

The Falmouth Conservation Commission
MEETING MINUTES - WEDNESDAY, FEBRUARY 19, 2020
Selectmen's Meeting Room, Falmouth Town Hall, 7:00 p.m.

Present: Jamie Mathews, Chair
Russell Robbins, Vice-Chair
Maurie Harlow-Hawkes
Steve Patton
Peter Walsh, Alternate
Kevin O'Brien, Alternate
Jennifer Lincoln, Administrator

Absent: Betsy Gladfelter, Courtney Bird, Mark Gurnee, Kevin Newton, Agent

Mr. Mathews opened the meeting at 7:00 p.m.
Mr. Mathews called Kevin O'Brien and Peter Walsh up to the quorum.

VOTE MINUTES

2/5/2020

Mr. Robbins: Move to adopt the minutes as written.
Ms. Harlow-Hawkes: Second.
Mr. Mathews: Unanimous, so moved.

2/12/2020

Mr. O'Brien: Move to adopt the minutes as written.
Ms. Harlow-Hawkes: Second.
Mr. Mathews: Unanimous, so moved.

REQUESTS FOR DETERMINATION OF APPLICABILITY

Treetops Condominium, 52 Landfall, Falmouth, MA- For permission to install a retaining wall and infiltrator chambers to fix an existing drainage issue.

Ms. Lincoln: Jurisdiction: within 100 foot resource area buffer of bordering vegetated wetland, land under water bodies, and within AE 13. The RDA is to install a retaining wall and infiltrator chambers connected to the existing building down spouts to fix an existing drainage problem. There is no increase in coverage within 100 feet of wetland other than the retaining wall. The only disturbance will be within the existing lawn areas. Staff recommends a negative 2 (under the State and the bylaw). Resource area boundaries are not confirmed by this RDA.

Ms. Harlow-Hawkes: Move to accept staff's recommendation.
Mr. Patton: Second.
Mr. Mathews: Unanimous, so moved.

Gerard and Margaret Robinson, 290 Acapesket Road, East Falmouth, MA- For permission to repair an existing timber pier by hand.

Ms. Lincoln: Jurisdiction: within 100 foot resource area buffer zone of land under salt ponds, bordering vegetated wetland, salt marsh, and within flood zones AE 13 and AE 15. The RDA is to repair an existing timber pier; pier will be repaired in kind. Four 6"x6" timber posts need to be replaced along with the yokes, stringer, and decking. The work will be performed by hand. No expansion or change is proposed. The pier is soon-to-be licensed; RDA is accompanied by a letter from DEP Waterways approving the Chapter 91 License for the existing stone riprap and timber pier. Receipt of the license is anticipated in the next few weeks. Staff recommends a negative 2 (under the State and the bylaw). Resource area boundaries are not confirmed by this RDA.

Ms. Harlow-Hawkes: Move to accept staff's recommendation.

Mr. Patton: Second.

Ms. Harlow-Hawkes: The 6x6 posts – what will they be made of?

Ms. Lincoln: I will check.

Mr. Mathews: Unanimous, so moved.

CONTINUED HEARINGS UNDER A NOTICE OF INTENT

Sharlene Cardoza, Trustee, Estate of Charles A. Cardoza 2012 Revocable Trust, 41 Mary Manuel Way, Falmouth, MA- For permission to construct a new single family dwelling with drywells and all associated clearing, grading, and landscaping.

Quorum: Jamie, Russ, Kevin, Peter

Ms. Lincoln: No comment at this time.

Tom Bunker (BSS Design) The previous hearing was continued for improvement to the resource area buffer and we are adding 3 native trees – tupelos. There will be drainage during construction around the limit of work - straw bales to contain runoff - runoff into the roadway contained by putting in a paved apron with dry wells connected to a chamber by a pipe.

Ms. Lincoln: Was the proposed rinse station on the last plan?

Mr. Bunker: I believe so.

Mr. O'Brien: No questions or comments.

Mr. Walsh: You have addressed all my concerns.

Mr. Robbins: No questions or comments.

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

Mr. Walsh: **Second.**

Edward McCormick (abutter) I want to make a point that I am not here to oppose the project. I am just asking that whatever standards are applicable are applied. There will be no loosening of any of your standards. I worked on the big dig. The big concern was during construction the trucks were coming out and leaving a lot of dirt on the street. This creates air pollution. Are there any provisions in the plan to mitigate that?

