

**Conservation Commission Minutes**  
**Thursday, March 10, 2016**  
**Mashpee Town Hall**  
**Waquoit Meeting Room**

**Present:** Brad Sweet, Robert Anderson, Dale McKay, Bud Shaw, Mark Gurnee, Conservation Agent Drew McManus, Recording Secretary Judy Daigneault

**Absent:** John Rogers

*Chairman Brad Sweet opened the meeting at 5:55 p.m.*

*No Items from the Public*

**CALL MEETING TO ORDER: 5:55 p.m.**

**PRE/POST-HEARING AGENDA:**

**MINUTES: February 25, 2016**

**Motion: Mr. McKay moved to approve the February 25, 2016 minutes, seconded by Mark Gurnee. Vote unanimous 4-0-1 with Mr. Shaw abstaining.**

**Update:** DEP superseding Orders of Conditions issued for Coastal bank stabilization projects at 118, 124 & 126 Shore Drive West. Superseding Orders of Conditions appealed by Tidewatch.

The Agent stated at the last meeting he informed the Commissioners that DEP issued superseding Orders of Conditions for the projects at 118, 124, and 126 Shore Drive West. He said a group of residents at Tidewatch Condominiums appealed those Orders. He noted there will be a prescreening conference at the end of the month and the judicatory hearing will occur in late June if no progress is made. Anyone can attend but there cannot be a quorum of the Commissioners; so no more than three Commissioners can attend. The Agent said he will scan the information he received from DEP and send it to the Commissioners.

**Update:** Land Stewardship Program/volunteer initiatives (2016 Herring Count Program)  
The Agent said that Katelyn Cadoret has just recently sent out the announcement for the beginning of the herring count program. We had about 15 people show up for training. There have been sightings of herring scouts coming up the river. Katelyn also planned an AmeriCorps work day. They will be installing 3 new kiosks. They will also be constructing bat boxes in conjunction with The US Fish and Wildlife Service. They will also planning some pick up days for conservation areas. Ms. Cadoret also comprised the latest newsletter for the Land Stewards Program. The Agent and the Chair noted she did a great job.

**HEARINGS:**

**6:00 Beachfront A. Condominium, 34 East Road. Proposed beach nourishment.** Owners of record Jose J. Fernandez, Ethan Schaff, Trustee, Steven Holstein, Trustee, Richard E. Winn, Jr. and Gina M. Winn, Mark C. O'Connor, Robert J. Muir, Jr. and Margaret K. Muir. **NOI**

**Resource Areas: [Bordering Land Subject to Flooding, Buffer Zone to Land Under Water, Peters Pond](#)**

Ethan Schaff, representing the condominium owners, explained only half the beach is usable and the second half is all stones. The owners of the condominium contacted PA Landers and were told to get approval from Conservation Commission. He referred to the proposal from PA Landers which was to drive over the asphalt driveway and dump the sand at the edge of the beach. They would not go onto the beach but would kill three hydrangeas which will be replanted. PA Landers will be using washed sand.

The Agent noted the property on the map provided. He said there are standard conditions which need to be demonstrated such as clean washed sand must be used and it should be grain size compatible. He asked if the applicant was asking for a request in perpetuity and the applicant confirmed. The applicant said the sand would be three to four inches deep on the rocks.

No comments from the public

**Motion: Bud Shaw moved to Close and Issue, seconded by Dale McKay. Vote unanimous. 5-0**

**6:03 James M. Gomes, 53 Timberlane Drive.** Proposed replacement of dilapidated dock with an aluminum dock. **RDA**

**Resource Area: [Inland Bank, Land Under Waterbodies and Water Ways \(Santuit Pond\)](#)**

James Gomes, owner, explained he was looking to replace his dilapidated dock with an aluminum dock in the same footprint as existing dock. The Agent noted the location of the property is on Santuit Pond with a very steep bank. He showed the existing wood dock on a photo which is falling apart. Mr. Gomes had come before the Commission previously for an RDA which expired after three years so he is back before the Commission again to seek a new RDA. Mr. Gomes said this is a request for a seasonal dock and he will have the dock removed seasonally every year. No storage of the dock on the bank itself.

When it comes to small docks and piers and seasonal docks, the plans provided are acceptable for a Chapter 91 license. It doesn't have to be an engineering plan. Santuit Pond doesn't fall under Natural Heritage jurisdiction so there are no rare species habitats associated with Santuit Pond. The Agent recommended a Negative Determination.

