

## CONSERVATION COMMISSION MEETING MINUTES

March 2, 2023

**Members Present:** Ed Hoopes (Chairman), Patricia Mulhearn, Thomas Durkin, David Bernstein, Rick Bishop, Paul Huggins

Absent: Ellie Lawrence (Vice Chair)

**Staff:** Brittany DiRienzo

**Start Time:** 5:00 pm

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### Executive Session

1. The Commission will hold an executive session to discuss litigation related to [18 Roads End](#), Yarmouth. The Commission will convene in open session at the end of the executive session.

### Open Session began at 5:30 pm

#### Emergency Certification

2. Kieran Healy, BSC Group, for William Hearn, [103 River Street](#), fuel oil release remediation efforts

Presenting: Kiernan Healy and William Hearn

Discussion: Mr. Healy explained that during construction an unknown oil tank was struck resulting in some oil spillage. The oil tank has been removed as well as 5 yards of soil. The petitioner asked for permission to stockpile and remove more soil if it is contaminated.

Commissioner Bishop made a motion to ratify the emergency certification for remediation efforts.

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

#### Announcement

3. Department of Public Works- Presentation of Wastewater program and updates  
Jeff Colby presented an overview and update of the wastewater.  
Commissioner Bishop made a motion to write a letter of support which was seconded by Commissioner Durkin.  
The motion carried 6-0.

#### Request for Determination of Applicability

4. Magdalena Lofstedt, CDM Smith Inc., for the Town of Yarmouth [Road based](#)  
Proposed sewers located within land subject to coastal storm flowage, riverfront area, and the buffer zones to bordering vegetated wetlands and coastal banks.

Presenting: Magdalena Lofstedt , and Mike CDM Smith

On 3/16/2023, on a motion by Commissioner Bernstein, seconded by Commissioner Mulhearn, the Commission voted 4 - 0, to approve these minutes as written.

Discussion: none

Commissioner Bishop made a motion to issue a negative 2 determination. The motion was seconded by Commissioner Bernstein, and the motion carried 6-0.

5. Dan Ojala, Down Cape Engineering Inc., for Thomas J Ruhan Trust 168 South Street Proposed free standing garage located within land subject to coastal storm flowage

Presenting: Craig Ferrari, Down Cape Engineering Inc

Discussion: The existing garage will be replaced by a larger one. The existing lawn area will remain. Two large trees were removed, one within riverfront area, and Commissioner Bernstein asked that multiple replacement trees be required as a special condition.

Commissioner Huggins made a motion to issue a negative 2 determination with this special condition. The motion was seconded by Commissioner Durkin, and the motion carried 6-0.

6. Dan Ojala, Down Cape Engineering Inc., for Matthew Feid 184 South Sea Avenue Unit 10 Proposed cantilevered deck within land subject to coastal storm flowage, and the buffer zone to a salt marsh. No ground disturbance is proposed.

Presenting: Craig Ferrari, Down Cape Engineering Inc

Discussion: A small deck expansion that will be cantilevered out from existing structure. A 230 ft mitigation area is also part of the plan. The fire pit will be moved away from the water. CA asked for list of mitigation plant species, quantity, and size to be submitted for approval.

Commissioner Bernstein made a motion to issue a negative 2 pending approval of plantings. The motion was seconded by Commissioner Mulhearn, and the motion carried 6-0.

### **Continued Notice of Intent**

7. Thomas Young, 71 Arrowhead Rd. Proposed 15 x 28 and 9x9 decks on sonotubes in the buffer zone to a bordering vegetated wetland

Presenting: Thomas Young, homeowner

Discussion: DEP number SE 83-2381 was given. Data was provided in the non-drought period to prove the stream is intermittent, not perennial, and therefore no riverfront area exists.

Commissioner Mulhearn made a motion to issue an Order of Conditions with special conditions. The motion was seconded by Commissioner Bishop, and the motion carried 6-0.

### **Notice of Intent**

8. **SE83-2379** Magdalena Lofstedt, CDM Smith Inc., for the Town of Yarmouth 0 Pine Grove Road Proposed construction of a pump station, that is part of the proposed wastewater collection and conveyance system, in land subject to coastal storm flowage.

On 3/16/2023, on a motion by Commissioner Bernstein, seconded by Commissioner Mulhearn, the Commission voted 4 - 0, to approve these minutes as written.

Presenting: Magdalena Lofstedt , and Mike CDM Smith

Discussion: The structure will be 14 feet elevation, 3 feet above the 100 year flood plain. All stormwater will stay on site. CA asked that native plantings be used for mitigation in place of the non-natives proposed

Commissioner Bishop made a motion to issue the Order of Conditions with special conditions including the requirement of native plants. The motion was seconded by Commissioner Durkin, and the motion carried 6-0.

9. Daniel A. Ojala, Down Cape Engineering Inc., for Kaya Cinar [4 Television Lane](#) proposed raze and replace of a single family dwelling and a new Title 5 septic system within land subject to coastal storm flowage.

Presenting: Craig Ferrari

Discussion: DEP number was issued SE83-2380.

Commissioner Bernstein made a motion to issue an Order of Conditions with special conditions. The motion was seconded by Commissioner Mulhearn, and the motion carried 6-0.

### **Enforcement**

10. Great Island Homeowners Association, [0 Great Island Road](#)- Unpermitted fill deposited on a coastal dune, coastal beach, and land subject to coastal storm flowage.

Presenting: "Buff" Chase, Great island Realty Trust, and Craig Fleming, Great Island Homeowners Association

Discussion: After the December storm Mr. Chase had Childs Company put in 530 tons of fill/sand and then another 40 yards as well as large rocks on the dunes. Mr. Chase said he ordered this action since he felt it was a matter of resident safety to make road passable for emergency vehicles. When asked he did admit he never requested an emergency certification from Conservation, the Fire Dept. or the Police Dept. Chairman Hoopes reminded Mr. Chase that he did not have the authority to make a decision about public safety. Commissioner Durkin asked that if the sand was removed would the road be in imminent danger. Commissioner Bishop talked about the road and dunes being part of a larger problem that needed to be resolved. He felt that bringing excavators to remove rocks and dirt may do more damage. He also suggested NHESP should be contacted to provide suggestions of restoration. Mr. Chase mentioned that in the 1980's beach nourishment was undertaken by dredging sand from offshore. Commissioner Bernstein commented that the issue isn't just about the road but also about the possibility of being a violation of the endangered species act. He was also concerned about the possible disruption of animal life in the area.

Commissioner Bishop made a motion to issue an enforcement order requiring that the Great Island Association submit a project to be reviewed by Natural Heritage and Endangered Species Act.

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