetics. Revised plan must be filed by March 16.

Commissioner Lawrence made a motion to approve the revised restoration plan showing replaced creeping juniper and additional plantings on the south. The motion was seconded by Commissioner Mulhearn and the motion carried unanimously, 6-0.

Enforcement

10. [16 General Lawrence](#), South Yarmouth, Unpermitted clearing of vegetation in the buffer zone to a vegetated wetland

Presenting: Michael Fraser, contractor, and Elizabeth Shea homeowner.

Discussion: CA showed pictures of vegetation clearing including a tree in the no disturb zone to a wetland and stated that a restoration plan was needed. Homeowner said she would do whatever is asked and just needs guidance. Erosion control in the form of a straw wattle and matting would be needed immediately. Contractor stated that he only cleaned waste material. Chairman Hoopes commented that contractors with any experience with working in wetlands should know that the first step is to contact the Conservation Commission. Mr. Fraser defended his actions and left the meeting after he was asked to leave.

Two votes were taken:

On 03/02/2023, on a motion by Commissioner Bernstein, seconded by Commissioner Mulhearn, the Commission voted 5 - 0, to approve these minutes as written.

Commissioner Lawrence moved to fine Mr. Fraser \$300 for removing vegetation in the no disturb zone to a wetland resource area without approval. The motion was seconded by Commissioner Bernstein and the motion passed 5-1.

The second motion was made by Commissioner Bernstein to have an Enforcement Order issued requiring a restoration plan to be submitted to the CA by April 16 and to complete the restoration by May 31. There will also be three years of monitoring. The motion was seconded by Commissioner Lawrence and the motion carried unanimously, 6-0.

11. **14 Roads End**, South Yarmouth, Unpermitted dock, and floating docks within land under a water body, bordering vegetated wetland, and their buffer zones.

Presenting: Matt Fitzsimmons, homeowner

Discussion: dan Ojala of Down Cape Engineering handed the CA a hardcopy of an existing conditions draft plan to show they are working on this.

Previous CA contacted the homeowner in October 2021 asking for a chapter 91 license and any local permitting for his dock, Current CA followed up in November 2022 asking for a NOI to be filed for the unpermitted dock and sent an enforcement order on February 6, 2023, after no action was taken. The EO required an NOI to be filed by March 16, 2023. The commissioners were willing to extend this deadline to March 31, 2023.

Commissioner Lawrence made a motion to ratify the Enforcement Order with the March 31st, 2023, deadline. The motion was seconded by Commissioner Bernstein, and the motion carried 6-0.

Commissioner Lawrence left the meeting at 6:04 after this hearing closed.

Other Business

12. No dock zone inquiry – 11 Edgewater Drive,

Presenting: Paul McLean Homeowner

Mr. McLean recently bought the property and is hoping to put in a dock; However, the property is in a no dock zone. He cited that the property at 430 Highbank was able to reverse the no dock zone for his property at the other end of this no dock area. He inquired if there was any way to ask for a similar variance. The commission informed him that natural resources waterways committee would need to give their recommendation, and that he should put together some material to present to the commission supporting his case.

13. Approval of Meeting Minutes: January 4, 2023, and February 2, 2023. Both were Tabled to March 2, 2023.

Executive Session The Commission will hold an executive session to discuss litigation related to **18 Roads End**, Yarmouth. The Commission will not reconvene in open session at the end of the executive session.

Because the town attorney was unavailable, the executive session was postponed to the next meeting. Commissioner Bernstein made the motion to postpone to March 2, 2023 which was seconded by Commissioner Durkin. Motion passed 5-0

Commissioner Bernstein made a motion to adjourn. The motion was seconded by commissioner Mulhearn.

Meeting Adjourned at 6:26