

Town of Wareham
Conservation Commission Minutes
December 7, 2022

1. PRELIMINARY BUSINESS:

Present: Chairperson, Ms. Sandra Slavin, Denise Schulz, Kwame Bartie, Michael Mercier, Nichole Locurto, Jessica Parr and Carol Malonson

Absent:

Mr. Buckland was also present.

Review and Approve Meeting Minutes: 8-3-22, 8-17-22, 9-7-22, 9-21-22, 10-5-22 and 10-19-22; 11-2-22; 11-16-22

Ms. Slavin reviewed the minutes. Ms. Slavin said the November 16, 2022 minutes said that a female seconded the motion, however it was not clear who seconded the motion.

10-19-22: Ms. Slavin said there was a motion made and seconded, but it wasn't clear who seconded the motion, so it will remain in the minutes that the motion was indeed seconded.

Ms. Slavin stated they do not need to approve minutes anymore, but they would acknowledge they exist. She stated these minutes exist and she has a couple of adjustments that need to be made and she will forward to Ms. Raposa to post once she signs and acknowledges.

Ms. Schulz made a motion to acknowledge the minutes were received and exist. The motion was seconded by Ms. Malonson and passed unanimously. (6-0-0)

2. PUBLIC HEARINGS:

2.1 NOI Ryan Vlaco, c/o J.C.Engineering – 72b Burgess Point Rd – SE76-2770

Ms. Slavin said that the address should've been 72 Burgess Point Road, just an error on the agenda. She stated the correct abutters were notified.

Mr. Bartie read the advertisement in for the record.

Mr. Brian Wallace was present for the applicants, he is from J.C. Engineering.

Ms. Slavin read the field notes: Pier construction with a ramp, float and boat lift at 72b Burgess Point Road. She read it is land under the ocean, coastal beach, coastal banks, land containing shellfish. The interest to be protected is Storm damage prevention, prevention of pollution, land containing shellfish, fisheries, wildlife and habitat. Land subject to coastal storm flowage. El 20VE.

The site visit was done on December 6, 2022. The proposed pier is 290.5' in length with aluminum ramp and boat lift. No dock or ramp has been on the site as of yet, but the site has been cleared and erosion control has been installed for construction. The clearing appears to be close to the top of the coastal bank as opposed to 30' setback. Question from the field site, Does the original order of conditions issue a clearing permit to the coastal bank.

Ms. Slavin, she reviewed the original order of conditions, May 2022 for permitting a single-family dwelling. She said there was nothing included that authorized within the 30' setback.

Mr. Wallace stated it was a 160.5' pier, with a 25' ramp and 10x30' float and a boat lift. He said the majority of the structure would be constructed with a barge; 1-2 set piles on land, so they show a temporary 10' wide for a small size machinery to get through then it would be restored to a 5' path. They would like to extend electric and water utilities under the decking and to the end of the pier.

Ms. Slavin opened it up for the committee members.

Mr. Bartie asked about an eel grass study.

Mr. Wallace said that they had consultants go out in July who identified eel grass beds. Same delineation as 72a Burgess Point. He said they are requiring 50' separation.

Ms. Schulz stated she was confused about the eel grass report. She said she was reading that they were coming out 209' from the eel grass, which would not be 50' out as required.

Mr. Wallace said he was not privy to the conversation; however, he said there is an overlay map that goes with the report that would show they would be in compliance. He said it clarifies the distance. He said the map shows the distance from the mean low water line. He said the report was done within a half-hour of low tide.

Ms. Schulz stated that it was supposed to be from the shoreline, not the mean low water line. She said she would like a letter confirming what it should be as it is very confusing.

Mr. Buckland stated it is showed on the plan.

Conservation consultant, Mr. Faneuf said the report read the 'shoreline.' Ms. Schulz asked for it to be confirmed in writing, as the 'shoreline' can be misinterpreted.

Mr. Mercier asked if there were any concerns with the dock being too far into the Cape Cod Canal wake or other boats trying to come into the Onset Bay Channel.

Mr. Wallace stated they were far enough away from the Cape Cod Canal wake.

Ms. Malonson asked about the eel grass report stating a 'spray' of eel grass. Mr. Wallace said the spray was the beginning of the eel grass report which is shown on the plan.

Mr Faneuf referenced the Department of Marine Fisheries report and read from it regarding the eel grass. He asked if there had been any shellfish study report done.

