

On 6/15/2017, on a motion by Commissioner Lawrence, seconded by Commissioner Durkin, the Commission voted unanimously (Rick Bishop, Ellie Lawrence, Tom Durkin, and Phil Johnston), 4-0, to approve these minutes as amended.

CONSERVATION COMMISSION MEETING MINUTES

June 1st, 2017

Members Present: Rick Bishop, Ellie Lawrence, Cris Luttazi, Tom Durkin, Megan Schlesinger and Phil Johnston



YARMOUTH TOWN CLERK

Member(s) Absent: Brendan Quirk

Staff: Kelly Grant – Conservation Administrator

'17JUN23AM10:59 REC

Start Time: 6.30pm

Request for Extension:

Cont. from 5/18/2017 SE83-1788, Salt Box Association, Ed English, President, request for extension of beach nourishment permit. Commissioner Lawrence recused herself from the hearing. Mr. English represented his request to the Commission for the benefit of the two members who did not take part in the previous meeting. Commissioner Luttazi commented that the original permit is ten years old and that the condition of the beach may have changed in that time. There has been shoaling in the river and this nourishment may be impacting this. She commented that the Commission should have the opportunity assess any impacts that have occurred. Mr. English stated that the nourishment activity has been occurring every three years. Commissioner Schlesinger commented her concerns were the same as Commissioner Luttazi's. Mr. English responded that Army Corp found no impacts in their recent re-permitting of the work. Commissioner Luttazi suggested the following conditions be placed on the extension of the Order of Conditions:

- Bathymetry shall be studied 800 feet in a north and south direction from the nourishment site and 200 feet into the channel prior to any additional nourishment. The data can be used as a baseline to determine any future impacts of sediment movement.
- A shellfish survey shall be conducted prior to any nourishment to identify any changes to shellfish habitat within the nourishment site.

Commissioner Durkin suggested a 2 year extension would be appropriate.

Commissioner Luttazi made a motion to issue an Extension Permit for SE83-1788 for 2 years with the stated conditions. Seconded by Commissioner Durkin. Motion carries 5 to 0.

Commissioner Lawrence returned to the meeting.

Request for Determination of Applicability

Mark Kimball, Eversource Energy, **484 Willow Street**, Yarmouth MA, proposed construction of new solar array canopies within the existing parking areas within a riverfront area. Mr. Tom Melehan of Weston and Sampson represented the applicant and presented the project. There being no comments, Commissioner Lawrence made a motion to issue a Negative 2 Determination with the condition that proof of mailing to DEP is received before issuing. Seconded by Commissioner Luttazi. Motion carries unanimously.

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Notice of Intent:

SE83-2113, Caroline Murphy, **99 Lewis Road**, West Yarmouth, MA, proposed addition to a single family dwelling within the buffer zone of a bordering vegetated wetland. Mr. Kieran Healy of BSC Group represented the applicant and presented the project. Green cards were presented. Commissioner Luttazi confirmed that 2:1 mitigation was proposed for intrusion into the setback.

Commissioner Durkin made a motion to issue an Order of Conditions approving the project with the following conditions 1-8,10 ,11 ,12 ,15 ,17 ,29 , 31,36 (foundation as-built), and 37. Seconded by Commissioner Lawrence. Motion carries unanimously.

Commissioner Schlesinger recused herself for the next three agenda items.

Continued Notice of Intent:

Cont. from 5/4/2017 and 5/18/2017 **SE83-2108**, Stephen Gatto, **28 Aunt Edith's Road**, South Yarmouth, MA, rebuild pier, ramp, and float on Bass River. Commissioner Bishop read into the record the request from Mr. Dan Ojala to continue to the June 15th meeting.

Commissioner Durkin made a motion to continue to the June 15th meeting. Seconded by Commissioner Lawrence. Motion carries unanimously.

Cont. from 5/18/2017 **SE83-2110**, Paul E Tinsley, **40 Whale Road**, West Yarmouth, MA, proposed raze and replace of an existing single family dwelling with proposed swimming pool and landscaping within the buffer zone to a coastal dune and land subject to coastal storm flowage. Commissioner Bishop read into the record a request from Mr. Bob Perry, representative for the applicant, to withdraw the application without prejudice.

