

The Falmouth Conservation Commission  
**MEETING MINUTES - WEDNESDAY, JUNE 03, 2020, 7:00 P.M.**

In accordance with the Governor's Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20, relating to the 2020 novel Coronavirus outbreak emergency, **the June 03, 2020 public meeting of the Falmouth Conservation Commission shall be physically closed to the public to avoid group congregation.**

Alternative public access to this meeting shall be provided in the following manner:

1. The meeting will be televised via Falmouth Community Television.
2. Real-time public comment can be addressed to the Conservation Commission utilizing the Zoom virtual meeting software for remote access. This application will allow users to view the meeting and send a comment or question to the Chair via the Chat function. Submitted text comments will be read into the record at the appropriate points in the meeting.
  - a. Zoom Login instructions:
    - i. Instructions and the meeting link for this specific meeting can be found at the following web address:  
<http://www.falmouthmass.us/1092/Conservation-Commission>
    - ii. Please plan on 10-15 minutes of preparation time to log in though it may be less if you have previously used Zoom on the device you will use to access this meeting.
3. Additionally public comments may be sent in advance of the meeting to [concom@falmouthma.gov](mailto:concom@falmouthma.gov) at **least 5 hours prior** to the beginning of the meeting. Documents and audio or video files may also be submitted via email. Submitted email comments and documents will be made a part of the meeting record and may be read into the record, summarized or displayed during the meeting at the discretion of the chair.
4. Applicants, their representatives and individuals with enforcement matters before the Conservation Commission may appear remotely and are not required to be physically present. Applicants, their representatives and individuals with enforcement matters before the Conservation Commission may contact the Conservation Department to arrange an alternative means of real time participation if unable to use the Zoom virtual meeting software. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to [concom@falmouthma.gov](mailto:concom@falmouthma.gov) so they may be displayed for remote public access viewing.

Present:        Jamie Mathews, Chair  
                  Betsy Gladfelter  
                  Courtney Bird  
                  Steve Patton  
                  Mark Gurnee  
                  Kevin O'Brien, Alternate  
                  Peter Walsh, Alternate

Pat Harris, Alternate  
Jennifer Lincoln, Administrator  
Kevin Newton, Agent

Absent: Russell Robbins, Vice-Chair, Maurie Harlow-Hawkes

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

## **MINUTES**

5/20/2020

Ms. Gladfelter: Move to adopt the minutes as corrected.

Mr. Bird: Second.

Mr. Mathews: Gurnee, aye; Mathews, aye; Gladfelter, aye; Bird, aye; Walsh, aye; Patton, aye; O'Brien, aye, Harris, aye. Unanimous, so moved.

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

Dana Brown, 17 White Pine Lane, East Falmouth, MA – For permission to raze an existing single family dwelling and to reconstruct a new single family dwelling and new Title V septic system.

Ms. Lincoln: The applicant has requested a continuance until June 24, 2020.

Ms. Gladfelter: At the request of the applicant I move to continue the hearing until June 24, 2020.

Mr. Patton: Second.

Mr. Mathews: Gurnee, aye; Mathews, aye; Gladfelter, aye; Bird, aye; Walsh, aye; Patton, aye; O'Brien, aye, Harris, aye. Unanimous, so moved.

Arthur and Pamela Chaves, 400 Edgewater Drive East, East Falmouth, MA – For permission to remove an existing pool, patio area, and surrounding fence; and to construct a new 26' x 33' timber deck.

Ms. Lincoln: The applicant has requested a continuance until June 24, 2020.

Ms. Gladfelter: At the request of the applicant I move to continue the hearing until June 24, 2020.

Mr. O'Brien: Second.

Mr. Mathews: Gurnee, aye; Mathews, aye; Gladfelter, aye; Bird, aye; Walsh, aye; Patton, aye; O'Brien, aye, Harris, aye. Unanimous, so moved.

## **REQUESTS FOR DETERMINATION OF APPLICABILITY**

Michael Kachadoorian, 50 Muskegat Road, East Falmouth, MA – For permission to construct a 4'x47' mulched path, a 4'x8' gravel path, wood stairs with railings, and utility trenches.

