

On 6/20/2017, on a motion by Commissioner Lawrence, seconded by Commissioner Schlesinger, the Commission voted unanimously, 4-0, to approve these minutes as amended.

CONSERVATION COMMISSION MEETING MINUTES

July 6th, 2017

Members Present: Ellie Lawrence, Tom Durkin, Phil Johnston, and Megan Schlesinger

Member(s) Absent: Rick Bishop, Cris Luttazi and Brendan Quirk

Staff: Kelly Grant – Conservation Administrator

Start Time: 6.30pm

YARMOUTH TOWN CLERK

'17AUG1AM9:17 REC *W*

Request for Determination of Applicability:

Amy Hanlon and Julie O'Brien, **21 Vineyard Street**, South Yarmouth, MA, proposed addition to a single family dwelling with land subject to coastal storm flowage. Mr. Robin Wilcox of Sweetser Engineering represented the applicant and presented the application.

Commissioner Lawrence made a motion to issue a Negative 2 determination. Seconded by Commissioner Schlesinger. Motion carries unanimously.

Notice of Intent:

SE83-2116, Mikhail and Irene Ioffe, **342 Long Pond Drive**, South Yarmouth, MA, proposed seasonal dock on Long Pond. Mrs. Irene Ioffe presented the proposed project. She is requesting a variance to the regulations to have an 8x8 foot platform at the end of the dock for use by her husband who has Parkinson's disease. The Commission discussed where the dock will start and how this will impact the BVW. The dock will start at the bank and existing access will be used across the BVW. Commissioner Johnston asked if it is a seasonal dock and suggested the variance was appropriate under the circumstances but should revert back to a compliant size with a change of ownership. Commissioner Lawrence commented on the proposed materials. The decking should allow maximum light penetration. Aluminum is the preferred decking material.

Commissioner Lawrence made a motion to issue an Order of Conditions approving the project pending receipt of a file number from DEP, with the following conditions: 1-6, 8, 10, 11, 12, 17, 19, 24, 25, 26, 28, 37; and, to minimize the extent of shading, the proposed "seasonal dock" shown in the site plan shall utilize materials that ensure a minimum of sixty percent (60%) light transmission; the seasonal aspect for use of the dock shall be limited to April 1st through to November 1st after which date the dock will be removed and stored upland, away from the pond; if the house is sold the variance will expire and the oversized section will need to be removed; a 3 foot wide path to the edge of the bank will be permanently delineated from the bottom of the steps to the edge of bank. Seconded by Commissioner Schlesinger. Motion carries unanimously.

Request for Certificate of Compliance:

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SE83-2057, 1 Snug Harbor Road, Yarmouth, MA. The Conservation Administrator (CA) commented that there was a condition that the driveway should be pervious however the driveway was already paved before the project began and remains so. There were also no drywells installed to capture roof runoff. There are mulch beds around the perimeter of the property.

Commissioner Johnston made a motion to issue a Certificate of Compliance with ongoing condition of drywells be installed. Seconded by Commissioner Lawrence. Motion carries unanimously.

SE83-1698, Smith Point Road, Yarmouth, MA

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

SE83-1980, 4 Swan Lake Road, Yarmouth, MA.

The CA addressed the Commission and stated that the project has been completed in significant compliance with the Order of Conditions and the approved plan. The Request for a Certificate of Compliance included a request for beach nourishment in perpetuity. The CA advised against approving such a request. The Order should have been extended to allow for continued beach nourishment. The Commission will have limited ability to monitor and condition continued nourishment without an Order of Conditions. The property owner is advised to reapply for a new Order of Conditions for beach nourishment.

Commissioner Lawrence made a motion to issue a Certificate of Compliance with no ongoing nourishment. Seconded by Commissioner Schlesinger. Motion carries unanimously.

Cont. from 12/15/2016, 1/5/2017, 1/19/2017, 2/2/2017, 4/20/2017, 5/18/2017, and 6/15/2017
SE83-2021, 12 Jessie's Lane, Yarmouth, MA; and *Cont. from 2/2/2017, 4/20/2017, 5/18/2017 and 6/15/2017*
SE83-1972, 8 Jessie's Lane, Yarmouth, MA

Commissioner Schlesinger recused herself but returned under the rule of necessity as there was no quorum and a new matter was presented for a variance to the regulations.

Mr. Kieran Healy of BSC Group represented the applicants of both properties and presented the request for a variance to the Commission of the wetland bylaw regulation requiring 75 feet of distance between two docks on the basis of avoiding the need to remove and replace pilings and the associated impacts to the wetland resource area.

The Commission discussed the options for shortening longer dock and lengthening the longer dock to reach compliance with the regulations. Mr. Healy responded that there is no alternative that will have no impact on the resource area and as the error in placement was not malicious and the property owners are both OK with the placement of the docks the variance is appropriate. The Commission expressed concern about the precedence set by allowing this variance. Commissioner Lawrence did not support the variance and suggested the float and

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one piling on one of the docks be moved. Commissioner Johnston supported the variance as he did not wish to see any further disturbance. Commissioner Durkin also supported the variance for the same reason but stated that precedence would not be set by this decision.

Commissioner Johnston made a motion to grant a variance and issue a COC for **SE83-2021**, 12 Jessie's Lane with the ongoing condition that any future reconstruction shall be in compliance with the previously approved plans for this Order of Conditions. No precedence is set by this decision. Seconded by Commissioner Schlesinger.

