

The Falmouth Conservation Commission  
**MEETING MINUTES - WEDNESDAY, JANUARY 24, 2018**  
Selectmen's Meeting Room, Falmouth Town Hall, 7:00 p.m.

Present: Mary Schumacher, Chair  
Jamie Mathews, Vice-Chair  
Betsy Gladfelter  
Courtney Bird  
Maurie Harlow-Hawkes  
Kevin O'Brien, Alternate  
Peter Walsh, Alternate  
Jennifer McKay, Administrator

Absent: Kristin Alexander, Steve Patton, Mark Gurnee, Alternate

Ms. Schumacher opened the meeting at 7:00 p.m.

## **MINUTES**

12/20/2017

Mr. Mathews: Move to adopt the minutes as written.

Ms. Gladfelter: Second.

Ms. Schumacher: Unanimous, so moved.

1/17/2018

Ms. Harlow-Hawkes: Move to adopt the minutes as corrected.

Ms. Gladfelter: Second.

Ms. Schumacher: Unanimous, so moved.

## **OTHER BUSINESS**

Review and approve Tony Andrews Farm Conservation Restriction

Jessica Whritenour (Executive Director – 300 Committee) presented an overview of the property. The area covered by the Conservation Restriction (CR) is 33.5 acres. The farm CR is moving forward. We have to have all the approvals in place so the Town can record it. The CR is the legal document protecting the land in perpetuity for agriculture and conservation. The next phase is to get the land management plan back to the Conservation Commission in April. The farm plan is to be produced by the operator of the farm and the 300 Committee will produce the baseline. There will be a Documentation Report (BDR) and Land Management Plan (LMP). Ms. Whritenour read the prohibited "Acts and Uses" section and the "Reserved Rights and Exception" section. This has been an amazing project to be working on and I'm pleased to say that we are nearing the point of acquisition being completed.

Mr. Bird: This is a wonderful project that is in marked contrast to a story in the Globe today about a years old dairy farm that is disappearing in Stockbridge. This Town shows a lot of foresight.

Ms. Schumacher: Page 9 addresses what should happen if the agricultural lease is abandoned. Ms. Schumacher read the Town's responsibility if this happens. Will it be kept in its natural state? Is the Town responsible for the actual implementation of the plan?

Ms. Whritenour: Yes.

Ms. Schumacher: Will there be a permit issued for that purpose?

Ms. Whritenour: The Town will be issuing a license to the farmer for one year. After that there will be a long term lease for 20 years. If the Town will not be issuing that lease, the next step would be to implement a restoration plan.

Ms. Gladfelter: Move to approve the Tony Andrews Farm Conservation Restriction.

Ms. Harlow-Hawkes: Second.

Ms. Schumacher: Unanimous, so moved.

## **REQUEST FOR A CONTINUANCE UNDER AN AMENDED ORDER OF CONDITIONS**

Lawrence White, 194 Acapesket Road, East Falmouth, MA – Request to amend the existing Order of Conditions (DEP 25-4150) to install two floats approximately 8-ft x 11-ft along the dock to store jet skis.

Ms. McKay: The applicant has requested a continuance until February 14, 2018.

Mr. Bird: At the request of the applicant I move to continue the hearing until February 14, 2018.

Ms. Harlow-Hawkes: Second.

Ms. Schumacher: Unanimous, so moved.

## **REQUEST FOR A CONTINUANCE UNDER AN ABBREVIATED NOTICE OF RESOURCE AREA DELINEATION**

Susan Moran, 390 & 402 Wild Harbor Road, North Falmouth, MA - Request for confirmation of the following wetland resource area boundaries: BVW/freshwater wetland and salt marsh.

Ms. McKay: The applicant has requested a continuance until February 7, 2018.

Ms. Gladfelter: At the request of the applicant I move to continue the hearing until February 7, 2018.

Ms. Harlow-Hawkes: Second.

Ms. Schumacher: Unanimous, so moved.

## **REQUESTS FOR DETERMINATION OF APPLICABILITY**

Paul Lloyd, 64 Shoreview Avenue, East Falmouth, MA – For permission to construct a two-car garage addition and driveway.