Mr. Newton: Jurisdiction: within 100 foot buffer to coastal bank and land under the ocean and within flood zone AE 13. This project is to install utility trenches, a mulched path, and a gravel path within the buffer zone. Staff spoke with the applicant's representative to inquire if any trees are proposed to be removed. The applicant has indicated that no trees are to be removed. Staff recommends a negative 2 (under the State) and negative 3 (under the bylaw). Resource area boundaries are not confirmed by this RDA.

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

Mr. Patton: Second.

Mr. Mathews: Gurnee, aye; Mathews, aye; Gladfelter, aye; Bird, aye; Walsh, aye; Patton, aye; O'Brien, aye, Harris, aye. Unanimous, so moved.

Thomas & Reid Austin, 100 Chase Road, West Falmouth, MA – For permission to rebuild part of an existing deck as a screened porch and to lengthen the existing steps from the remaining deck to the ground.

Mr. Newton: Jurisdiction: within 100 foot buffer to a salt marsh, coastal bank, BVW, within Riverfront Area, and coastal bank and within flood zone AE 15. This project is to remove a portion of an existing deck and construct a screened in porch in a smaller footprint. The existing steps from the deck are proposed to be lengthened to reach the ground. There will be an overall decrease of 4-s.f of coverage. All excavation is to be done by hand. Staff recommends a negative 2 (under the State) and negative 3 (under the bylaw). Resource area boundaries are not confirmed by this RDA.

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

Mr. Walsh: Second.

Mr. Mathews: Gurnee, aye; Mathews, aye; Gladfelter, aye; Bird, aye; Walsh, aye; Patton, aye; O'Brien, aye, Harris, aye. Unanimous, so moved.

John Reynolds, Trustee of the Sylvia-Reynolds Living Trust, 87 Alder Lane, North Falmouth, MA – For permission to replace the existing deck and to construct an addition to the existing house.

Mr. Newton: Jurisdiction: within 100 foot buffer to a coastal bank and within flood zone AE 15. This project is to remove the existing deck and replace with a new deck. The project is also to construct a new addition to the existing house. The deck and addition will be a slightly different footprint but the proposed project will not move closer to the coastal bank than the existing primary structure. Staff recommends a negative 2 (under the State) and negative 3 (under the bylaw). Resource area boundaries are not confirmed by this RDA.

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

Mr. Patton: Second.

Mr. Mathews: Gurnee, aye; Mathews, aye; Gladfelter, aye; Bird, aye; Walsh, aye; Patton, aye; O'Brien, aye, Harris, aye. Unanimous, so moved.

Kathryn Elder, 32 Bowman Lane, Falmouth, MA – For permission to replace the existing failed leaching field with a new Title V leaching field.

Mr. Newton: Jurisdiction: within DCPC District and within flood zone AE 16/18. This project is to replace an existing failed leaching field with a new Title V leaching field. Other system components do not require replacement. A3 bedroom system is to remain a 3 bedroom system. The work area is located outside the 100 ft buffer to BVW  
Staff spoke with Dave Martin regarding trees surrounding work area – none are proposed to be removed at this time. Staff recommends a negative 2 (under the State) and negative 3 (under the bylaw). Resource area boundaries are not confirmed by this RDA.

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

Mr. Walsh: Second.

Mr. Mathews: Gurnee, aye; Mathews, aye; Gladfelter, aye; Bird, aye; Walsh, aye; Patton, aye; O'Brien, aye, Harris, aye. Unanimous, so moved.

Alison Leschen, 15 Lantern Lane, Falmouth, MA – For permission to replace an area of lawn with native plantings.

Mr. Newton: Jurisdiction: within 100-ft resource area buffer to land under waterbodies, inland bank and BVW. This project is to expand an area of mitigation plantings. Area of mitigation plantings required under old OOC are thriving. The additional lawn area will be converted to native plantings. Some blueberries from the old OOC will be transplanted to a less shaded area so they have an opportunity to have more space to grow. Staff recommends a negative 2 (under the State) and negative 3 (under the bylaw). Resource area boundaries are not confirmed by this RDA.