Ms. Slavin said she has not heard of any. Mr. Wallace confirmed they have not done a shellfish study in the area.

Ms. Schulz stated that the Harbormaster said this was a commercial and residential shellfish area.

Mr. Faneuf stated that this project is very close to mapped estimated habitat and endangered species, so he wondered if there had been any investigations to that.

Mr. Wallace stated they did delineate the endangered species on the plan.

Mr. Faneuf shared his concerns to the committee members.

Mr. Wallace said he would look into the DEF recommendations and would be okay designating one channel.

Mr. Faneuf stated he observed big boulders in that area as well and mark them off on the plan.

In review of what was discussed, Ms. Slavin reiterated what they would be looking for at their next meeting. She stated they would be looking for the distance from shoreline to the edge of eel bed and shellfish study, and the conclusion of the boulders on the plan. They discussed a possibility of a flounder study. She said they can leave them alone from January to May and that could be conditioned as such.

Ms. Schulz made a motion to January 4, 2023 and was seconded by Mr. Bartie. The motion passed unanimously. (6-0-0)

3. CONTINUED PUBLIC HEARINGS:

3.1 NOI Scott Green, co/ JC Engineering, Inc. – 17 Murphy Street – SE76-2754

Ms. Slavin stated they asked for a continuance to January 4, 2023.

Ms. Schulz made a motion to continue 17 Murphy Street per the applicant's request to January 4, 2023 and was seconded by Ms. Malonson. The motion passed unanimously. (6-0-0)

3.2 NOI Salvatore A & Carol Santolucito, c/o GAF Engineering Inc – 8 Grace Lane – SE 76-2767

Ms. Slavin called the application. Mr. Rogers was present with GAF Engineering. Also present was Owner, Mr. Santolucito.

Mr. Buckland reviewed the field notes: He read that this was a pier with a boat lift. 210' ramp, gang, and float system within 195' of mean high water. Float would be 12x20 in size. He said MA DMF sent in comments regarding the eelgrass and scallops under the pier. He said there would be no commercial or recreational fishing in the area. He said comments have not been received by the Harbormaster. Resource area, land contained shellfish and under ocean. Coastal beach and coastal flood zone.

Ms. Slavin said they were relocating the pier a bit to avoid the eelgrass. She said they have not heard from the Harbormaster for comment either.

Ms. Slavin stated they did receive comments from the Harbormaster that it does not impede navigation and not extended any funds in shellfish propagation in the same area. Area is very rocky.

Mr. Rogers summarized the email from the Harbormaster as this is not a significant shellfish area. He said they provided a shellfish report with their original filing. He said the shellfish area is the same on this part of the point. He also stated that there were two additional piers in this area that were approved by the commission this past summer. He summarized the last meeting, stating that they moved the pier over to avoid the eelgrass patch and he submitted plans at the last meeting that showed that. He said the regulations say it has to be 50' from the eelgrass bed, but this area did not have an eelgrass bed. He said he compared the letters from the two piers that were approved by the DEF to the letter they received and it's a new reviewer and suddenly the driving of piles is a significant loss of shellfish habitat per the letter. He said the key to this meeting is that the Harbormaster stated this was not a significant shellfish area. He said they have 33 pilings.

Mr. Rogers said they would agree to the same and special conditions offered to the two residents that are near them and approved this past year.

Ms. Slavin said she did feel it was a weird response from DEF, because that wasn't said to the other two piers in that area.

Mr. Bartie asked how they do the pilings in the rocky area and Mr. Rogers explained.

Ms. Schulz stated they do consider the input from the Harbormaster, however she said sometimes his thoughts are not aligned with Conservation regulations.

Ms. Schulz read from the Dept of Marine and Fisheries regarding piers and the adverse effect on the eelgrass. Mr. Rogers pointed out the eelgrass was a patch only. Ms. Schulz stated that what she was reading, as didn't matter whether it was patch or more. Mr. Rogers argued that everything was being built according to the bylaws. Ms. Schulz said if they had had the same concerns in the letters from DMF for the other properties, perhaps they would've had the same concerns.

He said that he thinks it's arbitrary to say now that he can't build but his neighbors can. He asked if they had the opportunity to get more information, and he would.

Ms. Malonson asked what date the eel study had been done.

Ms. Slavin stated October of 2021 and updated again in October 2022.