Ms. McKay: Jurisdiction: in land subject to coastal storm flowage (flood zone A). High capacity infiltrator chambers are to be installed and connected to dry wells to control stormwater on the property – French drains with stone not allowed. Per the Building Department, it does not require the 1<sup>st</sup> floor elevation to be 1-ft above the base flood elevation 12 because the garage is connected to the house and flood vents under the garage shall be required. Staff recommends a negative 2 (under the State and the bylaw). Resource area boundaries are not confirmed by this RDA.

Mr. Bird: Move to accept staff's recommendation.

Ms. Harlow-Hawkes: Second.

Ms. Schumacher: Unanimous, so moved.

MacDougalls Cape Cod Marine Service, Inc., 145 Falmouth Heights Road, Falmouth, MA - For permission to repair the existing licensed timber pier which includes replacing float pilings (6) in the same location using a floating barge.

Ms. McKay: Jurisdiction: in land under the ocean, land containing shellfish, in land subject to coastal storm flowage (flood zone A) and within 100-ft resource area buffer to coastal bank, salt marsh, land under the ocean and land containing shellfish. The proposed work is for piling replacement maintenance within the existing formerly approved pier footprint. Staff recommends a negative 2 (under the State and the bylaw). Resource area boundaries are not confirmed by this RDA.

Mr. Bird: Move to accept staff's recommendation.

Ms. Harlow-Hawkes: Second.

Ms. Schumacher: Unanimous, so moved.

## **CONTINUED REQUEST UNDER DETERMINATION OF APPLICABILITY**

Peter Bennett, 344 Quissett Avenue, Woods Hole, MA – For permission to remove existing bottom anchors (2) and chain and to install 12-inch timber pilings (3) to secure the float using a floating barge and to relicense existing structures to include new float pilings.

Ms. McKay: Jurisdiction: in salt marsh, land under the ocean, land containing shellfish, rocky intertidal, in land subject to coastal storm flowage (flood zone A), on coastal bank and within 100-ft resource area buffer to coastal bank, salt marsh, land under the ocean, land containing shellfish and rocky intertidal. The Conservation Administrator met with Dave Martin, DH Engineering, to review the old footprint vs. the new footprint. A determination was made that the new footprint is similar to the old and improves water depth. Staff recommends a negative 2 (under the State and the bylaw). Resource area boundaries are not confirmed by this RDA.

Mr. Bird: Move to accept staff's recommendation.

Ms. Harlow-Hawkes: Second.

Ms. Schumacher: Unanimous, so moved.

## **REQUEST FOR HEARINGS UNDER A NOTICE OF INTENT**

Francis Duane, 0, 28 and 33 Brenton Road West, North Falmouth, MA – For permission to nourish and replant an existing Coastal Dune bordering Megansett Harbor.

Ms. McKay: No comment at this time.

Stan Humphries (LEC Environmental) presented abutter's cards. Resource areas include: land under the ocean, coastal bank, coastal dune, salt marsh and land subject to coastal storm flowage. There is a coastal dune that is very low and stretches between two stone groins. The dune is very low and very narrow and doesn't offer protection for the two homes that it should. You have photos in the NOI. Snail shells cover the dune. The applicant would like to remove the shells and cover the dune with sand coming from the Rands Canal dredging project. The shells will be raked from the dune and barrier beach by hand. If necessary a bobcat like machine with wide tracks that doesn't dig into the beach will be used. If there is alteration to the beach it will be graded daily. We hope to cover 6400-sq.ft with 600-cu.yds of sand. We will plant beach grass 18" on center on the dune. We hope to have this done before April 15, 2018. We are asking for a 5 year permit and the ability to add another 600-cu.yds of sand as needed.

Mr. Bird: No questions or comments.

Ms. Harlow-Hawkes: Are both homes owned by the same person?

Mr. Humphries: No. The application is in one name but the homes are owned separately.

Ms. Harlow-Hawkes: You don't have land containing shellfish and eel grass on the plan.