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

Mr. Walsh: Second.

Mr. Mathews: Gurnee, aye; Mathews, aye; Gladfelter, aye; Bird, aye; Walsh, aye; Patton, aye; O'Brien, aye; Harris, aye. Unanimous, so moved.

Ken & Laura Morse, 210 Quisset Ave (Map 49-03-026-005A) & Sue Morse, Quisset Ave (Map 40-03-026-003A), Woods Hole, Falmouth, MA – For permission to conduct invasive plant management for Common Reed (*Phragmites australis*) in an intertidal wetland using established protocols for control.

Mr. Newton: Jurisdiction: within 100-ft resource area buffer to a salt marsh. This project is to conduct invasive plant management of phragmites. Crawford Land Management will use an established protocol to conduct management. The applicant has procured a letter from the CR holders (300 Committee, Buzzards Bay Coalition) to permit the application. A site visit shall be requested with the Conservation Staff and Crawford Land Management applicator for each of the 3 years, just before treatments. A summary report shall be submitted to the Conservation office no later than December 15 by Crawford Land Management each year invasive plant control activities are conducted. Staff recommends a negative 2 (under the State) and negative 3 (under the bylaw). Resource area boundaries are not confirmed by this RDA.

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

Mr. Patton: Second.

Mr. Bird: I would like more information on the methodology to be used, i.e. phosphate, spray, hand removal?

Mr. Newton: It will be done manually. Crawford Ecological will keep mowing it.

Mr. Bird: Cutting and covering a small area has worked also.

Mr. Newton: It's too large an area to do that.

Mr. Mathews: Gurnee, aye; Mathews, aye; Gladfelter, aye; Bird, aye; Walsh, aye; Patton, aye; O'Brien, aye; Harris, aye. Unanimous, so moved.

Clarence E. & Amy L. Korsgard, 23 Deely Lane, West Falmouth, MA- For permission to completely renovate and upgrade the entire building, construct a second story addition, upgrade the subsurface sewage disposal system and to lightly grade the walk-out access beneath the existing deck.

Mr. Newton: Jurisdiction: within 100-ft resource area buffer to a salt marsh, coastal bank, within River Front, and within flood zone AE 15. This project is to renovate and upgrade an existing home and to construct a second story addition within the existing footprint. The only excavation will be to remove the existing concrete patio. There will be no enlargement of existing structures and no increase in impervious surfaces. The applicant has submitted testament from the architect that the structure can sustain the second story addition and will not be compromised. A new denitrification system will be installed to replace the current subsurface sewage disposal system. Staff recommends a positive 3 (under the State) and a positive 3 (under the bylaw). Resource area boundaries are not determined by this RDA.

Ms. Lincoln: Please promote Jeff Ryther to a participant. We have received documentation that the foundation can stand the weight of the second story addition.

Jeff Ryther (BSS Design) There will be changes in the roof line because of the second story addition. There will be work underneath the deck in the back – it will be graded out to the limit of work. A septic upgrade will be installed (denitrifying system). No trees are coming out but one may be limbed. There is a retaining wall in the back yard and they will reconstruct the patio and update the walkout. It is a Riverfront area.

Mr. Bird: Staff recommends against the project because they feel that the scope of the work requires a more comprehensive permitting process?

Ms. Lincoln: Yes, we want to be consistent with others.

Mr. Bird: They are not expanding the footprint, but a lot of work is going on. I agree with staff.

Mr. Mathews: Is that what you are looking for?

Ms. Lincoln: Right. We are trying to be consistent. We do have documentation from the architect however.

Ms. Gladfelter: One of your concerns is that the project may become bigger? It doesn't on the face look like a huge project.

Mr. Mathews: Except for the work out back.

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

Ms. Gladfelter: **Second.**

Mr. Ryther: It's mostly a maintenance project. The biggest improvement is the septic upgrade. You pass one story additions all the time.

Ms. Gladfelter: The concern is the work in the back of the house.

Mr. Ryther: It's just to lower the patio and grade out. It's a couple of hours of work.