Mr. Mathews: The proposed limit of work will control the soil from running off into the road.

Ms. Lincoln: What about the path to the marsh?

Mr. Bunker: It will be similar to vista pruning. We will come back to the Board if necessary.

Mr. Mathews called for the vote.

Mr. Mathews: **Unanimous, so moved.**

Delcor Realty Trust (c/o Joanna Delapa), 418 Menauhant Road, Falmouth, MA- For permission to replace and extend the existing pier.

Quorum: Peter, Steve, Russ, Jamie, Maurie, Kevin

Ms. Lincoln: No comment at this time.

Matthew Watsky (Attorney) We're here to give you an update on our process. At the end of the last meeting there were questions re variance decisions. We did some research re the standards for

granting variances, i.e. what is a hardship? To qualify for a variance you have to look at alternatives – does a significant habitat exist? Paul Caruso reviewed the site and presented his report: there is more than one but low productivity – low quality substrate – of the 44 clams, only 4 were small indicating that the others had been there for a long time. It is not a productive area. Rules provide that if an area has been shellfished you check out how many shellfish are left and check again after 6 months to decide whether the area is productive. We will conduct a shellfish study, carefully document the number we find and go back after 6 months to see how many are there. I do believe you have enough information, but if you don't please continue the hearing for 6 or 7 months so we can do the study. Green Pond is closed to shellfishing and it is a significant habitat. There is misinformation from the record re the history of the property. As to the question of hardship there was a pre-existing structure before the permit was issued in 1983 allowing the structure. The permits were in place for the dock. The applicant at the time came before the Commission then and was granted permission. We have included a letter from the Building Inspector. Our client purchased the property with the belief that the permit for the dock was there. As mitigation for the dock 12,000 quahog seeds would be dispersed and improvements will include the existing decking will be replaced by thru-flo decking and the deck will be raised higher. This is better than what is out there right now. The rest of the variance standards have been met. We have included an aerial image of the property in 1986. Does the Commission want to continue the hearing or grapple with this?

Ms. Lincoln: Our regulations state that you can redo your survey within 6 months? Where is that?

Attorney Watsky: Look at H 4.

Ms. Lincoln: When did he purchase the property?

Attorney Watsky: In 1986.

Ms. Lincoln: He didn't purchase the property with all applicable permits. There was no Chapter 91 permit for the dock. It was built without that.

Attorney Watsky: The Chapter 91 license can only be granted after all other permits are granted.

Ms. Lincoln: The dock was never issued a building permit and the owner was ordered to remove it.

Attorney Watsky: Mr. Dalapa will get a Chapter 91 license.

Ms. Lincoln: The entire history is kind of messy.

Attorney Watsky: I agree that it is not a perfect record. He purchased the property but didn't pull a building permit. The Commission didn't have any specific standards for docks then. He is trying to bring it into compliance with your current standards.

Ms. Lincoln: Technically the dock is not allowed to be there. He has ignored the Town Building Commissioner's order to remove it. This application was filed in May of last year. The Board has given the applicant plenty of time to present their case and conduct a survey. It's over a year that it has been on the agenda. You have only presented one other time.

Attorney Watsky: The Board has what it needs to grant the permit now, but if you don't have enough information we can wait another 6 or 7 months. You'll have far less than 1 quahog per sq.yd. after the second survey and it will no longer have to meet compliance. Does the Board feel we have to go in that direction? 12,000 shellfish will be provided. Process over protection is what we are trying to avoid.

Ms. Lincoln: You are going to check for shellfish in the area and then do your survey?

Attorney Watsky: Yes. We will engage the services of a marine biologist who will do the survey and wait 6 months to go back and see what is there.

Ms. Lincoln: You are suggesting that you clean the whole site out, remove quahogs from the area and see if other quahogs move into an area. We don't want you to clean out the area.

Attorney Watsky: We would be removing them from this specific area in order to determine if other sets of quahogs come into the area. We are working with rules that the Commission has set up.

Ms. Lincoln: This proposal should have been presented to the Commission a week prior so that we could present it to the Shellfish Constable and the Board could look at the information.

Mr. Mathews: Did Chuck give us a report?

Ms. Lincoln: No. I have no other questions or comments.

Ms. Harlow-Hawkes: I'm concerned with the fact that the shellfish are all removed and will naturally reset. All sorts of things affect shellfish. You can get a bad year for shellfish in general. Warmer water can affect shellfish. I don't think you should take all the adults.