No comments from the public

**Motion: Mr. McKay moved a negative determination, seconded by Mr. Shaw. Vote unanimous 5-0**

**6:06 William D. and Carol A. Sherman, 18 Great River Road.** Proposed construction of a pier, ramp and float with stairs leading to the new dock structure. **NOI**

**Resource Area: [Land Under Ocean, Coastal Banks, Salt Marsh, Land Subject to Coastal Storm Flowage](#)**

Matt Costa, Cape and Islands Engineering, represented the applicants. He explained the proposal is to construct and maintain a private residential dock, ramp, and float with stairs leading to the new dock structure. The construction will include 11 ten inch vinyl coated piles within and adjacent to the waters of Great River. Timbers and decking will connect to the stairs, ramp and float. All work from the seaward edge will be done from a barge or by hand and the work on the stairs will be done by hand. Proper signage will be attached to the structures. Mr. Costa stated the project meets the performance standard and requested the Commission approve the request. Mr. Costa stated the harbormaster or shellfish warden didn't have any issues. Rick York, Shellfish Constable, stated there are no problems with the shellfish.

The Agent recommended to Close and Issue,

No Comments from the public

**Motion: Mr. Shaw moved to Close and Issue, seconded by Mr. Gurnee. Vote unanimous 5-0**

**6:09 Antonio and Helen Donato, 18 Cricket Way.** Proposed construction of pier, ramp and float structure and retaining wall. Continued from 1/14, 2/25 for revised plans. **NOI**

**Resource Area: Coastal Bank, Land Subject to Coastal Storm Flowage, Land Under Ocean, Salt Marsh, Land Containing Shellfish (Little River)**

Matt Costa, Cape and Islands Engineering, represented the applicants. The project consists of the construction and licensing and maintenance of a new private residential pier, ramp and float system with stairs. Also, the project includes the construction of a timber retaining wall located along the bottom of the Coastal Bank above mean high water. The project includes the placement of 12 ten inch vinyl coated piles, support timbers and decking that will connect to the stairs, ramp and float. The pier is a 4' wide by 48' long elevated walkway, a 3'x16' aluminum ramp and an 8'x20' long floating T- section. The construction of the retaining wall is a Navy style wall with 8" pilings and wood sheathing held in place with galvanized rods and anchors. Mitigation plantings of native grasses will be planted on top of the completed wall to stabilize the area. All work will be done from a barge on the seaward side or by hand and all work on the retaining wall will be done by hand.

Mr. Costa said he reviewed this proposal with Rick York, Shellfish Constable, and he doesn't have any concerns in regard to shellfish.

Mr. Costa said the acting Harbormaster, did not want to comment on the project and wants us to wait until the town hires a new Harbormaster. He said he is obligated to his client to keep the project moving and didn't feel the project should be held up. Mr. Costa provided an overlay plan to show how it relates to other portions of the river. He reviewed the overlay plan with the Commissioners which showed dimensions from the end of the dock to the adjacent dock across the river. He also showed the dimensions from the docked boat indicating there was more than enough room for navigation purposes. He said they will be going through the Chapter 91 process and there will be plenty of time for the Harbormaster to comment. He said they meet the performance standards and requested the Commissioners issue an Order of Condition.

The Agent spoke about the retaining wall and stated this is an eroding vegetated coastal bank but is not a sediment source bank. Because the house is pre 1978, the homeowner is entitled and allowed to armor the bank in the interest of storm damage prevention so, in that way, this project meets the performance standards. He referred to a letter from Division of Marine Fisheries and they commented on the treated wood and the leaching of chemicals into the environment and recommended other materials. He felt that navigation would not be affected in this area.

Mr. Costa said he would be hesitant putting a Condition in the Order that makes the approval contingent on further review by the Harbormaster down the road because that would handcuff the applicant from appealing any denial. He said this could be addressed at the DEP level. Following a lengthy discussion, the Commissioners generally agreed they were not qualified to deal with the navigation issues and the Harbormaster's comments can be forwarded to the hearings on the Chapter 91 license. Mr. Costa said they would be happy to change the condition to a maximum beam 6 to 8 feet. He also said the piles that will be in the water will be vinyl coated piles. Rick York stated the project has been conditioned to limit the size of the boat and that the draft on the boats at the dock has to be shallow enough so they don't contact the bottom.

