

The Falmouth Conservation Commission  
**MEETING MINUTES - WEDNESDAY, FEBRUARY 27, 2019**  
Selectmen's Meeting Room, Falmouth Town Hall, 7:00 p.m.

Present: Jamie Mathews, Vice-Chair  
Courtney Bird  
Steve Patton  
Kevin O'Brien, Alternate  
Peter Walsh, Alternate  
Jennifer McKay, Administrator  
Brendan Lynch, Agent

Absent: Mary Schumacher, Chair, Betsy Gladfelter, Maurie Harlow-Hawkes, Mark Gurnee, Alternate; Kristin Alexander

Mr. Mathews opened the meeting at 7:00 p.m.

### **VOTE MINUTES**

2/13/2019

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

Mr. O'Brien: Second.

Mr. Mathews: Unanimous, so moved.

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

Patrick & Phyllis McDevitt, 5 North Chop Lane, East Falmouth, MA – For permission to reconstruct existing stone riprap and incorporate new granite steps within riprap.

Ms. McKay: The applicant has requested a continuance until March 13, 2019.

Mr. Bird: At the request of the applicant I move to continue the hearing until March 13, 2019.

Mr. Patton: Second.

Mr. Bird: Why are they requesting a continuance?

Ms. McKay: The mitigation plantings are gone. The applicant's representative is working on a site plan.

Mr. Mathews: Unanimous, so moved.

### **REQUESTS FOR DETERMINATION OF APPLICABILITY**

T H O of Massachusetts (SHM Fiddler's Cove LLC), 42 Fiddler's Cove Road, North Falmouth, MA – For permission to repair a failing asphalt wash pad.

Mr. Lynch: Jurisdiction: within 100-ft resource area buffer to land under the ocean, coastal bank and in flood zone AE 16. The proposed repair is located landward of the travel lift. The 922-sq.ft of eroding asphalt is to be covered over with concrete to match the adjacent existing concrete. A 6' by 6' area of asphalt will be removed to test the soil below to determine if all of the asphalt needs to be removed. If removed, the asphalt will be transported and disposed offsite appropriately. Silt sock and sediment control methods are to be implemented when digging the test pit and if more asphalt needs to be removed. Staff is to inspect immediately after the work is complete. 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.

Mr. Patton: Second.

Mr. Mathews: Unanimous, so moved.

Thomas & Diane Rowley, 29 Nauset Avenue East, Falmouth, MA – For permission to pump, fill and abandon existing cesspools and upgrade to a Title 5 septic system.

Mr. Lynch: Jurisdiction: within 100-ft resource area buffer to riverfront, salt marsh, BVW/freshwater wetland, coastal bank, flood zone AE 15. Two cesspools are to be pumped and filled with sandy soil. Wastewater will flow by gravity to the pump chamber and will be pumped to the D-box and then to the SAS located upland. The work will be done 100-ft from all resource areas but within 200-ft of the riverfront. One 14-inch oak is to be removed to locate the tank/pump chamber. One dead 4" sassafras is to be removed. No tree replacement is needed due to the small lot size and the dense tree coverage. 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.

Mr. Patton: Second.

Mr. Mathews: Unanimous, so moved.

## **CONTINUED REQUESTS FOR DETERMINATION OF APPLICABILITY**

Donna Sbardella, 38 Deer Run Lane, North Falmouth, MA – For permission to expand existing deck, construct an addition over existing porch, install mitigation plantings for after-the-fact approval of unpermitted patio.

Mr. Lynch: Jurisdiction: within 100-ft resource area buffer to land under the ocean, salt coastal bank and flood zone AE 15. Staff met with Brendan Mullaney from Bracken Engineering and the homeowner and discussed mitigation for the unpermitted patio and the deck expansion. The amount and location of the plantings is sufficient enough to comply with past enforcement and the new deck. A site visit is to be conducted with the engineer or landscaper before and after the plantings. 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.

Mr. Patton: Second.

Mr. Mathews: Unanimous, so moved.

P&B Realty Trust, 47 Gunning Point Avenue, Falmouth, MA – For permission to license an existing stone riprap seawall and existing stone groin.