Commissioner Durkin made a motion to accept the request to withdraw the application without prejudice. Seconded by Commissioner Lawrence. Motion carries unanimously

Cont. from 2/16/2017, 4/6/2017, 5/18/2017 **SE83-2100** - Kent Stout, **9 Vernon Street** (Portion of 7 Grove Street), Yarmouth, MA, proposed construction of a single family dwelling within a coastal bank, land subject to coastal storm flowage, and the buffer zone to a coastal dune.

Commissioner Luttazi recused herself from the hearing.

Attorney David Reid represented the applicant and presented the check for \$10 for the outstanding balance of the consultant fees. Also present for the applicant were Mr. Kieran Healy of BSC Group, Mr. Stanley Humphries, Coastal Geologist with LEC Group, and attorney Brian Wall (co-counsel for the applicant), and Mr. Kent Stout and his wife. Attorney Reid commented that the lot had been deemed a buildable lot and provided the documentation from the building department. He described the history of the property and the presence of structures on the property in the past and presented his comments previously provided to the Commission in writing and held on file including a discussion on the definition of a coastal bank.

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Mr. Humphries presented his report filed with the Commission previously, providing his interpretation of the resource areas on the property. He asserted that Mr. O'Connell's claims of a coastal bank were false as the bank is not steep and continuous enough to function as a buffer to flood waters. He concurred with Mr. Reid's definition of a landform as needing to be natural and asserted that Policy 92-1 is used to define the top of the coastal bank, once it has been established to be a landform.

Commissioner Lawrence commented that the regulatory definition of the coastal bank includes "any elevated landform", including both natural and altered landforms. Many landforms have been altered by human activity but still function as a coastal bank and the focus should be on that function. Mr. O'Connell addressed the commission and described the process he used to delineate the coastal bank. He concurred that the definition describes any elevated landform so the definition is met and the Commission should look to the function. Mr. O'Connell commented that his contact with the DEP concurred with his interpretation. He commented that the contours on the plan demonstrate a continuous bank. The bank may be small but given the VE zone on the property its value in dampening wave action is important for flood control and storm damage prevention. He also stated that the Falmouth example of a previous case does not relate to this situation. In terms on meeting the interests of the act he dismissed the assertion that the location of the road diminishes its value as a coastal bank. Following the contour lines on the plan the waves will bend around toward the house and the adjacent property.

The Conservation Agent (CA) addressed the comment that artificial dunes are called out in the regulations but not artificial coastal banks, stating that artificial dunes are created for the purposes of storm damage prevention and then become a resource area in their own right so the clarification is warranted in the regulations.

Mr. Humphries suggested the applicant could extend the coastal bank seaward with fill to allow for increased buildable land on the lot. The CA questioned whether this is allowed in VE zone. Mr. O'Connell, been involved in such projects in the A zone not a V zone and would not expect it to be permitted by the DEP. Attorney Reid suggested the Commission vote on whether they consider a coastal bank exists at the property. Mr. Healy commented that by definition the bank needs to have a 10:1 slope and the two roads either side are not 10:1, so it is not likely to be a coastal bank but was probably created by excavation and fill.

Commissioner Durkin made a motion that the area under consideration meets the criteria of a coastal bank. Seconded by Commissioner Lawrence. Motion carries unanimously. 4:0.

Attorney Reid asked for feedback from the Commission on how the project could be changed to meet the Commission's requirements. Commissioner Bishop suggested the idea of extending the coastal bank further could be investigated but they would want to get feedback from DEP on how this option could potential impact the resource areas on the property and their function. Attorney Reid commented this is not a virgin property and this should be included in the Commission's consideration. He asked if a new filing would be required. Commissioner Bishop confirm that a new NOI should be submitted as the review time as been significant to date.

The Commission took a break to allow the applicant to consider his options and returned at 8pm. Attorney Reid made a request to withdraw the application without prejudice.