Attorney Watsky: It wouldn't be any different if a commercial shellfisherman came in and fished the property. I think he would take everything out on both sides.

Ms. Harlow-Hawkes: Just because there aren't many now doesn't mean there won't be some – it's their habitat.

Attorney Watsky: We're just following your standard that the regulations set and it's a numerical one.

Ms. Harlow-Hawkes: You just said that Green Pond is a significant habitat.

Attorney Watsky: Parts of it are. We're not asking to do another survey. This is how we're hoping to go about complying with your current standards. We'll agree to a continuance if the Board will give us one.

Mr. Robbins: I remember when this first came up. I have never seen a commercial shellfishermen in that area.

Ms. Lincoln: Sometimes they are off the bridge in the middle of the channel.

Mr. Robbins: The area could be productive someday but that's an if. This has to be solved. Will we cause more damage taking everything out of there?

Mr. Patton: I drive by there once a day and I've never seen anyone over there. It's been a busy fall for the shellfishermen. The survey will say there are very limited quahogs in the area. Then we can move forward.

Mr. Walsh: With the exception of the shellfish numbers does it meet our standards?

Ms. Lincoln: Yes.

Mr. O'Brien: I have a couple of concerns with the offer of a 6 month continuance. I'd like to know if you do clean it out and check it after 6 months, is that a fair test – true or not?

Ms. Lincoln: We can get a second opinion. I would want a 2nd opinion on that. Having a scientific permit to clear out shellfish so a dock can go in there concerns me.

Mr. O'Brien: That is something we don't know if it's factual. Will the dock be replaced?

Attorney Watsky: The plan is to use most of the existing pilings. They may have to replace two at the end. They will change the decking.

Mr. O'Brien: I walked out on it and didn't have a safe and warm feeling about walking on it. How long has this been on our docket?

Ms. Lincoln: Since May of 2019.

Ms. Harlow-Hawkes: You will replace the pilings as needed?

Scott Goddard (contractor) The last 2 piles are elevated. All the others are intact. One new set is to be replaced and other repaired as needed.

Ms. Harlow-Hawkes: I would like it to be made more clear.

Mr. Goddard: The two pilings at the end of the dock are elevated.

Ms. Lincoln: Did you have a dock company look at that?

Mr. Goddard: The guys from Little River.

Ms. Lincoln: Okay. I think you need to replace the ones at the end too.

Ms. Harlow-Hawkes: There are no soundings in the mooring field. We always want to see the depth of the mooring field.

Mr. O'Brien: Given the amount of investigation that has gone into this and as long as there is something in our decision allowing the 6 month study, etc. I would be willing to go along with closing the hearing.

Ms. Harlow-Hawkes: On page 4 of the narrative there are no lighting appliances on the proposed dock. On the plan you have proposed electricity – what is it for? There is nothing about a boat and nothing about lighting.

Mr. Goddard: There is no boat now, but one could be there in the future. Right now no electricity is proposed.

Ms. Lincoln: The photo from 1986 that you gave us – in what month was it taken? You say it was there in 1986. In 1987 they were denied a request to build the dock.

Mr. Goddard showed an historic aerial of the dock.

Ms. Lincoln: There was no Chapter 91 license then either. Whatever structure was out there was not valid. You're saying there was a pre-existing dock that was built with permits. When did Chapter 91 come into effect?

Mr. Goddard: This predated Chapter 91.

Ms. Lincoln: Chapter 91 came into effect in the 1800's.

Ms. Harlow-Hawkes: We can continue the hearing until the next meeting for clarification. We need a new plan re the electricity and the boat. Also you can't say "piers replaced as needed".

Attorney Watsky: Can I suggest an alternative? The details you're asking for are required on the plan that doesn't show electricity on it.

Ms. Harlow-Hawkes indicated where it is on the plan.

Ms. Lincoln: Also putting the soundings in the mooring field after the fact could have a bearing on the application.

Mr. Robbins: We also don't close until we have everything on the plan.

Ms. Harlow-Hawkes: There is no water, no electricity, no soundings in the mooring field. We have to have the exact number of pilings to be replaced. In the narrative you have to show how you're getting it there.

Attorney Watsky: So it's just clarifying it?

Mr. Robbins: Right.

Ms. Harlow-Hawkes: And clarify that you're not putting a boat on it.

Ms. Lincoln: How about the 25th of March?

Ms. Harlow-Hawkes: At the request of the applicant's representative I move to continue the hearing until March 25, 2020.