Ms. McKay: This is a request to basically legitimize a wall so the applicant can get a Chapter 91 license. There is a topo map that labels an area as riprap. There is an interim Chapter 91 license from 1995 that shows a groin and stone steps but not the wall itself. We have the photos from DEP files (1995) that don't really show a wall, but it's been there for a while. There are no permits and no NOIs in the file so it has not been permitted since 2005. Staff's tentative recommendation is a negative 4, but the applicant's representative is here and may want to say a few words.

Jeff Ryther (BSS Design) There are three waterfront structures – wall, groin and stairway. Mr. Ryther presented 1975 maps to the Board. It has been one year since the applicant closed on the house so he wants to get it licensed. We have prepared license plans but need a local permit before we can file. The groin is on the 1975 map. Between each groin is the word riprap. It is part of the waterfront structure. The groin is licensed for eight more months. We would like to have the

license plan approved.

Mr. Walsh (to Ms. McKay) Did you check any aerial photos?

Ms. McKay: Yes. It's hard to tell in the aerials if it's a revetment or a pile of rocks.

Mr. Walsh: So you have to recommend a negative 4?

Ms. McKay: Yes, unless we can tell if it's a revetment.

Mr. Ryther: There is an aerial in 1975 which the topo is based on.

Mr. Patton: What does a negative 4 recommendation mean?

Mr. Lynch: No work is to be done.

Mr. O'Brien: No questions or comments.

Mr. Bird: Gunning Point is pretty rocky and the shoreline can be rocky. This is not necessarily an improvement. I don't think we have enough information to make a decision on this.

Maureen Conte: I am a homeowner in the Sippewissett subdivision. She presented a Powerpoint showing a sandy beach before the armoring. Now the beach is all rocks. It has been starved off by coastal armoring. The 1995 interim approval is to maintain the existing groin and stairs. In 2002 they received permission to repair the riprap on the abutting property. From 2003-2004 riprap appears. In 2013 a plan was prepared for the Salt Pond area and there was a riprap extension. The alterations have voided the 1995 approval. There is no approval for anything on this property now. The ConCom must ask the new owner to remove the structures.

Mr. Bird: Normally when a presentation for an RDA takes more than 5 minutes it's an indication that maybe this is the wrong place to hear this.

Michael Eder: You have received letters from 3 long term residents stating there was nothing there until 2002. The topo plan (1995) isn't correct. Mr. Eder submitted maps to the Board.

Mr. Bird: I am not prepared to make a judgment on who's right and who's wrong. I can't support it in this form. An NOI is more appropriate.

Mr. Patton: If you have a Chapter 91 license and alter the original permit - who says you don't have a permit?

Ms. McKay: The State.

Mr. Patton: How would they know about these things?

Ms. McKay: If the scope changes you can go for an amendment. This is an interim permit so the owner has one year to redo the license. The State regulates the license and the applicant needs local approval first. The Board can continue it and see if Mr. Ryther can supply additional information and show evidence that the wall was constructed before our regulations changed.

Mr. Bird: We are spending too much time on an RDA.

Mr. Ryther: I am trying to do the right thing. We would like to get a permit from ConCom. The existing wall is shown on the 1975 topo. It shows riprap between every groin. I don't know why that's not good enough.

Mr. Mathews: Did you give us the topo map?

Mr. Ryther: Yes. And I kept my presentation to just a few minutes.

Mr. O'Brien: And the indications were done by?

Mr. Ryther: The red ones? I did that. The dashed line is the outline of the riprap.

Mr. Bird: There are areas of riprap but they are not contiguous.

Mr. Ryther: 1975 was before the Act.

Mr. Bird: When did it become contiguous?

Mr. Ryther: I don't know. If you pulled out that one section it wouldn't help with the problem.

Mr. Bird: I have trouble with this.

Ms. Conte: I know when it was installed - when the McCready wall was built. That was the result of the armoring of Gunning Point. The only people who had a wall before that is #45.

Ms. McKay: When did the McCready wall go in?