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Commissioner Durkin made a motion to accept the request to withdraw the application without prejudice. Seconded by Commissioner Lawrence. Motion carries unanimously.

Commissioner Schlesinger rejoined the meeting.

Cont. from 11/17/2016, 12/1/2016, 12/15/2016, 1/5/2017, 1/19/2017, 2/2/2017, 2/16/2017, 3/2/2017, 3/16/2017 and 4/6/2017, 4/20/2017 **SE83-2087** Crowell Beach Association, **Crowell Road**, West Yarmouth, proposed beach nourishment on a coastal beach and tidal flat. Mr. Brad Holmes (Wetland Scientist), Mr. Stan Humphries (Coastal Geologist), and Mr. Joseph O'Brien of Capitol Engineering were present for the applicant. Mr. O'Brien provided an overview of the history of the application. Commissioner Schlesinger asked what the purpose of the project was. Mr. O'Brien responded that it was to restore the beach and improve its usability. Commissioner Lawrence asked what volume of nourishment is proposed. Mr. O'Brien responded that there will be 18 cubic yards over 4800 square feet (12 inches thickness). Commissioner Lawrence asked about the shellfish survey. Mr. Holmes responded that quahog and softshell clam were found interspersed through the nourishment area though not in high numbers. They consulted with the Natural Resources Department so these can be relocated prior to work beginning. Commissioner Durkin commented that this is a dynamic area of Lewis Bay. The creek meanders across the intertidal zone, the south west wind washes across it, and it is impacted by winter northeasterly storms. The nourished sand below MHW mark is subject to a number of weather related conditions that causes concern for its impacts. Commissioner Luttazi commented that sediment is being added to the system in a location that already has a sediment surplus. Nearby Pine Island and Uncle Roberts Cove are experiencing significant silting. She expressed concern that the additional sediment will likely exacerbate silting issues. She also expressed concerns with upland sourcing of sediment and its different mineral make up and the need for ongoing nourishment to maintain the beach area demonstrated by the continual dredging and nourishment required on the adjacent property. She had a number of questions on the expected rate of sediment loss from the nourishment area, plans for monitoring of toxicity and bathymetry. Mr. O'Brien responded that a good quality source of sand has been found that is compatible with the area. He also stated that this project is small scale compared to other permitted projects in the area so will be insignificant in terms of exacerbating siltation problems. Mr. Humphries commented that there is a revetment on the property at 138 Crowell Road that has limited the sediment supply to the beach so this is replacement sediment for that source. Mr. Humphries commented that the ridge and runnel system will be monitored and only the low areas will be nourished to match the work being carried out on the neighboring property. Commissioner Bishop read the DMF comments into the record. The CA commented that according to the DEP beach nourishment guidelines beach nourishment is generally permitted for two reasons: for the beneficial reuse of clean, compatible sediment from a nearby dredging project to augment the volume of a beach or dune; or an engineered project where a specified volume of sand is added to a beach/dune system to provide a desired level of storm damage protection and flood control. The project is for neither of these purposes but is solely for improving the quality of the bathing beach for the members. The CA suggested including conditions from the DMF comments and the beach nourishment guidelines. Mr. O'Brien commented that the project fits as the last piece of the neighboring project to build up the level of the beach. The CA asked if the existing permit is for nourishment below mean high water. Mr. O'Brien responded that it is. After referencing the plan for 138 Crowell Road it was determined that the dredge material is added below the MHW to maintain the

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creek channel. The offsite sand is added above the MHW line at the base of the revetment. The new application wishes to bring the association beach up to the level of the neighboring beach.

Commissioner Luttazi commented that according to the performance standards if there is tidal flat that is determined to be significant to the protection of land containing shellfish and therefore to the protection of marine fisheries then any project on land containing shellfish shall not adversely affect such land or marine fisheries by a change in the productivity of such land caused by alterations of water circulation, alterations in relief elevation, the compacting of sediment by vehicular traffic; alterations in the distribution of sediment grain size and this project does not comply with many of these standards. Addition of sediment should not have adverse effects by increasing erosion, decreasing the volume or changing the form of a coastal beach which this project will be doing. The nourishment proposed is not to protect a structure or property or to prevent flood damage but to let people to have a flat beach. Mr. O'Brien responded the property values of the beach association members are impacted by not allowing the project.