Mr. Bird: I understand where you're coming from. I all went well we could accept this under an RDA. If after beginning the project they discover that the foundation isn't adequate, they will

have to stop work and file for an NOI. They may have to ask for an amendment. They should avoid a potential problem.

Mr. Ryther: I hear you but I disagree.

Mr. O'Brien: Staff's original concerns should have been allayed by the architect's stamp that the foundation would satisfy for the new second floor. I'm inclined to vote no.

Mr. Gurnee: I'm inclined to vote no also.

Ms. Harris: No questions or comments.

Mr. Walsh: What does voting positive on a positive motion mean?

Ms. Lincoln: It means that their next step is to file an NOI. You would be voting to require an NOI and they could not proceed with the project.

Mr. Walsh: Does the staff have concerns that if approved it would send a different precedent?

Ms. Lincoln: We just want to be consistent with how we handle second floor applications. There have been problems in the past.

Mr. Patton: When the staff made their recommendation did they have the architect's stamp?

Ms. Lincoln read a letter from the architect in which it was stated that the foundation was full height (10") and in good condition.

Mr. Mathews: What's happening behind the house is more concerning.

Ms. Lincoln: We are just being consistent with past recommendations to the Board.

Ms. Lincoln: There are no public comments on the Chat function.

Mr. Bird: I was in construction for 30 years and I learned the lesson that in remodeling if something can go wrong, it will. It's a 10" foundation so they don't have to put in footings. The architect and engineer feel the foundation is sound. But we need to be consistent. It is an approvable project if all went well, but I think it's important to do what's right. We have to say no sometimes.

Mr. Ryther: The footprint won't change. You have approved additions like this with changes. No mitigation is required.

Mr. Mathews called for the vote.

Mr. Mathews: **Gurnee, no; Mathews, aye; Gladfelter, no; Bird, aye; Walsh, aye; Patton, no; O'Brien, no. 3 yes, 4 no. The motion does not pass.**

Ms. Lincoln: The applicant can move forward with the project.

## **REQUESTS FOR A HEARING UNDER A NOTICE OF INTENT**

Dana Brown, 17 White Pine Lane, East Falmouth, MA – For permission to raze an existing single family dwelling and to reconstruct a new single family dwelling and new Title V septic system.

The hearing is continued until June 24, 2020.

Arthur and Pamela Chaves, 400 Edgewater Drive East, East Falmouth, MA – For permission to remove an existing pool, patio area, and surrounding fence; and to construct a new 26' x 33' timber deck.

The hearing is continued until June 10, 2020.

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

Rosemarie E. Murphy, 23 Green Pond Road, East Falmouth, MA – For permission to construct

an addition that connects the existing dwelling to the garage and to install mitigation plantings.

Quorum: Mark, Jamie, Betsy, Courtney, Peter, Steve, Kevin

Ms. Lincoln: Please promote Tom Bunker to participant.

Tom Bunker (BSS Design) At the hearing 2 weeks ago it was determined that 2 to 1 mitigation is required for the Riverfront area.

Ms. Lincoln: Are you working from the May 27<sup>th</sup> plan?

Mr. Bunker: Yes. Under the mitigation calculations – 1068-sq.ft – is shown on the plan. The mitigation goes downhill from the garden, cuts through the entire bank and the bank is mitigated. There will be some lawn area at the bottom of the steps. There will be new mitigation along the southern property line. We added extra mitigation per the Riverfront regulations.

Ms. Lincoln: I have double-checked the calculations and no additional concerns. Staff recommends voting the OOC. The Commission should consider that the mitigation for the former OOC is to be installed prior to the construction of the patio.

Mr. Newton: No questions or comments.

Mr. Mathews polled the members and there were no further questions or comments.

Mr. Mathews: The dock and steps are being removed.

Mr. Bunker: Yes.

Mr. Mathews: Anyone on the Chat function?

Ms. Lincoln: No.

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

Mr. Bird: Second.

Mr. Mathews: Gurnee, aye; Mathews, aye; Gladfelter, aye; Bird, aye; Walsh, aye; Patton, aye; O'Brien, aye, Harris, aye. Unanimous, so moved.