Ms. Conte: In 2003. Didn't you just say it was bad aerial photo?

Mr. Ryther: Yes.

Mr. Eder: It's one continuous wall and should not have been permitted. This never got licensed, it

was just built. It destroyed our beach.

Mr. Bird: Move a Positive recommendation without prejudice.

Mr. Patton: Second.

Mr. Mathews: Unanimous, so moved. 4 yes 1 no

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

Town of Falmouth (c/o Gregg Fraser, Harbormaster), 0 Town Landing Road (Map 32-21-015-000), Falmouth, MA – For permission to reconstruct the existing boat ramp.

Ms. McKay: No comment at this time.

Brett Sherry (Division of Boat Access) We work with Towns like Falmouth. Seapit Landing is in disrepair. The 6” curbs on each side have fallen over. Further down the ramp are 10 precast pads. At low tide it is 2-ft and at high tide it is 3-ft. There is land under ocean and the ramp will be extended by 4-ft in length and 6” on each side. Pads will be made 6-ft long for more traction. It is a shellfish area and mitigation is required. There is also a time of year restriction from January to May. We will not be changing grades. Parking is scarce. The ramp will be for small boats and there will be as little change as possible. For erosion control a silt fence will be placed prior to construction. We will demolish the ramp and will not stockpile it on site. Once the ramp is removed we will check the gravel sub-base. It will be precast all the way down to mean high tide. Above mean high tide we will do cast in place. The pads will be attached with stainless steel connectors. We don’t believe a coffer dam is necessary and it would change the footprint. The total length of the ramp will change from 65-ft to 69-ft and the width will change by 4-ft. No salt marsh has been observed. There is brush and grass in the area. No pavement is proposed at this time.

Gregg Fraser (Harbormaster) The State handles the ramp and the DPW will redo the access road and the small parking lot. The process is the same as Childs River. We will have to come back to the Board for the road and parking lot project.

Ms. McKay: Mitigation for the shellfish is required. Is there any proposal to relay them out prior to construction?

Mr. Sherry: We’ll see what the fee will be. If you require a coffer dam it will be larger. It can be pumped out within the curtain. I don’t think a coffer dam is necessary.

Mr. Fraser: We have offered to move any the State wants.

Mr. Lynch: No questions or comments.

Mr. Patton: No questions or comments.

Mr. O’Brien: No questions or comments.

Mr. Bird: What type of shellfish is there?

Mr. Sherry: Quahogs.

Mr. Bird: The relay won’t be a big issue then.

Mr. Walsh: At the end of the ramp in low tide, what’s the difference in length?

Mr. Sherry: The further you extend the ramp you will need dredging. There is a prop hole wash.

Mr. Walsh: What is a prop hole wash? Will it be filled or covered over?

Mr. Sherry: It’s kind of a natural depression with a shelf after it.

Mr. Walsh: Will the prop hole wash problem be gone?

Mr. Sherry: The extension will help a bit.

Ms. McKay: We can put a sign saying no power loading boats.

Mr. Mathews: Any complaints from shellfishermen?

Mr. Fraser: No.

Mr. Sherry: They are okay with keeping the ramp as is. They don’t like the extension.

Mr. Fraser: The small boat ramp will be very successful.

Mr. Sherry: Using 6-ft pads works better.

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

Mr. Patton: Second.

Mr. Mathews: Unanimous, so moved.

Shelby & Janet Mudarri, 4 Nichols Road, East Falmouth, MA – For permission to replace the existing seasonal access dock ramp with a longer ramp.

Ms. McKay: No comment at this time.