Commissioner Luttazi made a motion to issue an Order of Conditions approving the project with the following conditions 1-8, 10, 12, 21,27, 28, 36,37 and:

- Shellfish shall be removed after consultation with the shellfish constable, under the guidelines of and to a suitable location approved by the state Division of Marine Fisheries, (D.M.F.). Any such project shall not be commenced until after the moving and replanting of the affected shellfish has been completed.
- Sediment analysis of the receiving beach and source material shall be carryout prior to nourishment to determine compatibility and shall follow the DEP Beach Nourishment Guidelines (2007).
- A beach monitoring and maintenance plan shall be developed following the DEP Beach Nourishment Guidelines (2007) and submitted to the Commission for review prior to any nourishment activity.
- the beach nourishment shall follow the specifications and BMPs set out in the DEP Beach Nourishment Guidelines (2007).

Seconded by Commissioner Lawrence. For: 1 (Schlesinger), Against: 5. (Luttazi, Durkin, Johnston, Bishop, Lawrence) Motion does not carry 1:5.

Commissioner Luttazi made a motion to deny the project because it does not meet the performance standards 310 CMR 10.27 (3)-(7), 10.27 (6), and 10.34(4)-(8) and corresponding bylaw regulations.

Seconded by Commissioner Lawrence. For: 5 (Luttazi, Durkin, Johnston, Bishop, Lawrence), Against: 1 (Schlesinger). Motion carries 5:1.

Cont. from 5/18/2017 SE83-2109, Paula Perrone, **12 Pleasant Street**, South Yarmouth, MA, proposed bulkhead to repair existing seawall on Bass River. Mr. Mark Burgess of Shorefront Consulting represented the property owner and presented the project. Commissioner Bishop read into the record the comments from DMF. Vegetation proposed is not viable as the area floods frequently, stone will be used instead. Commissioner Lawrence asked about the proposed erosion control. The Commission agreed that a silt curtain should be used to contain silt and debris.

Commissioner Lawrence made a motion to issue an Order of Conditions approving the project with the following conditions 1-6, 7, 9, 10, 11, 12, 16, 17, 19, 20, 23, 25, 28, 29 (crushed stone), 31, 36, 37.

Seconded by Commissioner Luttazi. Motion carries unanimously.

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Request for Certificate of Compliance:

SE83-1714, 9 Wilfin Road, South Yarmouth, MA. The CA discussed the site and recommended issuing a Certificate of Compliance.

Commissioner Luttazi made a motion to issue a Certificate of Compliance. Seconded by Commissioner Lawrence. Motion carries unanimously.

Commissioner Schlesinger recused herself from the following agenda items.

SE83-1238, 1 Powers Lane, West Yarmouth, MA. The CA discussed the site and recommended issuing a Certificate of Compliance.

SE83-1051, 1 Powers Lane, West Yarmouth, MA. The CA discussed the site and recommended issuing a Certificate of Compliance.

Commissioner Lawrence made a motion to issue a Certificate of Compliance for SE83-1238 and SE83-1051. Seconded by Commissioner Durkin. Motion carries unanimously.

Meeting Minutes:

4/6/2017, Commissioner Luttazi made a motion to approve the minutes as written. Seconded by Commissioner Durkin. Motion carries unanimously.

5/4/2017, Commissioner Bishop made a motion to approve the minutes as amended. Seconded by Commissioner Luttazi. Motion carries unanimously.

5/18/2017 Commissioner Lawrence made a motion to approve the minutes as amended. Seconded by Commissioner Luttazi. Motion carries unanimously.

Staff Updates:

The CA updated the Commission on a number of violations that have come up. These will be addressed in the coming weeks.

Commissioner Bishop made a motion to adjourn at 9.26pm. Seconded by Commissioner Luttazi. Motion carries unanimously.