Vote: 3:1

Affirmative: Commissioners Johnston, Durkin and Schlesinger

Negative: Commission Lawrence

Motion carries.

Commissioner Schlesinger made a motion to grant a variance and issue a COC for **SE83-1972**, 8 Jessie's Lane with the ongoing condition that any future reconstruction shall be in compliance with the previously approved plans for this Order of Conditions. No precedence is set by this decision. Seconded by Commissioner Johnston.

Vote: 3:1

Affirmative: Commissioners Johnston, Durkin and Schlesinger

Negative: Commission Lawrence

Motion carries

Violations:

174 Bayview Street, West Yarmouth, unpermitted fill in a wetland and buffer zone. Ms. Sandra Reilly and Mr. Robert Fair co-owners of the property, and Mr. Joseph Horrigan representing a co-owner of the property addressed the Commission. Mr. Horrigan requested a clarification that the fill was placed within the buffer zone rather than a wetland. The CA responded that a delineation is required to clarify to wetland line as the fill makes it difficult to see. She commented that based on the site visit the ground is very soft and wetland and is mostly likely a wetland area. Mr. Fair provided background on the flood history of the property. He commented that there has been no previous issue with flooding at the property until about 11 years ago when the culvert become blocked and was no longer maintained by the Town. Commissioner Durkin asked that the discussion be limited to the violation itself and how it will be addressed. Mr. Fair commented that the area of fill was not a wetland previously but has become inundated. Photos were distributed to the Commission that show water on the property. Mr. Corrigan pointed out that the pond edge has encroached on to the property. Commissioner Durkin responded that wetlands do change over time in response to changes in environmental conditions and changes to the built environment.

Mr. Corrigan stated that since it has become disconnected from the tidal creek it is no longer a tidal pond and the MassGIS classifies it as a salt marsh. He commented that now it is just a swamp. The CA responded that it is still a wetland resource area regardless of the change in its

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nature. Commissioner Lawrence commented that changes in wetland areas are occurring all over the Cape. They are still wetland resource areas protected under the regulations.

Mr. Fair responded that the Town can't divert water on to their property. Commissioner Lawrence responded that changes in water levels through groundwater and sea level changes are not the Town's responsibility. Mr. Fair responded again that this is no longer a tidal pond but is fed only through surface water. The CA provided background that the pipe is not likely collapsed but is likely blocked, hence the lack of tidal flow to the pond. The tidal creek that fed the pond has built up over time and water only flows up it during moon and storm tides. The pond is essentially disconnected from the coast so the water levels are likely to be influenced mainly by rain water and maybe groundwater. Regardless, it is still a wetland, protected under the regulations. Activity occurred within a wetland resource area without any permitting and that is the issue under consideration.

Mr. Corrigan commented that the Enforcement Order required restoration to the previous conditions. He considers that that is what they have done by reclaiming the back yard. The CA clarified that the restoration should be to the conditions before the alteration occurred.

Mr. Fair commented that for 50 years there was no problem and that it was the Town's inability to correct the problem that has changed the wetlands. Mr. Corrigan asked if the Commission suggests the property should be allowed to flood. The CA suggested a professional consultant/engineer be engaged by the property owners to assess the property for possible solutions to the flooding. Mr. Fair commented that it wasn't their intention to cause any harm and that the work occurred on their property. Commissioner Schlesinger responded that the issues to be addressed are a current delineation of the wetland, and the issue of unpermitted alteration of a resource area. The CA confirmed that it is the responsibility of those doing the work to engage a professional and get the permitting. The CA suggested the owner submit an after-the-fact Notice of Intent with an updated wetland delineation, a plan to protect the property from flooding and a plan to restore the altered area. The Commission concurred with that approach.

Mr. Richard Facchini, abutting property owner, addressed the Commission. He commented that the fill has displaced water on to his property. There has been a drastic change in the water level since the fill was added and he is also concerned with impacts to wildlife in the pond. Ms. Aimee Facchini addressed the Commission and expressed concern with the impacts on wildlife habitat of the pond being cut off from the tidal flow and also the impacts to the beach playground area of the culvert being blocked.

Commissioner Johnston commented that regardless of the advice of a consultant, the fill needs to be removed. Mr. Fair responded that before the work was done the abutting property was being flooded. The water level appears to be dependent on rain fall.

The Commissioner Lawrence made a motion to ratify the enforcement order as amended. Seconded by Commissioner Johnston. Motion carries unanimously.

Meeting Minutes:

6/15/2017. There was not a quorum to approve the minutes.

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Discussion:

Cape Cod Hospital – Karl Von Hone asked the Commission for their input on clearing a trail on the Cape Cod bog property to open up access for patrolling the property given the issues with illicit use. The Commission agreed that an upland trail is appropriate and asked the CA to work with the Hospital and Mr. Von Hone to attend a site visit and administratively review the project if it is found to be appropriate.

Staff Updates:

The Commission discussed the letter received from Mr. and Mrs. Ciavarra regarding the Sailing Center property. They found nothing that required any further action by the commission and asked the CA to write a response to the Ciavarra's on their behalf.

Commissioner Lawrence made a motion to adjourn at 8.17pm. Seconded by Commissioner Schlesinger. Motion carries unanimously.