Michael Borselli (Falmouth Engineering) presented abutter's cards. The applicants have been here before. They requested permission to fix a retaining wall and a Certificate of Compliance has been received. They had also requested permission to rebuild an existing seasonal ramp walkway and floats. That outcome was not as good. They have reconsidered the project and are here again. They do have an OOC for a seasonal dock and have received a Certificate of Compliance for that. There was a controversy over the license for the dock and DEP found in favor of the Mudarris. Now they have to walk up the ramp, down and up again to get to the float and it can be slippery. They would like to eliminate the sloping ramp that presently lands on the beach. The plan is to purchase a new aluminum ramp that will land on top of the wall. The new extension is 8-ft long and will be elevated above the beach with a 5-ft clearance. This will eliminate the sloping walkway ending on the resource area. We submitted a narrative in which we highlight the public benefit of improving public and shellfishermen access. There is a letter supporting this from fishermen with the application. The main reason for docks not being in velocity zones is because of hurricanes causing damage to salt marshes. There is also a letter from the company that will haul this seasonal dock away. If a hurricane is predicted they will remove the entire dock and haul it to their facility. Any concerns are mitigated by that. This is also an added benefit. Originally we asked for a more substantial dock and you denied the request. In your denial you had a basis for it. We went over the reasons why the findings are no longer valid in the narrative.

Ms. McKay: The dock does not meet the strict interpretation of our regulations. Some issues in the denial have been resolved. I do not believe that there is a public benefit with this ramp. It does not meet the level of a public benefit. The dock does have a Certificate of Compliance. It's up to the Board to decide. There are abutter concerns also.

Mr. Lynch: No questions or comments.

Ms. McKay: The plantings are in.

Mr. Borselli: The concerns of a neighbor are a redo of the original concerns and have been dispelled by DEP. They are not making it longer, just moving it landward for easier access.

Mr. O'Brien: I don't see it as being a problem.

Mr. Bird: The areas in tan on the plan coincide exactly with the license and any preceding OOC?

Mr. Borselli: Yes.

Mr. Bird: There is no deviation from the previous OOC?

Mr. Borselli: Correct.

Mr. Patton: I can see where it's a benefit for the shellfishermen. It's an improvement.

Mr. Walsh: It is an improvement.

Mr. Mathews: Extension is a misnomer. It is a trade-off for public benefit. My specific concern is that there will be a new path to the ramp. What about the mitigation?

Mr. Borselli: We can remove the mitigation provided and just move it over. Just thicken the corner. We can transplant them.

Ms. McKay: That has to be on the site plan. How many new posts?

Mr. Borselli: None that will be made out of aluminum. Nothing new is being introduced. The ramp will connect to an existing post.

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

Mr. Walsh: Second.

Mr. Mathews: Unanimous, so moved.

Nathan Holcomb, 270 Sippewissett Road, Falmouth, MA – For permission to construct an addition, garage, mudroom, scree+ned room, deck, a gravel terrace, expanded driveway, 4-foot wide mulch path, wash station, drywells, invasive species management/restoration, and all associated excavating, clearing, grading and landscaping.

Ms. McKay: No comment at this time.

Mark Manganello (LEC Environmental) The property was constructed in 1952. The lawn extends to the rear of the property and there is an isolated freshwater wetland behind the house. Invasive vines surround the wetlands. They have taken over the resource area buffer and are into the fresh water wetland and upper lawn. It is a low quality fresh water wetland that has been degraded because of being overrun with invasive species. The addition is an improvement to the dwelling. The driveway will be reconfigured. The addition is confined to zone B (50-ft buffer) with increased coverage of 988-sq.ft. 4 drywells are proposed. The mitigation is a restoration plan – to restore native vegetation. Crawford Land Management who will be handling the mitigation is included in the NOI. The invasive species will be removed and a meadow habitat will be created with VA rose between the lawn and the resource area. This will require a multi-year management plan to protect work that has been done. I'm sure there will be Conditions requiring monitoring. There will be 1,000 sq. ft of mitigation. The 988-sq.ft of coverage will be planted in a previously disturbed area.

Ms. McKay: Staff has some concerns: I would like to see a restoration project – removing invasives, etc. Staff would be okay with re-vegetating with meadow mix if the applicant actually mitigated for the increase in impervious surface. I would like it to be replaced with shrub material as close to the resource area as possible. Staff cannot support this project unless the 1,000-ft area is planted with shrubs. Maybe you can shift the screen room.

Mr. Manganello: The gravel terrace could be reduced.

Ms. McKay: If the applicant wants an outdoor terrace, have you looked at blasting the rock. Then you could shift the room and patio over.