## **HEARINGS UNDER ENFORCEMENT ORDER**

Andreas & Joan Spalaris, 78 Squibnocket Drive, East Falmouth, MA- Violations of approved Order of Conditions / settlement agreement (DEP# 25-3466 & DEP# 25-4277)

Ms. Lincoln: The hearing was continued to re-advertise to include both DEP numbers attached to the project. The applicant wishes to continue the hearing until June 24, 2020.

Ms. Gladfelter: At the request of the applicant I move to continue the hearing until June 24, 2020.

Mr. Bird: Second.

Mr. Mathews: Gurnee, aye; Mathews, aye; Gladfelter, aye; Bird, aye; Walsh, aye; Patton, aye; O'Brien, aye, Harris, aye. Unanimous, so moved.

## **VOTE ORDER OF CONDITIONS**

James P. and Jean F. Bourdon, 124 Sider's Pond Road, Falmouth, MA (6/3/2020)

Quorum: Mark, Jamie, Betsy, Steve, Kevin

Ms. Lincoln: This is the new construction with the large amount of bank restoration. The ramp and float are not permitted. The smaller plants will be planted in the areas around the trees, but not directly under the trees. Many of us were concerned that the bank be stabilized immediately.

Ms. Sprague plans to strip it completely. That is a concern and it must be included in the Order that native plants will remain. We can cite as a finding that jute matting must be installed

immediately.

Mr. Gurnee: Also included is that a lot of shrubbery shouldn't be totally stripped out.

Ms. Gladfelter: I believe she said that they would keep the native shrubs.

Mr. Gurnee: Some of them are 4 to 6-ft tall. They are substantial.

Ms. Gladfelter: Any native shrubs must be maintained.

Ms. Lincoln: We have met with Ms. Sprague in the past to go over the methodology and then went back to verify that. We have identified native plants with her and made sure it was done.

Ms. Gladfelter: This will come close to insuring it won't happen.

Mr. Mathews: You will have a pre-construction meeting.

Ms. Lincoln: Yes and then we'll go back out to be sure.

Mr. Mathews: There is an additional limit of work at the top of the bank.

Mr. Mathews: And the float will be removed?

Ms. Lincoln: It's not permitted.

Ms. Gladfelter: A fence is also coming out. Make sure they know that there is to be a delineation between the mitigation and the lawn – a single rail fence - otherwise they are to discuss it with Jen.

Mr. Mathews: I have a note about moving the trees from the property line.

Ms. Gladfelter: Ms. Sprague said there are cedars near the neighbor's property line already and they wish to make a larger cluster.

Ms. Lincoln will clarify that.

There were no other questions or comments from the Board.

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

Mr. Bird: Second.

Mr. Mathews: Gurnee, aye; Mathews, aye; Gladfelter, aye; Patton, aye; O'Brien, aye.

Unanimous, so moved.

Bonnie W. Simon, 138 & 144 Gardiner Road, Woods Hole, Falmouth, MA (6/3/2020)

Quorum: Mark, Betsy, Courtney, Peter, Steve, Kevin

Ms. Lincoln: This is the amendment to the original project. They are not re-building. Trees will be transplanted. They are taking out a large area of pavement and restoring the area.

Ms. Gladfelter: They changed the driveway. It's pretty straightforward and is an improvement.

Ms. Lincoln: There will be some re-grading, but no real special conditions are needed.

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

Mr. Patton: Second.

Mr. Mathews: Gurnee, aye; Gladfelter, aye; Bird, aye; Walsh, aye; Patton, aye; O'Brien, aye.

Unanimous, so moved.

## **VOTE ENFORCEMENT ORDER**

David Bell and Yves DeBouteiller, 554 Quaker Road, North Falmouth, MA (6/3/2020)

Quorum: Mark, Jamie, Betsy, Courtney, Peter, Steve, Kevin

Ms. Lincoln: The violation is clearing the resource area buffer within a resource area. The area was cleared and burned. We don't know what was on the site. We know there were a lot of invasives. At site plan is required with the resource area delineated and a survey. The property

owners have asked for consideration due the Covid-19 crisis. We have to have a plan submitted. What time frame should we consider?