Mr. Rogers confirmed the dates. He further explained that there is a difference between 'eel patch' and eel grass bed; and he said they have the opportunity to move the pier over away from the eel patch if necessary. He stated that the DMF letter also gives the instructions on how to approve the project with conditions, and it does not state to deny the project.

Mr. Rogers submitted DEP's shellfish maps in for the record.

Mr. Buckland stated in reading the regulations that they read 'eel grass beds.' He said the question is whether or not you have beds there and interpretation of by law requires you to amend and clarify what eel beds are meant to include. He said that the bylaws are up to interpretation.

Ms. Schulz stated she felt that it wasn't an opportunity to interpret the regulations. She said the letter reads eel grass bed, whether it was a twig, patch or bed. She said she believes it is against their bylaw.

The commission discussed the bylaw regulations.

Mr. Rogers said the eel grass patch is about 25' away from the boat lift side. He said they are being very responsible to where they are building it.

Ms. Parr asked about the arrows on the plan that designate 13' from the eel grass patch. She asked if a small patch of eel grass would pop up somewhere and then not survive there.

Mr. Rogers said that from prior projects they found eel grass and they tried to stay away from it as far as possible. He said they went back to it after, and it was gone. He said he is not an expert on the eel grass. He said in this case, this was the only patch of eel grass that was found. He said it is growing into seaweed and wouldn't grow unless it has a firm bottom to support it.

Ms. Slavin asked Mr. Faneuf what the likelihood of the survival of this eel patch in this seaweed is.

Mr. Faneuf said it is the question is whether it's a bed or a patch and the difference of them. He said he is of the opinion that it gives the Commission a lot of leeway as the regulations state "bed". He said that eel grass does disappear and perhaps by next July wouldn't be there.

Ms. Schulz stated she thinks there is a lot of significant things in this area, not just the eel grass. She said the DMF brings up a lot of different things and she doesn't think they should ignore the letter.

Mr. Faneuf stated that it is the difference between a patch and a bed. He said there is no right answer, but this is an appealable case and if appealed it would go to DEP, and Superior Court and they would be regarding the difference between a patch and a bed. He said it would probably come down to the spirit of the argument.

The expert from Mr. Faneuf's office said it would be good to get a trend in that area if the bed is receding and or a new bed.

Mr. Rogers said they submitted both reports and from 2021 to 2022 and the patch is still there. He said there has been no other mapping in the last ten years in this area. He said it is embedded in the seaweed.

Mr. Buckland also said that the distance between the eel grass and the pier or boat lift needs to be considered as well.

Ms. Slavin said this area is the home to the boat lift.

Mr. Rogers said the boat lift is electric and goes up and down when the boat is in the water or not.

Ms. Slavin said she thought they could canoe over that eel patch if they wanted as the water is low there and she doesn't see a boat fitting through there.

Mr. Buckland stated they have all the information needed to make a decision, other than past history studies of the area of eel patch and or beds.

Mr. Faneuf said it may come down to the Commission's size idea of a eel bed and or eel grass. He said if you consider it to be more than a bed than a patch, then you could deny. He said if it was the other way that you could move toward an approval.

Mr. Rogers said they would agree to the other general conditions as the other two piers.

Mr. Buckland stated they could condition along with the DMF recommendations.

Ms. Schulz made a motion to close the public hearing and was seconded by Ms. Malonson. The motion passed unanimously. (5-0-0).

Ms. Slavin said if they would approve it there would be stipulations they put in the conditions. She said recommendations of the DFM letter dated November 1, 2022; remove the shellfish prior to construction, do not bring any boats in between the boat lift area to the shore.

Ms. Schulz asked how that would be monitored.

Ms. Slavin said all they could do is put it into the conditions.

Mr. Mercier suggested designing the dock to hold the boats on one side versus on the opposite side of the eel grass.

Ms. Parr made a motion to approve 8 Grace Lane with the following conditions, that they follow the recommendations of the Department of Marine Fisheries letter dated November 1, 2022; that they remove any shellfish prior to construction, and whenever possible stay away from the eel grass. Ms. Malonson seconded the motion. Ms. Slavin called for the vote via roll call, and it was passed, 5-1-0, with Ms. Schulz in opposition.

4. EXTENSION REQUESTS

5. ENFORCEMENT ORDERS:

6. CERTIFICATES OF COMPLIANCE:

6.1: **SE76-2663** 16 Arnold Street, Solimando. Mr. Buckland recommended the Certificate of Compliance be issued.