Mr. Manganello: The rock is very large. That would not be possible. We might modify the terrace and square it off. We can work with that. I understand your concern about the meadow mix. That square footage of shrubbery would be very expensive and there are also 10 trees to be planted. That is significant to the resource area. A meadow around the wetland that is maintained every 2 years would be good.

Ms. McKay: The invasives are a shrub material and for them to be replaced by a meadow is just not a good idea. The applicant needs to comply with the mitigation requirements.

Mr. Manganello: Would you consider another location?

Ms. McKay: It has to be as close to the resource area as possible. I want to enhance and improve the wetland. Shrub material can come behind the wetland.

Mr. Mathews: Is the stone driveway in a previously disturbed area?

Ms. McKay: The gray area is not being counted as new coverage?

Mr. Manganello: Right.

Ms. McKay: The stone driveway is already counted in.

Mr. Walsh: What is the approximate location of the septic system? Is it a Title 5?

Mr. Manganello: Yes, it was updated in 2010.

Mr. Patton: The overgrowth is substantial and it is hard to delineate the wetland. I don't understand the trees being planted in right-of-ways?

Mr. Manganello: It doesn't go into the roadway. We are increasing the size of the restoration area.

Mr. Patton: This is different than most projects we look at. All wetlands are equal no matter their present state.

Ms. McKay: Mitigation for expansion of surface should follow the regulations.

Mr. Patton: What about the plantings between the house and the wetland – VA rose?

Ms. McKay: It is a supplement to the 900-sq.ft of shrubbery around the wetland.

Mr. O'Brien: An effort to restore the wetland is to be lauded. A meadow seems to be a great improvement over the existing conditions.

Ms. McKay: The invasive removal and meadow - that's your prerogative. But in addition you should have to put in mitigation for the expansion of the structure. If the Board starts changing that we will have to rewrite our regulations.

Mr. Manganello: If we just plant 1,000-sq.ft around the wetland we have no incentive to do invasive removal.

Ms. McKay: I'm not letting go of this.

Mr. Bird: No, that's right.

Mr. Manganello: I would like a continuance until next week.

Mr. Patton: At the request of the applicant's representative I move to continue the hearing until March 6, 2019.

Mr. O'Brien: Second.

Mr. Mathews: Unanimous, so moved.

## **CONTINUED HEARINGS UNDER A NOTICE OF INTENT**

Town of Falmouth (c/o Jim McLoughlin, DPW), 164 Turner Road, Falmouth, MA - For permission to replace an existing failing 36" pipe culvert under an existing bog road.

Ms. McKay: No comment at this time.

James McLoughlin (DPW) The culvert is in the Coonamessett River. The pipe will go from the Coonamessett Pond, under the roadway, through the middle of the bog and past the cartway. There is an access by the gravel road between the 2 bogs. The culvert is underneath. The pipe is 30 inches. There is erosion around the culvert. Downstream the pipe is broken and has collapsed. There is erosion on the downstream side also. The pipe has deteriorated. Further downstream the pipe is submerged in water. We will replace the existing pipe with a 24" plastic pipe. We will insert the 24" pipe from the downstream area up to the existing culver. Upstream by the box we will install a concrete collar on both ends. 3" of cement will be used to grout around it and seal it in. Erosion control will be silt fence at both ends. In addition to the pipe replacement we will repair the erosion by installing a 2 to 1 slope with fabric rolled down and stapled and will hydroseed the area. We will be working in the buffer zone repairing the cart roadway. The total area in the buffer zone is 2400-sq.ft. There is a 26-ft bank and erosion areas of 10-ft. There will be 199-sq.ft of erosion control. InnerFlow Pipe Systems will be onsite at the time of the pipe installation. It should take about 1/2 day to finish the project. Upstream we will install soft logs. The work will be relatively in dry areas. The grout cement is a quick set.

Mr. Mathews: Won't the new pipe rust?

Mr. McLoughlin: No, it is plastic and the cement will close it in.

Ms. McKay: What is the life span of the pipe?

Mr. McLoughlin: Easily 50 years.

