

MINUTES OF MEETING OF WAREHAM CONSERVATION COMMISSION

Date of Meeting: June 21, 2017

I. CALL MEETING TO ORDER

The meeting was called to order at 7:15 P.M.

II. ROLL CALL

Members Present: Ken Baptiste, Chairman
Joe Leggett
Sandy Slavin
Jim Smith
Mary Taggart
Elissa Heard
Elizabeth Lydon
Robert Lassen, Associate Member
Dave Pichette, Agent

Members Absent: Mark Carboni, Associate Member
Donald Rogers, Associate Member

III. PRELIMINARY BUSINESS

A. Approve meeting minutes: October 19, 2016 & April 19, 2017

Ms. Slavin noted at the October 19, 2016 meeting, she believes Mr. Carboni was an Associate at the time and Mr. Rogers should be counted as being absent.

MOTION: Ms. Slavin moved to approve the April 19, 2017 meeting minutes as presented. Mr. Smith seconded.

VOTE: Unanimous (7-0-0)

IV. PUBLIC HEARINGS

A. RDA – Leah Abbott

Present before the Commission: Leah Abbott

A site inspection made at 63 Oak Street. The project involves repairing a portion of the existing foundation in the buffer zone to a coastal beach/coastal bank. This is an after-the-fact filing for work that was already done. The front wall of the foundation, the side closest to the street, was replaced with a new concrete block foundation. The work required excavating down to install the new footing and installing the new block foundation wall. The work was limited to that section of wall. No adverse impacts to any resource occurred. Mr. Pichette recommended the issuance of a Negative Determination #2 for the project.

MOTION: Ms. Slavin moved to table the public hearing for Leah Abbott as no one was present at the time. Ms. Heard seconded.

VOTE: Unanimous (7-0-0)

MOTION: Ms. Slavin moved to un-table the public hearing for Leah Abbott. Mr. Leggett seconded.

VOTE: Unanimous (7-0-0)

MOTION: Ms. Slavin moved to close the public hearing for Leah Abbott. Ms. Heard seconded.

VOTE: Unanimous (7-0-0)

MOTION: Ms. Slavin moved to grant a Negative #2 Determination. Ms. Heard seconded.

VOTE: Unanimous (7-0-0)

B. RDA – Wildlands Trust & Wareham Land Trust

Present before the Commission: Eric Boyer, Property Manager of Wildlands Trust
Leah Howard, Project Manager

The applicant did not have the green cards from the abutter notifications for the project. It was explained that discussion on the project may be held, but the hearing must be continued to allow for abutter notifications to be submitted to the Commission.

A site inspection was made at 0 Nicholas Drive (various lots). This application is submitted as a joint application between the Wildlands Trust and the Wareham Land Trust for the creation of a nature trail system on existing conservation properties in the Marks Cove area. Work will be done within the buffer zone to bordering vegetated wetland (BVW) and within a coastal flood zone. Most of the proposed trail network will utilize existing trails. There are some sections of new trail that would have to be created to complete the proposed trail network. 500' of new trail would have to be created. There is also a section of bog boards to be installed to create an elevated walking surface through the BVW on the property. This would be 75' in length. The bog boards would be supported by 4'x6' cedar posts. Existing trails would be enhanced by the use of chain saws, pole saws, and a brush hog machine. There are also proposed viewing spots to overlook the marsh area. Split rail fencing will be installed at the edge of the overlook areas to keep hikers from getting into the salt marsh. A section of the proposed trail is closer to wetlands than what is represented on the plan. Mr. Pichette requested this portion of trail be relocated to be at least 30' from the edge of the wetland. He recommended the issuance of a Negative Determination #2 with the relocation of a portion of the trail be at least 30 ft. from the edge of the wetland as a condition for the project.

Ms. Slavin asked how the trail will be accessed. Ms. Howard stated the access is off of Nicholas Drive.

MOTION: Ms. Slavin moved to continue the public hearing for the Wildlands Trust & Wareham Land Trust to July 5, 2017. Ms. Heard seconded.