Mr. O'Brien: Second.

Mr. Mathews: Unanimous, so moved.

Susan Choate Garland, 42 Chase Road, Falmouth, MA- For permission to conduct targeted treatment and manual removal of phragmites from the Bordering Vegetated Wetland and the edge of Salt Marsh on site.

Ms. Lincoln: No comment at this time.

Michael McGrath (Holmes & McGrath) presented letters and colored plans. Dan Tandora from Edible Landscapes of Cape Cod is here to discuss the eradication of the phragmites. There is an existing house on the property. Resource areas include: a culvert under Chase Rd and a big wetland that continues forward. The salt marsh extends below mean high water. There is a freshwater wetland and adjacent to it is a limited coastal bank. The whole site is in MA flood zone AE 15 and AE 17. There is a different buffer zone 50-ft from the coastal bank.

Dan Tandora (Edible Landscapes of Cape Cod) We will cut the phragmites manually. We will apply organic herbicide and employ the cut and drip method. This will be done 3-5 times a year per season and if they are still there after 3 years we will re-apply the organic herbicide and go through the process again.

Mr. Mathews: No planting at this point?

Mr. Tandora: Right.

Ms. Lincoln: You're hoping the salt marsh will come back?

Mr. Tandora: That's the plan.

Ms. Lincoln: Are you a licensed applicator?

Mr. Tandora: I will be as of March 6th. If not, we have a subcontractor who does this thing.

Ms. Lincoln: Will a licensed applicator do the work?
Mr. Tandora: Yes.
Ms. Lincoln: You are following the drip method? Not spraying?
Mr. Tandora: There will be no spraying – the drip method.
Ms. Lincoln: When we issue the permit we will have an on-site meeting prior to beginning work.
Mr. O'Brien: No questions or comments.
Ms. Harlow-Hawkes: I'm glad to see it.
Mr. Robbins: No questions or comments.
Mr. Patton: Good luck.
Mr. Walsh: No questions or comments.

Ms. Harlow-Hawkes: Move to close the hearing and take it under advisement.
Mr. Walsh: Second.
Ms. Lincoln: We will vote on March 4th and issue the permit on the 11th.
Mr. McGrath: We are getting more phragmites because of more carbon dioxide in the atmosphere.
Mr. Mathews: Unanimous, so moved.

John and Deborah Gillespie, 39 Inkberry Lane, North Falmouth, MA- For permission to raze an existing single family dwelling and to construct and maintain a new single family dwelling with a garage, front porch and stairs, back patio and stairs, a new driveway, retaining wall, a new Title 5 sewage disposal system, mitigation plantings, with all associated grading, utilities, and landscaping.
Quorum: Peter, Steve, Russ, Jamie, Maurie, Kevin
Ms. Lincoln: The hearing was continued for a DEP number and we have received it.

Ms. Harlow-Hawkes: Move to close the hearing and take it under advisement.
Mr. Robbins: Second.
Mr. Mathews: Unanimous, so moved.

CONTINUED REQUEST FOR AN ABBREVIATED NOTICE OF RESOURCE AREA DELINEATION

Robert Sullivan, Wings Pond LLC, 63 North Falmouth Highway, Falmouth, MA- Request for confirmation of the following resource area boundaries: isolated land subject to flooding / freshwater wetland.
Ms. Lincoln: No comment at this time.
Kent Thompson (Wetland Scientist) We flagged the vernal pool and certified it. Sweet pepper goes up the slope. It is ground water fed. There is not much elevation change.
Ms. Lincoln: Staff confirmed the wetland line. We're fine with it. Just confirming the freshwater wetland line not the vernal pool. The abutter's were notified and we will get the cards.
Ms. Harlow-Hawkes: Where the area was filled? Nothing was done in there?
Ms. Lincoln: This is an ANRAD. It's just for the wetland boundary.
Mr. O'Brien: No questions or comments.
Ms. Harlow-Hawkes: No questions or comments.
Mr. Robbins: No questions or comments.
Mr. Patton: No questions or comments.
Mr. Walsh: No questions or comments.

Mr. Robbins: Move to close the hearing and take it under advisement.
Mr. Patton: Second.
Mr. Mathews: Unanimous, so moved.