Mr. Humphries: That area is beyond the project.

Ms. Harlow-Hawkes: Yes, but sediment moves. There is an impact to eel grass and shellfish if sand

migrates out into the water.

Mr. Humphries: This is not beach nourishment. The sand is strictly confined to the coastal dune.

Ms. Harlow-Hawkes: Waves have turbidity and can pull the dune down and the sand will move causing possible impact to shellfish and eel grass. Why remove the shells? There are shells in the dune. Why not put sand on top of the shells? Why not leave the snail shells, they're natural.

Mr. Humphries: About 30-cu.yds has been removed from the project on the west end. They have totally smothered the beach grass. The applicants want a dune, not a mound of shells.

Ms. Harlow-Hawkes: Why are there so many shells there?

Mr. Humphries: I don't know.

Ms. Harlow-Hawkes: Are they licensed groins? Do they belong to the homeowners?

Mr. Humphries: No.

Ms. Harlow-Hawkes: They used to put stakes in the dune area so you'd know how far to go when adding the sand.

Tom Bunker (BSS Design) It can be done.

Ms. Harlow-Hawkes: The beach access should be on the plan. Will there be a skid bringing sand in?

Mr. Humphries: The material will be stored between the two houses.

Ms. Harlow-Hawkes: The homeowners must stop mowing the dune they do have. House lot 1 should stop mowing the entire dune. We don't usually grant a 5 year permit. Do you want that so you can put more sand on the dune at the end of the 5 years?

Mr. Humphries: If it's necessary.

Ms. McKay: There is no monitoring plan included. How will you know how much sand you have lost? I would not recommend extra sand to be put in without an annual monitoring report. If there is no monitoring plan, no additional sand will be allowed.

Ms. Harlow-Hawkes: If the sand does move we may add more to the problem by adding sand.

Ms. Gladfelter: This type of snail is a filter feeder that lives on algae. Algae grows on the cobble and the snails live on the cobbles. Each snail starts out as a male and then another snail lands on the first and that one becomes a female, etc. In a storm the cobbles act as sails and will wash onto shore. You can bury them, but it's a huge buildup. Mix in the cobbles as part of the dune. It will help to establish the grasses.

Mr. Mathews: With monitoring – new elevations can be measured.

Ms. McKay: You need to create a baseline after completion and then do transects and submit that on a yearly basis. Beach monitoring is done every year. It's good practice. If there are big storms the sand will come back into the system.

Mr. Humphries: We don't want to propose beach nourishment.

Ms. McKay: You will still lose some sand.

Ms. Gladfelter: Shellfish live in sandy areas.

Ms. McKay: You need to know how much you're losing each year. There needs to be a survey immediately after the sand is placed. We must see baseline monitoring prior to May.

Mr. Walsh: There are three owners involved. It's confusing to me looking at the plot plan as to what the actual boundaries are of the three owners.

Attorney Bob Ament (representing the applicant) The road does extend to the Harbor. Attorney Ament pointed out the Duane property line. The Hannon property surrounds it.

Mr. Walsh: The upper boundary - how far does it extend out?

Attorney Ament: To mean low water.

Ms. Gladfelter: It's not on the plan. The property extends to mean high water. (to Mr. Bunker) Give us a revised plan showing where it should be.

Ms. McKay: Where does the Hammond property go to the west towards the groin?

Attorney Ament: The 1985 plan shows the areas. He presented the 1985 plan to the Board.

Mr. Bunker: I will check the deeds and plans and put the line on the plan.

Mr. O'Brien: No questions or comments.

Ms. Schumacher: The sand from Rands Canal may also go to Town beaches. If they have to get sand from a different location – do we want some kind of analysis?

Ms. McKay: Yes.

Ms. Schumacher: If so, you should come back and see Jen and we can make that a condition in the Order.

Ms. McKay: Should there be a protocol – one dumpster or 2 – hand rake a lot of the shell? They might use the bobcat to scoop it up. We need a protocol.

Mr. Humphries: Raking the shells should keep the cobbles there.

Ms. Gladfelter: What would you use the shells for?