VOTE: Unanimous (7-0-0)

C. RDA – Robert & Pamela Bulis, c/o G.A.F. Engineering, Inc.

Present before the Commission: Bill Madden, G.A.F. Engineering, Inc.

A site inspection was made at 5 Preservation Lane in the Cromessett area. The project involves the construction of a single family dwelling within a coastal flood zone. A 30'x56' dwelling with attached 24'x36' garage is proposed within flood zone AE, el. 16. The project will require extensive filling as proposed. The site will require 6-7 feet of fill at the deepest points. The project will also have a septic system and Town water. All of the proposed work will be outside the buffer zone to any wetland resource areas. Mr. Pichette recommended the issuance of a Negative Determination #2 for the project

MOTION: Ms. Slavin moved to close the public hearing for Robert & Pamela Bulis. Ms. Heard seconded.

VOTE: Unanimous (7-0-0)

MOTION: Ms. Slavin moved to grant a Negative #2 Determination for Robert & Pamela Bulis. Mr. Smith seconded.

VOTE: Unanimous (7-0-0)

D. RDA – Robert Aron, c/o New England Clean Energy

Present before the Commission: Ben Fitzer, Contractor
Robert Aron, Owner

The applicant did not bring the green cards from the abutter notification. The hearing will need to be continued.

A site inspection was made at 32 Robinwood Road. The project involves the installation of solar panels within a coastal flood zone. Ground mounted solar panels are to be installed within coastal flood zone VE. The ground mounted panels will be mounted on poles anchored by helical screw anchors. No excavation will be needed for this. There will be minor trench work to connect the panels to the dwelling. The site is relatively flat. There is no work proposed within the buffer zone to any other resource areas. The work is within existing yard/lawn area. Mr. Pichette recommended the issuance of a Negative Determination #2 for the project

MOTION: Ms. Slavin moved to continue the public hearing for Robert Aron to July 5, 2017. Ms. Heard seconded.

VOTE: Unanimous (7-0-0)

E. NOI – Atlantic Concrete Construction, Inc., c/o JC Engineering, Inc.

Present before the Commission: Jeff Halahan, Owner, 24 Fisherman Cove Road
John Chakran, Owner, Atlantic Concrete Construction

A site inspection was made at 24 Fisherman Cove Road. The project involves repairs to an existing seawall on a coastal bank and within a coastal flood zone. Repairs are proposed to an existing 100' concrete seawall. The face of the existing wall is deteriorating and the work involves pouring a new face on the wall, one foot thick to solidify it. The wall sits above existing rip rap at the base of the slope. Forms will be put in place and concrete would be pumped in to create the new face of the wall. There will be no excavation involved, just doweling into the existing wall. There will be no alteration of the existing rip rap. No machinery would be needed to add the forms for the job. The existing deck and stairs would be removed and replaced with new materials. The new stairs would be aluminum instead of wooden. The existing fence on the top of the wall would also be removed and replaced with new fencing. A DEP file # has been received. Mr. Pichette recommended the issuance of an Order of Conditions with standard conditions and the added condition that there be no machinery or materials on the beach.

Present before the Commission: Mark Wyman, Fisherman Cove Road

Mr. Wyman stated his mother owns property going down to the water. He asked for something in writing from the contractor concerning protection of the neighboring pier. Mr. Halahan stated he could provide that.

MOTION: Ms. Slavin moved to close the public hearing for Atlantic Concrete Construction, Inc. Ms. Heard seconded.

VOTE: Unanimous (7-0-0)

MOTION: Ms. Slavin moved to grant an Order of Conditions with standard conditions and the added conditions that there be no machinery or materials on the beach for Atlantic Concrete Construction, Inc. and further, a letter be provided to the neighbor stating that there will be no damage to the existing neighboring pier. Ms. Heard seconded.

VOTE: Unanimous (7-0-0)

F. NOI – David Pillsbury, c/o JC Engineering, Inc.

Present before the Commission: Mike Pimental, JC Engineering, Inc.