Ms. Schulz made a motion to issue the COC and was seconded by Ms. Malonson. The motion passed unanimously. (5-0-0)

6.2: **SE76-2519:** 71 Charlotte Furnace Road, Borrego Solar Systems – Mr. Buckland recommended the Certificate of Compliance be issued.

Ms. Schulz made a motion to issue the COC and was seconded by Ms. Malonson. The motion passed unanimously. (5-0-0).

6-2: Tricia Wurts stated that Borrego Solar System is now New Leaf and wondered who the COC is issued to. Ms. Slavin said that they would issue to the name they approved, which was Borrego.

6.3: **SE76-2526** 299 Farm to Market Road – Borrego Solar Systems

Mr. Bartie made the motion to approve the COC and was seconded by Ms. Schulz. The motion passed unanimously.

6.4: **SE76-1117** 3020 Cranberry Highway – Lucier

Mr. Mercier made a motion to approve the COC and was seconded by Ms. Shculz. The motion passed unanimously. (5-0-0).

6.5: **SE76-2116** 10 Fisherman's Cove Road – Bete

Ms. Slavin, she put this on here as they did not build to plan and are not in compliance.

6.6: **SE76-2600** 10 Stone Ave – Murley

Mr. Buckland stated they submitted a request for a COC.

Mr. Bob Rogers of GAF Engineering was present and said he worked on this project with Ms. Murley. He said it started down with an addition and swimming pool. He said the swimming pool wasn't going to get approved and they got an order of conditions for a deck and a small addition. He said she wanted to plant blueberry bushes but there wasn't enough room when it was all said and done. He said there is still a lot of vegetation around the shed. He said the shed was already there.

Ms. Slavin said she would leave it on the agenda for Mr. Buckland's office to review.

6.7: **SE76-2372** 12 Pine Tree Drive - Chrzanowski

Ms. Slavin said there was a late add to the agenda for 12 Pine Tree Drive. Ms. Slavin said that twelve additional feet were added to the pier and wondered how they now wanted a Certificate of Compliance.

Mr. Rogers of GAF Engineering was present to speak on this as well. He said he was present to give the 53 G funds. HE said they have identified a few minor changes. He said the 6' extension is land work, not an extension of the pier into the water. They installed 12" pilings instead of 8x8 posts. They put a ladder on the float. Mr. Madden will submit a letter.

Per the plans, Ms. Slavin reviewed the plans. She said that she would have the consultant go out and review.

Mr. Faneuf asked if the stringers were at high mean water, he said it seemed a bit low.

Mr. Rogers said he would have to review it. He said they called for a 7.5' deck elevation.

Ms. Schulz said it was not built to the plan. She said a Certificate of Compliance is given when the project is completed according to the plan, and this was not. Ms. Slavin agreed and said they would have to come back with an amended plan.

Mr. Rogers said he thinks they need written guidance from the Commission. He said he gave the list of what the changes were on what was built.

Mr. Faneuf said the regulations state there has to be a substantial difference from the plans to what was built. He said he would like to see what the height is from high mean water to make sure it meets Chapter 91.

Mr. Rogers explained what work has been done at the property. He said the house was reconstructed with an order of conditions.

Mr. Faneuf wanted to review the project prior to any expansion. He said he wanted to review if there was a lateral separation, and if not, they would need to put in stairs.

Mr. Jeffrey Chrzanowski of 12 Pine Tree Drive was present and stated the original plan did show the elevation.

Josh Harety said he will be the new Conservation Agent and was there tonight just to listen and introduce himself. Ms. Slavin welcomed him aboard. Mr. Harety said he was looking forward to joining Wareham and would hopefully be ready to start in January.

7. ANY OTHER BUSINESS/DISCUSSION AND/OR VOTE:

7.1 Discussion/vote: Future Meeting Dates/Holiday Schedule

7.2 Discussion: Superseding Order of Conditions

7.3 Discussion/vote: Appointments/interviews/Reappointments

7.4 Discussion/vote: Bills

Ms. Schulz made a motion to adjourn and was seconded by Ms. Malonson. The motion passed unanimously.

Date Signed: 1/24/2023

Attest: 
Sandy Slavin, Chairperson
WAREHAM CONSERVATION COMMISSION

Date copy sent to Town Clerk: _____

WAREHAM TOWN CLERK
2023 JAN 24 PM 11:15