Mr. Humphries: They could be used for a driveway.

Ms. Harlow-Hawkes: Since you reduced the size of the project on the transect between E and F and pulled it back along the shoreline, why do you need the same amount of sand?

Mr. Humphries: The applicant would like as much sand as he could have. We don't want to overtop the crest however.

Ms. Harlow-Hawkes: I'm concerned you may overdo the sand. With the change in size I would expect a lesser amount of sand. Why not reduce the volume if you reduced the size of project?

Mr. Bunker: I redid the plan quickly and didn't re-calculate the amount of sand needed.

Ms. Harlow-Hawkes: Could you do that?

Mr. Bunker: The transect locations are the same - they just got narrower.

Ms. Harlow-Hawkes: How can you have the same amount of sand without the dune getting higher? When you give us the revised plan can you give us the amount of sand needed?

Ms. McKay: You can also look at lot lines, access, eel grass and shellfish, etc.

Mr. Humphries: Could we have another hearing for next week.

Ms. McKay: We're not meeting again until the February 7th.

Ms. Gladfelter: **At the request of the applicant's representative I move to continue the hearing until February 7, 2018.**

Mr. Mathews: **Second.**

Attorney Ament: Time is tight – may we have a decision as soon as possible.

John Donnelly (Abutter) I just saw the drawings today. My land goes down to the water and it is cut off on the plan. It blocks my way to the beach.

Ms. Schumacher: With the sand?

Mr. Donnelly: With both.

Ms. McKay: I met with Mr. Donnelly today and he is concerned about the back lot line. The project won't put sand down that far – it will be more in the wetland.

Mr. Humphries: We are not going as far as originally proposed. It should not affect Mr. Donnelly's land. It's about 60-ft away.

Ms. Schumacher called for the vote.

Ms. Schumacher: **Unanimous, so moved.**

## **REQUESTS TO AMEND THE EXISTING ORDER OF CONDITIONS**

Hilary & Langley Steinert, 15 Carey Lane, Falmouth, MA – Request to amend the existing Order of Conditions (DEP 25-4295) to allow excavation under the existing house to lift and replace the rubble stone foundation wall with a cast in place full-depth concrete foundation wall. Piers will be placed under the new porch.

Ms. McKay: No comment at this time.

Tom Bunker (BSS Design) presented abutter's cards. You have recently provided an OOC for an addition and pool on the property. During the course of construction and in repairing the existing

foundation, it became clear that it would be easier and quicker to put in a new foundation wall. The foundation is in and the piers under the porch are in. There is now a walkout. The work is done. There is no increase in the footprint. Everything will remain as it was approved.

Mr. Mathews: This is an after the fact approval. It does look like it's confined to the original OOC.

Ms. McKay: They were shut down by the Building Department and told to come see us. I allowed them to continue after learning that there is no increase in the footprint.

Mr. Bird: Why were they shut down by the Building Department?

Ms. McKay: Because they were putting in a foundation.

Mr. Bird: These situations give me a kind of heart attack. There are always potential issues like this and the architect and engineer should have done their homework before the construction began. Then they just went ahead and did it without a permit. They should have understood what they were looking at. This stuff troubles me.

Ms. Harlow-Hawkes: We're always picked on when these things happen. The limit of work was non-existent yesterday after the rain storm. When you are a general contractor you can't walk away from the limit of work. You have to take care of it. It would have been nice if they had asked first.

Ms. Gladfelter: No questions or comments.

Mr. Mathews: No questions or comments.

Mr. Walsh: Do you think that if you go out to the site later you could be re-assured that there is no further impact on the environment?

Ms. McKay: Yes. There is a slight modification in the plan. They are pulling one part of it back.

Mr. O'Brien: No questions or comments.

Ms. Gladfelter: Move to close the hearing and take it under advisement.

Ms. Harlow-Hawkes: Second.

Ms. Schumacher: Unanimous, so moved.

