

**Yarmouth Conservation Commission
October 17, 2013 Meeting Minutes**

Member Present: Ed Hoopes, Chairman, Tom Durkin Vice Chairman, Hugh March, Dave Flaherty, Phil Johnston

Members Absent: Joan Carr, Gerry Duffy

Staff: Kerry Muldoon, Conservation Administrator

Start Time: 7:00 pm

Certificate of Compliance:

SE83-1943, Cape Cod Hospital, 72 Bayview Street, West Yarmouth

Chairman Hoopes read the letter from the applicant's representative Daniel Ojala, Down Cape Engineering dated October 8th 2013. The letter stated the site was in compliance. The Commission reviewed photographs of the area. Commissioner March made a motion to issue a full Certificate of Compliance. Seconded by Commissioner Johnston. All in favor. Motion carries

Approved Document: Request for Certificate of Compliance, letter from the applicants representative Daniel Ojala, Down Cape Engineering dated October 8th 2013

Discussion:

Resident to discuss tree removal on Town property located at Map 121 Lot 18

No one was present at the meeting to present this issue.

Review the requested response for property located at 63 Smith's Point Road

Chairman Hoopes announced the role and task of the Conservation Commission is charged with. Three Commission members have visited the site, 63 Smith's Point Road. Commissioner Flaherty asked to see the original plans (plan titled approved plan of record for 63 Smith's Point road plan titled Proposed Sewage Disposal System for proposed 6 bedroom dwelling(s*) 63 Smith Point Road W. Yarmouth, MA revise date 9/15/1993 stamped by Robert Perry) and Order of Condition on the property of 63 Smith Point Road. Chairman Hoopes opened the discussion to audience members. Dave Crispin from the BSC Group, Mr. Christian Nolen, 71 Smith's Point Road, and Mr. Alan Lipkind, attorney for Mr. Nolen did not have any further comments. Mr. Crispin stated he provided the Commission with documents and findings at the previous meeting. Chairman Hoopes then opened the discussion for the representatives for 3 Smith Point Road. Mr. Michal Stusse, attorney for Mrs. Mihos, Mr. Daniel MCInnis, attorney for the Mihos, and Dennis D'Amore, engineer for the Mihos) were all present at the meeting. Attorney Stusse stated the Enforcement Order shall wait until the current law suit is

settled in court. The Mihos' hired a landscape company to do work but at this time the Enforcement Order is premature and asked the Commission to wait until the law suit is settled. The Commission asked how long the law suit will take. Attorney Stusse and Attorney MCInnis were unable to give an exact answer but suggested sometime in 2014. Mr. McInnis stated the trial date has not been set.

Chairman Hoopes stated he was at the site. Based upon the approved plan of record for the single family dwelling, it appears a large amount of fill has been added. The contours from the approved plan and the existing conditions do not match. Also, vegetation has been removed within Land Subject to Coastal Storm Flowage. Things on site look different from the approved plan dated 1993.

Commissioner Durkin stated the vegetation from the Google Earth aerial dated 2007 and 2010 are very different. The vegetation has been removed within 100 feet to the bank. Commissioner Durkin described the location of the bank as shown on the plan of record. He also commented that there is no formal record of a Notice of Intent or Request to enlarge the lawn. There is also a significant demarcation in lawn and sod looking at the boundary on the property. There is also a distinct drop-off and different soil types between the two properties at 63 Smith Point Road and 71 Smith's Point Road. Commissioner Durkin stated the area of the extended lawn needs to be re-vegetated.

Chairman Hoopes stated the area needs to be re-vegetated and the fill needs to be removed. The site needs to be brought back to the conditions as stated on the plan of record dated 1993. Commissioner Flaherty stated the plan of record uses the contour lines as a reference point. All disturbed areas shall be returned to original elevations and topography. The Commission noted that the document from the BSC Group dated 7/3/2013 shows an aerial from Bing.com that shows fill added and a deep drop off.

Chairman Hoopes stated the fill needs to be removed, contours returned, vegetated with native plantings. The Commission agreed that an as-built plan shall be submitted showing current contours and all wetland resource areas and associated buffer zones shall be shown on the plan. A restoration plan shall include contours back to the original condition as stated in the approved plan of record for 63 Smith's Point road plan titled Proposed Sewage Disposal System for proposed 6 bedroom dwelling(s*) 63 Smith Point Road W. Yarmouth, MA revise date 9/15/1993 stamped by Robert Perry, a detailed landscape plan with native vegetation appropriate for the area, plantings size, quality, densities, and other applicable information as needed or in accordance with standard nursery practices, Detailed methodology of construction activities in order to bring the site back into compliance, compatibility grain size and type – if needed, and the site brought back to its pre-existing conditions. The site shall be stabilized and erosion controls shall be on the plan. The Commission will require monitoring reports and photographs of site. The Commission will also set time frames for the project. The Commission stated the requested information shall be due to the office by November 27 2013 and the Commission will discuss it on the December 5, 2013 meeting. The Commission stated this is standard practice for violations. Commissioner Flaherty stated if we do not receive the requested information by November 27, then the Commission

can issue an Enforcement Order. Mr. Crispin asked the Commission to have the plan go the "A-horizon" or original contours.

Attorney McInnes requested that the Commission take no action until the current court case has been finalized. He informed the Commission of a current law suit to which the Town can become a party and which could be expensive to the Town. He suggested the Commission contact Town Counsel before we ask for the requested information. The Commission discussed if they wanted to discuss the option with town Counsel. Attorney Lipkind stated he does not understand the current situation Attorney McInnes is referring to. Trees were cut on Nolen's property and it damaged his well. He then stated the Conservation Commission has their own jurisdiction. Chairman Hoopes stated he will take a vote to see if any Commissioners would like to talk to Town Counsel before requested the information. In the positive were Commissioner Durkin, Commissioner Johnston and Commissioner March. In the negative were Commissioner Flaherty and Commissioner Hoopes. Let the record show that the Commission voted in the positive 3:2 to ask Town Council if it is appropriate for the Commission to request the information (as-built plan, restoration plan, and landscape plan as stated above) prior to litigation to all parties. Also, if the Commission requires the requested information, are we making the Town subject to litigation? The Commission will wait to hear back from Town Council for his advice and will have an answer for the November 7, 2013 for the Conservation Commission meeting.

Staff Updates:

The Agent informed the Commission of the proposed Cape Cod Commission Fertilizer Use Policy. The Commission commented that the Policy is unenforceable in practice.

The next Conservation Meeting will be scheduled on November 7, 2013

Executive Session: (if needed)

Commissioner Durkin made a motion to adjourn the meeting. Seconded by Commissioner Johnston. All in favor, Motion passes. Meeting adjourned.