Ms. McKay: It's been collapsed for awhile and needs to be fixed.

Mr. Mathews: The project seems to be pretty non-invasive.

Ms. McKay: It's better than removing everything and starting over. The Herring run is the thing right now. Will the outer pipe disintegrate?

Mr. McLoughlin: Yes.

Mr. Mathews: How old is the galvanized pipe?

Mr. McLoughlin: At least 30 years.

Mr. Bird: No questions or comments.

Mr. O'Brien: No qualms about restricting the amount of flow you can get through?

Mr. McLoughlin: Actually a 24" plastic pipe line inside the other pipe increases the flow by a little

less than 25%. It's the slope and friction. Plastic is so much better.

Mr. Patton: Seal the ends and then pump concrete in?

Mr. McLoughlin: The concrete will be just on the ends.

Mr. Patton: This entails 6 months of planning and ½ day of work.

Mr. Walsh: The drawing is pointing to a 30" pipe and the request is 36".

Mr. McLoughlin: We thought it was a 36" pipe but it's actually a 30" pipe.

Mr. Walsh: Did the erosion occur because the water was too high for the flow rate?

Mr. McLoughlin: Perhaps. It was not stable to begin with. Areas of high flow on the inlet and outlet get turbulent and cause erosion.

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

Mr. O'Brien: Second.

Mr. Mathews: Unanimous, so moved.

Patrick & Phyllis McDevitt, 5 North Chop Lane, East Falmouth, MA – For permission to reconstruct existing stone riprap and incorporate new granite steps within riprap.  
The hearing is continued until March 13, 2019.

### **VOTE ORDER OF CONDITIONS**

Ralph & Tricia Dipisa, Trustees, 94 Westwood Road, Falmouth, MA (3/6/19)

Quorum: Peter, Steve, Jamie, Kevin, Courtney

Mr. Lynch: The tree is not salvageable.

Mr. Patton: There were concerns about the cobble extending closer and closer to the salt marsh. Where it ends now is fine.

Mr. Lynch: Some of the cobbles might end up there in a bad storm.

Mr. Patton: Move to adopt the Order of Conditions as discussed.

Mr. Bird: Second.

Mr. Mathews: Unanimous, so moved.

Susan Morse, 206 Quissett Ave, Woods Hole, MA (3/6/19)

Quorum: Peter, Steve, Jamie, Kevin, Courtney

Mr. Lynch: There are two leach fields because of the slow perc rate. The trees to be taken down are out of your jurisdiction. There has been a deck enlargement over time, but they are pulling the house back so it's a moot point. The stairs down to the riprap should be on the plan. One native tree is being replaced and they are volunteering shrubs to be planted.

Mr. Walsh: What about the perc rate of the drywells?

Mr. Lynch: The dry wells will be slow and they should confirm the soil rate there.

Mr. Patton: Move to adopt the Order of Conditions as discussed.

Mr. Walsh: Second.

Mr. Mathews: Unanimous, so moved.

Michael O'Brien, 331 Edgewater Drive West, Falmouth, MA (3/6/19)

Quorum: Peter, Steve, Jamie, Kevin, Courtney

Mr. Lynch: They are moving the stairs away from the salt marsh. We need a revised plan.

Mr. Bird: Move to adopt the Order of Conditions as discussed.

Mr. Patton: Second.

Mr. Mathews: Unanimous, so moved.

Ryan Rapazky, 12 Turtle Pond Road, Falmouth, MA (3/6/19)

Quorum: Peter, Steve, Jamie, Kevin, Courtney

Mr. Lynch: There is an increase in impervious surface and they added mitigation to the plan. We can condition a revised plan to re-arrange the planting.

Mr. Bird: Move to adopt the Order of Conditions as discussed.

Mr. Walsh: Second.

Mr. Mathews: Unanimous, so moved.

Mr. Bird: Move to adjourn.

Mr. Patton: Second.

Mr. Mathews: Unanimous, so moved.

The meeting adjourned at 9:20 p.m.

Respectfully submitted,

Susan Cronin, Recording Secretary

Board will consider any matters not reasonably anticipated by the Chair.