Ms. Gladfelter recused

Woods Hole Steamship Authority (c/o William Cloutier), 29 Luscombe Avenue, 33 & 36 Railroad Avenue and Railroad Avenue (Map 51A-01-044A-000; 51A-01-044B-000), 12 Cowdry Road, Cowdry Road (Map 51A-01-043-004), Juniper Point Road (Map 51A-01-042-000A; Map 51A-01-043-005), Woods Hole, MA – Request to amend the existing Order of Conditions (DEP 25-4151) to perform maintenance dredging of approximately 306 cu yds of material over 4265 sq ft inside Slip #2 at the Woods Hole ferry terminal.

Ms. McKay: No comment at this time.

Greg Endicott (representing the Steamship Authority) presented abutter's cards. There is an incursion for time of year restrictions. We have no issues with any of the Orders. DMF wants us to meet the restriction date of February 15th. If we are not able to meet that date, will ConCom allow us to still do it with the okay of Marine Fisheries? We released an addendum to our bid about having to complete the project before February 15th. We are considering multiple contractors and many of them are asking if an environmental dredge bucket is required to be used, could there be an option to use a clam shell if it is too dense to dredge with that?

Ms. Schumacher: The main things that are different from the last hearing is that we have Eileen Feeney's (DMF) email that includes an extra week.

Mr. Endicott: We can't award a contract until we receive a permit from ConCom. We will keep the bid date of the 30<sup>th</sup>.

Mr. Mathews: Have the vendors been told the restriction in the specs?

Mr. Endicott: Yes. We are expecting information from vendors on the dates.

Mr. O'Brien: Are there damages for delays?

Mr. Endicott: I'm not sure. I'll have to ask.

Mr. Walsh: No questions or comments.

Ms. Harlow-Hawkes: This is not what we usually do. As for the clam shell vs. the environmental bucket - if we give you permission to use the clam shell, they will use it.

Mr. Endicott: Both buckets will be on site.

Ms. Schumacher: Do you want the contractor to get a sign-off from the Steamship Authority before they use the clam shell?

Bob Welch (Engineer, Steamship Authority) The environmental bucket can be difficult. Since there is a time restriction, using it could mean a longer length of time. Gradation shows very little clams and turbidity shouldn't be a problem.

Mr. O'Brien: Maybe we should we take the environmental bucket out. Time is of the essence.

Mr. Endicott: The beach superintendent would like the spoils for Surf Drive beach.

Mr. Bird: I'm okay with the way it's proposed.

Mr. Bird: **Move to close the hearing and take it under advisement.**

Ms. Harlow-Hawkes: **Second.**

Ms. Schumacher: You requested that the OOC stipulate that you can go past the date of February 15th providing you have permission from DMF?

Mr. Endicott: Yes.

Ms. McKay: You can vote this tonight. You have to go beyond just administrative approval if DMF recommends.

Mr. Endicott: Is the vote closed?

Ms. Schumacher: You can be here, we just can't take any more information.

Ms. Schumacher called for the vote.

Ms. Schumacher: **Unanimous, so moved.**

## **VOTE ORDER OF CONDITIONS**

Quorum: Kevin, Peter, Jamie, Mary, Maurie, Courtney

Ms. Harlow-Hawkes: Move to adopt the Order of Conditions as discussed.

Mr. Mathews: Second.

Ms. McKay: You must be provided permission from DMF to go beyond the February 15th date.

Mr. Bird: Are you okay with the barge for dewatering?

Ms. McKay: Yes.

Ms. Schumacher: Unanimous, so moved.

Ms. McKay: The Order will be out tomorrow.

Ms. Gladfelter returned to the meeting.

## **CONTINUED REQUEST TO AMEND THE EXISTING ORDER OF CONDITIONS**

Lawrence White, 194 Acapesket Road, East Falmouth, MA – Request to amend the existing Order of Conditions (DEP 25-4150) to install two floats approximately 8-ft x 11-ft along the dock to store jet skis.

The hearing is continued until February 14, 2018.

## **CONTINUED REQUEST FOR HEARINGS UNDER AN ABBREVIATED NOTICE OF RESOURCE AREA DELINEATION**

Susan Moran, 390 & 402 Wild Harbor Road, North Falmouth, MA - Request for confirmation of the following wetland resource area boundaries: BVW/freshwater wetland and salt marsh.