The Agent recommended to Close and Issue

No comments from the public

**Motion: Mr. Shaw moved to Close and Issue conditioned on the Agent's recommendation of the beam is 6 to 8 feet with restriction that prop washing and drafting be avoided. Seconded by Mr. Gurnee. Vote unanimous 5-0**

**6:12 Michael and Julie Rand, 58 Popponeset Island Road.** Proposed construction of a pool, patio addition, landscape improvements and mitigation plantings. Continued from 2/25 for revised plan. NOI

**Resource Areas: [Land Under Ocean](#), [Salt Marsh](#), [Armored Coastal Bank](#), [Land Subject to Coastal Storm Flowage](#)**

John O'Dea, Sullivan Engineering, represented the applicants. This hearing was continued from 2/25 at which the Commissioners requested revisions to the plan. He provided a new plan with the following details: mitigation coming off the top of the coastal bank; the location of pool equipment; swapping out some of the vegetation to switch grass; taking a look at the Rose of Sharon and dwarf fountain grass to make sure the spread is not going to have any adverse impacts; and showing the construction limits. He added the patio to the plan showing 20' x 16' pool patio area and all structures were accounted for in the revised plan. Mr. O'Dea noted the abutters no longer had any issues and the plan has been approved by the Zoning Board of Appeals.

The Agent said everything that was brought up at the last meeting has been addressed. He pointed out we will work on a condition to address the lawn issue and the submission from a lawn expert as to the type of lawn that is existing. The lawn must be restored to meet the lawn standards prior to the pool installation. Mr. O'Dea said the lawn will be destroyed from construction impacts and will be restored to meet the lawn standards of Ch. 172.

No comments from the public

**Motion: Mr. Shaw moved to Close and Issue with the condition that the destroyed lawn as well as any lawn that is not disturbed follow the lawn standards, seconded by Mr. Gurnee. Vote unanimous 5-0**

**6:15 Southworth Willowbend LLC, 100 Willowbend Drive.** Proposed renovation of existing pond/water hazard. **NOI**

**Resource Areas: [Bordering Vegetated Wetland, Riverfront \(Quaker Run\), Land Under Waterbodies and Waterways](#)**

Stephen Wilson, representing Willowbend, explained the proposed work consists of renovating the existing pond/water hazard by digging it deeper, re-grading the sides and installing an impermeable liner. The flow of water will continue to be the same and will flow to the bordering vegetated wetland on the other side of the gravel cart path. They are also proposing to remove some of the sand traps around the 1<sup>st</sup> hole green, extending the fairway into this area and relocating and extending the gravel cart path. The existing green will not be altered.

The Agent stated this is a maintenance activity under a previously issued permit for development of a golf course. Part of the proposal is to install native plantings and he questioned Bur-reed plantings. Michael Ball stated Bur-reed is a native planting and spreads rapidly and he felt it was a good fit for this location. The Agent confirmed there is a detailed description of the wildlife habitat on the existing manmade pond. It was confirmed there was no vernal pool activity. He felt the upgrade would result in an increased wildlife situation and recommended a Close and issue.

No comment from the public

**Motion: Mr. Shaw moved to Close and Issue, seconded by Mr. McKay, Vote unanimous 5-0**

**6:18 Ellen J. Harris, 41 Greenwood Road.** After-the-fact-filing to allow for placement of fill to elevate land above flood zone. **RDA**

**Resource Area: [Land Subject to Coastal Storm Flow](#)**

Tom Bunker, BSS Design, represented the applicant and explained the request is to get approval for the fill that has been placed around the existing house to elevate the land above the flood zone. This is an after-the-fact approval. The Agent noted this is a landlocked lot within the flood zone and there will not be removal of vegetation. He said this proposal meets the performance standards.

No comments from the public.

**Motion: Mr. Shaw moved a Negative Determination, seconded by Mr. McKay. Vote unanimous 5-0**

**6:21 Timothy J. Babineau, 130 Summersea Road.** Proposed dock modifications to include relocation of two piles, removal/replacement of ramp and float. **NOI**

**Resource Area: Land Under Ocean, Land Subject to Coastal Storm Flow, Ockway Bay**

Matt Costa, Cape and Islands Engineering, represented the applicant and stated the proposed project is modifications to include relocation of two piles, removal/replacement of ramp and float. They are proposing to extend further than the pier is today, however, it will be within the Chapter 91 license. They will relocate the existing piles and remove the existing ramp and float and install a new prefabricated ramp and float. He said the project meets the performance standards and requested the Commissioners approve. The Commissioners reviewed the plans provided. The Agent asked Mr. Costa to provide the depth contours as well as the setbacks for the neighboring docks on the plan.