REQUESTS TO AMEND THE EXISTING ORDER OF CONDITIONS

The Woods Hole, Martha's Vineyard, Nantucket Steamship Authority, Woods Hole Ferry Terminal (end of Railroad Ave), Woods Hole, Falmouth, MA- For permission to amend DEP # SE 25-4151 to place stone fill and riprap along the bulkhead and within the slips and to install additional steel piles immediately outboard and against the current steel sheet pile bulkhead.

Ms. Lincoln: No comment at this time.

William Cloutier (Project manager) In 2015 we were in front of the Commission to get an OOC for 3 minus 17 elevation slips. The middle slip scoured to about a minus 26 elevation. We completed the north slip (3) and almost completed the middle slip. The north and middle slips are getting scoured. Our concern is the bulkhead stability. We have a design for an anti-scour pad to assure stabilization of the bulkhead. We have come up with the construction procedure for the work and passed them out.

Dino Pistoletti (PCA) We are trying to show scour down to -26 prior to construction. There is another minus 22. We will excavate and put in new sheet piling for the bulkhead. There is a line where the bulkhead will be on the plan. A year ago during the construction of slip 3 the bulkhead was installed and anchored. Support was lessened and we experienced movement. It was stabilized and then more movement occurred. We are concerned about the stability of the wall and thought that we should take other measures. We didn't have enough information and asked for more calculations from the designer. The wall was installed last year and we had the no issue with the design. As part of the investigations we did mud line surveys and elevations -17 or -18 were down to -22. We didn't expect that kind of scour on the bulkhead. The erosion in the area could destabilize the wall. When we remove some of the soil the piling wants to bulge. We are asking to arrest that movement by putting a riprap wall along the slip with concrete mats along the floor of the slip. There will be a berm of crushed stone and a layer of stone fill. Mr. Pistoletti explained the process. The smaller stones can be placed in a controlled fashion. The armor stone will be installed by a clam shell. It could be locked in place. The mats will be put in by crane and set in position.

Ms. Lincoln: How many of layers of mats?

Mr. Pistoletti: One.

Mr. Mathews: The matting doesn't go under the riprap?

Mr. Pistoletti: Yes it will go under the edge of the riprap.

Mr. Mathews: You're not worried about turbidity getting at the seam and undermining it?

Mr. Pistoletti: The riprap will be sized so it won't move it.

Mr. O'Brien: The mat is concrete. Will the concrete wear over time?

Mr. Pistoletti: No. Steel will corrode eventually. The deeper it is, the slower the rate of corrosion.

Ms. Harlow-Hawkes: What is the weight?

Mr. Pistoletti: We don't know.

Ms. Harlow-Hawkes: You are assuming that the rock will hold those down and the turbidity will not affect them.

Mr. Pistoletti: We just got the prop size yesterday.

Mr. Robbins: No questions or comments.

Mr. Patton: No questions or comments.

Mr. Walsh: The depth is down to -26. Are you intending to refill the prop wash or will you put the concrete mat right over the existing?

Mr. Pistoletti: We were very concerned about the stability of the wall and that's why we requested the calculations. At that time we thought we would have to fill the area and now we may place a thin layer of stones or fill and now we are okay with it.

Ms. Harlow-Hawkes: Are you okay with the alteration of the substrate – 8,600-sq.ft.

Ms. Lincoln: They have to do it.

Ms. Harlow-Hawkes: Move to close the hearing and take it under advisement.

Mr. Walsh: Second.

Mr. Mathews: Unanimous, so moved.

VOTE ORDER OF CONDITIONS

Mary and Joseph Noonan, 183 Surf Drive, Falmouth, MA (2/19/20)

Quorum: Peter, Steve, Russ, Jamie, Maurie, Keving

Mr. Robbins: They did all the design changes and the soil coring.

Ms. Lincoln: We will have a pre-construction meeting. They must use a trench box to do the pilings. The plantings will be an improvement.

Ms. Harlow-Hawkes: Will they need to de-water?

Mr. Mathews: What about ZBA?

Ms. Lincoln: They have applied. I checked with the Building Department and they said that it would work with the trench box.

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

Mr. Walsh: Second.

Mr. Mathews: Unanimous, so moved.

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

Ms. Lincoln: There is a change of dates for an April meeting: instead of a night off on April 8th it will be on April 15th.

Ms. Harlow-Hawkes: Move to adjourn.

Mr. O'Brien: Second.

Mr. Mathews: Unanimous, so moved.

The meeting adjourned at 8:50 p.m.

Respectfully submitted,

Susan Cronin, Recording Secretary