The hearing is continued until February 7, 2018.

## **VOTE ORDER OF CONDITIONS**

27 Grove Street (Collette) 01/24/18

Quorum: Kevin, Mark, Jamie, Mary, Betsy, Maurie, Courtney

Ms. McKay: This is a revised plan because of the driveway jog. I have not seen a new plan.

Ms. Harlow-Hawkes: There is no mention of an AC unit or shower, the moving of the replacement tree on the lot line or the species of the mitigation plantings.

Ms. Gladfelter: Move to adopt the Order of Conditions as discussed.

Ms. Harlow-Hawkes: Second.

Ms. Schumacher: Unanimous, so moved.

21 Little Lane (Bennett) 01/24/18

Quorum: Mark, Jamie, Mary, Betsy, Maurie, Courtney

Ms. McKay: A revised plan was submitted with a PLS Stamp and the limit of work on the 30 contour line. It saves the 24" oak. Does it show the water line moved?

Ms. Schumacher: And did they move the septic to save the tree?

Ms. Gladfelter: They are not in our jurisdiction.

Ms. Harlow-Hawkes: Move to adopt the Order of Conditions as discussed.

Ms. Gladfelter: Second.

Ms. Schumacher: Unanimous, so moved.

## **OTHER BUSINESS**

Discussion of adding standard / special conditions regarding the nitrogen control bylaw.

Ms. Schumacher: This came up in a meeting I had with Virginia Valiela (Vice-Chair of the Waterways Committee) Ms. Schumacher read from the bylaw. We could make it a standard special condition in the OOC.

Ms. McKay: If I understand A – per the Falmouth nitrogen bylaw, this is prohibited.

Ms. Schumacher: This should be included or compliance is required within 100-ft of a wetland resource. We can defer voting until the next meeting.

Mr. Walsh: Do we have purview over lands not in our jurisdiction? Does this expand our authority?

Ms. Schumacher: No. Any NOI or RDA has to follow this bylaw re wetlands.

Mr. Walsh: So this is just educational.

Ms. Schumacher: We are telling people to comply with it. We used to have Falmouth Friendly Lawn guidelines and they were included in the Orders. Now they are superseded by this bylaw.

Ms. McKay: If you look at D under the performance standards, you have the authority.

Ms. Schumacher: We have a duty to require people to do this.

Ms. Gladfelter: Everyone should be doing this.

Ms. McKay: I could write a special condition letting them know this bylaw exists. It does not expand your authority beyond the flood plain. Outside of the flood plain, we don't have the authority. MES does.

Ms. Harlow-Hawkes: Education is the way to go. None of the professional guys use nitrogen fertilizer anymore – they use iron.

Ms. McKay: We can craft this and educate the public.

Sam Patterson (Selectman) Denitrifying systems should be required. Would we need a bylaw change to the regulations?

Ms. McKay: Did you ask whether or not we would relax a buffer zone regulation if they agreed to put in a denitrifying system?

Mr. Patterson: Yes, as part of a mitigation option instead of planting. It's an environmental improvement.

Ms. Schumacher: We need a Town bylaw on denitrifying systems.

Mr. Patterson: We could consider that in the future.

Ms. Gladfelter: I'm a strong advocate of a woody buffer. It pulls up the nitrogen and keeps storms from ravaging areas.

Mr. Bird: In an ideal world we would like them put in universally. This would not necessarily be a trade-off from a woody buffer.

Ms. McKay: Remember you're meeting Saturday at 8:30 in the Hermann Room at the library. Next week we'll have a listening meeting with input from the public on the design of Gateway to the Greenway. That will also be in the Hermann Room at 7:00 p.m.

Ms. Gladfelter: Move to adjourn.

Mr. Mathews: Second.

Ms. Schumacher: Unanimous, so moved.

The meeting adjourned at 8:50 p.m.

Respectfully submitted,

Susan Cronin, Recording Secretary