No comments from the public

**Motion: Mr. McKay moved to Close and Issue with the condition of the changes in plan, seconded by Mr. Anderson, Vote unanimous 5-0**

**6:24 Robert G. Najarian, Jr. et al trustees, 8 Bowsprit Point.** Request Certificate of Compliance 43-2260 COC

The Agent commented on the COC and stated it did not pass inspection. The septic was for four bedrooms and it is required an inspection be done to count the bedrooms. The homeowners were not home so he was unable to get in. He said the lawn standards were questionable. He also said in the cutting of the phragmites there was also cutting of native shrubs. These items will need to be addressed before a COC is issued.

**Request for Administrative Review:** (43-2594 - 112 Wading Place Road). Cape & Islands Engineering. Vote required

Matt Costa, Cape and Islands Engineering, explained his client, Eric Peterson, is requesting the Commission approve a smaller addition to their original approval at 112 Wading Place Road, delete the 2<sup>nd</sup> story deck on the garage and add a bump out. All work is within the previously approved area. The proposed changes are further away from the resource area than what was previously approved. The Agent said the revised plan is minor and further back from the resource area. He recommended the changes.

No question from the public.

**Motion: Mr. Shaw moved to approve the administrative review, seconded by Mr. Gurnee, Vote unanimous 5-0**

**Update:** Upper Quashnet restoration- AFCEC correspondence/funding.

The Agent updated the Commissioners on the Upper Quashnet restoration. He had some recent correspondence from Rose Forbes, liaison between the Conservation Commission and the Air Force Civil Engineering Center. He said the Air Force funding is based upon removing the entire berm and remediating the area. That figure was about \$800,000. Rose Forbes is preparing the funding to be available for fiscal year 2017 and had additional questions about the specifics to be done. The Agent said he doesn't have all of the answers which is why we will be doing an RFP.

Some of the answers could be supplied by Steve Hurley from the Division of Fisheries and Wildlife. The Agent said there should be grant money available especially when we bring in other partners such as US Fisheries and Wildlife, State Division of Fisheries and Wildlife, the Wampanoag Tribe, Natural Resources Conservation Services. As far as the Air Force funds are concerned, we submit the bills to them for payment. They will retain the funds but the funds are set aside for this project. The Agent will check to make sure the funds are carried over each fiscal year.

**Request for release of funds:** Osprey platform nest repair (Hamblin Pond Islands-deeded Conservation lands- \$250.00 for materials)

The Agent reported on an Osprey platform that is leaning over at Hamblin Pond. He checked it out and it is leaning with an osprey sitting on it. He contacted Waquoit Bay Research Reserve who has experience doing such repairs. He contacted Nancy Church, an employee, to see if they could help and she said they will check it out. They ask for donations for the materials which is about \$250.

**Motion: Mr. Shaw moved to release \$250 from the Land and Maintenance Account, seconded by Mr. Anderson. Vote unanimous**

**Discussion:** Chapter 172 Regulation 30 (Nutrient Loading) - handout highlighting issues with the current wording.

The Agent referred to Chapter 172 Regulation 30 Nutrient Loading which is a regulation that deals with prevention of water pollution and waterbodies from Nitrogen loading – a very comprehensive regulation. It also includes septic systems and any alterations on a lot. It has a standard of 5 parts per million. The Agent said there is a calculation sheet that goes along with this which requires groundwater modeling and he will forward it to the Commissioners. Mr. Gurnee said UMass did a study of all the estuaries to try to find out what was an appropriate adequately low concentration of nitrogen in the estuaries and that was .35 parts per million. There are other regulations that address the nitrogen issue, i.e. lawn standards, runoff capture, mitigation standards. The Agent noted to try and place this type of burden on an applicant is not feasible. This is placing an extreme burden on an applicant. It seems as if this regulation is redundant and overly excessive of what the expectations are. The Agent said he has asked Glen Harrington, Health Agent, to comment. It was decided to further investigate and become more familiar with the bylaw and perhaps revise the bylaw. He will research other towns and reach out to other agents to obtain more information.

#### ADDITIONAL TOPICS

*(This space is reserved for topics that the Chairman did not reasonably anticipate would be discussed).*

***Motion: Mr. Shaw moved to adjourn, seconded by Mr. Anderson. Vote unanimous 5-0. 7:52 pm.***

Respectfully submitted,

Judith Daigneault, Recording Secretary