A site inspection was made at 28 Shangri-La Boulevard. The project involves upgrading a septic system in the buffer zone to Glen Charlie Pond. An existing system is to be replaced with a new Title V denitrification system. The new leach field will be installed close to the road at the furthest point from the resource area, but will still be 75' from the edge of the pond. A new

septic tank and pump chamber will be installed as shown on the plan. The property is on a significant slope. Hay bales will be installed between the work and the resource area. A DEP file # has been received. Mr. Pichette recommended the issuance of an Order of Conditions with standard conditions

MOTION: Ms. Slavin moved to close the public hearing for David Pillsbury. Mr. Smith seconded.

VOTE: Unanimous (7-0-0)

MOTION: Ms. Slavin moved to grant an Order of Conditions with standard conditions for David Pillsbury. Ms. Taggart seconded.

VOTE: Unanimous (7-0-0)

V. CONTINUED PUBLIC HEARINGS

A. RDA – William Franklin, Green Seal Environmental, Inc.

The applicant has requested a continuance.

MOTION: Ms. Slavin moved to continue the public hearing for William Franklin to July 5, 2017. Mr. Smith seconded.

VOTE: Unanimous (7-0-0)

B. RDA – Church in the Pines, c/o Joel Hartley, RPE

Present before the Commission: Joel Hartley

A site inspection was made at lot 1048. The project involves the installation of a water line in the buffer zone to bordering vegetated wetlands and to delineate a wetland boundary. A water line is to be installed within an existing woods road 75' from the edge of the wetland. 150' of water line would be installed, with the remainder of the line that would extend over the Town line into Carver. The work would involve trench work for the new line which would be backfilled at the end of the work day. The water line would be within the existing woods road. The wetland line was reviewed and is accurate. Mr. Pichette recommended the approval of the wetland delineation and a Negative Determination #3 for the installation of the water line.

MOTION: Ms. Slavin moved to close the public hearing for Church in the Pines. Mr. Smith seconded.

VOTE: Unanimous (7-0-0)

MOTION: Ms. Slavin moved to grant a Negative #3 Determination and to approve the wetland delineation for Church in the Pines. Ms. Taggart seconded.

VOTE: Unanimous (7-0-0)

C. NOI – Garry Buckminster/Wareham Harbormaster/Shellfish Dept., c/o the Nature Conservancy – SE76-2432

The applicant has requested a continuance to July 5, 2017.

MOTION: Ms. Slavin moved to continue the public hearing for Garry Buckminster/Wareham Harbormaster/Shellfish Dept. to July 5, 2017. Ms. Heard seconded.

VOTE: Unanimous (7-0-0)

D. NOI – Frank Adrean, Nanumett Shores Improvement Association, c/o G.A.F. Engineering, Inc. – SE76-2413

The applicant has requested a continuance to August 2, 2017.

MOTION: Ms. Slavin moved to continue the public hearing for Frank Adrean, Nanumett Shores Improvement Association to August 2, 2017. Ms. Heard seconded.

VOTE: Unanimous (7-0-0)

E. NOI – Ronald & Lois Enos/Eighteen Burgess Point Realty Trust, c/o G.A.F. Engineering, Inc.

NOTE: Mr. Baptiste & Ms. Lydon recused themselves from this hearing. Ms. Slavin acted as Chair Pro Tem.

Present before the Commission: Bill Madden, G.A.F. Engineering, Inc.
Michael Kennefick, Counsel for Eighteen Burgess Point Realty Trust

A site inspection was made at 18 Burgess Point Road. This project has been filed under the Town of Wareham Wetlands Protective Bylaw only. There was a valid final Order of Conditions under the Wetlands Protection Act, but that Order has expired. The project involves the construction of a pathway within bordering vegetated wetland (BVW) and in the buffer zone to BVW, within a Coastal Flood Zone, & on a coastal beach. The Notice of Intent stated the application is being filed to comply with a DEP Enforcement Order. This is not accurate. This application is being filed because the project is required to obtain a permit under the Town's Wetland By-Law. If there were no DEP Enforcement Order, the process would be exactly the same.