Mr. Mathews: They have to meet the normal requirements but we can be more generous with the time frame. They were asked to cease and desist on 3 separate occasions. Now they are asking for leeway. I received a letter from Mr. DeBouteiller at my home asking for consideration. FYI for those listening, letters have to go to Town Hall, not to private homes. I'm okay with giving them leeway with a time frame.

Mr. Patton: I didn't know about the 3 cease and desist visits.

Mr. Mathews: That was inadvertently withheld at the hearing.

Ms. Lincoln: We didn't visit. We received a complaint and sent a cease and desist letter. Then Alissa had a conversation with them and scheduled a meeting on site. We received another complaint. Alissa told them to stop and tried to move up the scheduled meeting, but they said no to that and we kept the date of May 4<sup>th</sup> to visit. They kept burning.

Mr. Patton: What time parameters seem reasonable?

Ms. Lincoln: It's normally 30 days, but that is not fair. It should be 60 or 90 days.

Ms. Gladfelter: I would say 60 days.

Ms. Lincoln: To provide a restoration plan to staff?

Ms. Gladfelter: Yes.

Mr. Walsh: No questions or comments.

Mr. O'Brien: No questions or comments.

Mr. Gurnee: No questions or comments.

Mr. Bird: I'm sorry but this is an issue with me. Three different visits – we could just require 30 days and they can ask for an extension if needed.

Ms. Lincoln: We didn't visit, we made phone calls.

Mr. Bird: The fact that they didn't stop troubles me.

Ms. Gladfelter: It should be 60 days.

Mr. Mathews: We require a restoration plan and a site plan.

Ms. Lincoln: Yes. They must have all the resource areas located, buffer zones and tree stumps identified and come back to staff with the information. Then another 60 days to implement the plan and get everything done by October 15<sup>th</sup>.

Mr. Bird: I'd like to have some kind of affirmation as to who is the engineer and who will be doing the work by two weeks from now.

Ms. Gladfelter: I understand but he needs at least a month – a lot of people are behind because of Covid 19. We have to be a little generous this time.

Mr. Bird: I don't want them to come back in 60 days and say they don't have anyone.

Mr. Mathews: We can ask for the status in 30 days.

Mr. Bird: Okay.

Ms. Lincoln: This is a boiler plate enforcement order.

Mr. Mathews: We must emphasize the ending point.

Ms. Gladfelter: If their house has a certified plot plan, that could be a start. An Engineer can start with that.

Ms. Gladfelter: Move to issue an enforcement order stating that a status report must be received within 30 days and 60 days for the submission of a restoration plan.

Mr. Patton: Second.

Mr. Mathews: Gurnee, aye; Mathews, aye; Gladfelter, aye; Bird, aye; Walsh, aye; Patton, aye; O'Brien, aye. Unanimous, so moved.

Ms. Lincoln (to Mr. Newton) Please relay the vote in an email to Alissa.

Ms. Gladfelter: You all know that the lower Coonamessett River project is finished. There are two projects upstream and with the support of the Department of Ecological Restoration (DER) we are applying for a grant for the upper part of the river to be a priority river. With the funds available we can hire outside consultants and get technical support. I need a vote from you tonight. Mark Kasprzyk is working with me. I will see the Select Board on the June 15<sup>th</sup> and the grant is available on the 18<sup>th</sup>.

Mr. Bird: Move to approve that Ms. Gladfelter and Mark Kasprzyk seek a grant for the upper Coonamessett River.

Mr. O'Brien: Second.

Mr. Mathews: Gurnee, aye; Mathews, aye; Bird, aye; Walsh, aye; Patton, aye; O'Brien, aye; Harris, aye. Unanimous, so moved.

Ms. Gladfelter: Move to adjourn.

Mr. Patton: Second.

Mr. Mathews: Gurnee, aye; Mathews, aye; Gladfelter, aye; Bird, aye; Walsh, aye; Patton, aye; O'Brien, aye; Harris, aye. Unanimous, so moved.

The meeting adjourned at 8:27 p.m.

Respectfully submitted,

Susan Cronin, Recording Secretary