A 4' wide path 560' in length is proposed to provide access to the beach from Winship Avenue. As the path does cross through BVW, 1185 sq. ft. of BVW would be altered to complete the path. Several wetland replication areas totaling 1201 sq. ft. are proposed. The intent is to be able to run golf cart type vehicles over the path to access the beach. The applicant does not propose any surface for the path or any elevated structure to accommodate the golf carts. Root systems of plants would not be removed as part of the path construction. The plan shows a turning area in the existing mowed field area at the coastal end of the path. The applicant is requesting a waiver to do work in the 30' no activity zone based on the recently amended

Wetland Bylaw. The amendment states that the commission shall waive or reduce the no activity zone to the extent necessary to provide reasonable shoreline access if there is no other means of access available. This hearing had been continued as the abutter notifications that were sent out were incorrect stating that the application filed was a Notice of Resource area Delineation, but actually was a Notice of Intent, and that the application was being filed under both the WPA and the Town Bylaw, actually only being filed under the Town By-Law. There is also the issue of an Enforcement Order being issued by DEP. Mr. Pichette believes this was a result of the applicant requesting a Certificate of Compliance for the project. No work should have commenced on the project at all, as the applicant did not have their necessary permits to begin the work. There is currently no valid Order of Conditions under the WPA to do this work. It is unclear what was submitted to DEP in terms of information when the request for the Certificate of Compliance was requested. Mr. Pichette believes the applicant should have to get a valid Order of Conditions under the WPA, but that is not under the Commission's control. He recommended the issuance of an Order of Conditions under the Wetland Bylaw with the standard conditions and the following added conditions:

1. That only standard golf cart type vehicles with soft turf tires be used,
2. That vegetation cut for the purpose of clearing or maintaining the path be removed from the site,
3. That this Order does not approve the removal or destruction of any plant root systems within the BVW.

Mr. Kennefick stated the project was approved in 2011 and again in 2015 under two separate Bylaws that have since been replaced. This is the third approval the applicant is seeking. The 2015 approval is currently under appeal with the Superior Court.

Present before the Commission: Adam Brodsky, Representing Winship, LLC

Mr. Brodsky stated this project was a "bad" project when it started six years ago and remains a "bad" project. He stated the procedural irregularities make this worse. There was a Notice of Intent filed on May 8, 2017; apparently this was filed under the Bylaw only. However, this project required a Notice of Intent under the Wetlands Protection Act because the final Order on the first appeal has expired and was not renewed. This filing is deficient and should not be accepted for filing as it has not been filed according to the State Act. He feels the hearing should not have been opened as it was not properly advertised. It was advertised as an RDA where it should have been advertised as an NOI. A wetland line is shown on the previous 2012 plan. A wetland line is only good for three years. He feels the applicant should be required to delineate the wetland line again. The applicant had previously created the path without permits. The Commission and DEP both issued Enforcement Orders stating the applicant should replicate the area disturbed. He stated no applicant should be allowed to continue work under existing Enforcement Orders. The project was approved in 2011 and was then appealed in Superior Court. The applicant then applied to Town Meeting, twice, to create "spot changes" to the Bylaw to allow the project. The project does need to comply with the current Bylaw. The old Bylaw, which was repealed when the new Bylaw was adopted, is the subject of a pending Superior Court appeal. He feels the pending appeal is moot as the Bylaw was repealed and replaced. The applicant takes the opposite position, feeling that if they prevail in the appeal, they would be able to have an approval under the previous local Bylaw.

Mr. Brodsky stated the applicant is cutting two different no activity zones. He feels the applicant must show the reduction in the no activity zone is necessary to accommodate reasonable access. He understands the applicant already has access to the beach via Mr. Decas' property. Additionally, the Bylaw requires the applicant choose the least intrusive means of access. He believes the least intrusive means of access would be to construct an elevated boardwalk to go over the wetlands in lieu of demolishing wetlands to access the

beach. Also, the least intrusive means of access would be walking, not to drive golf-carts through the wetlands.

Mr. Brodsky stated his client has an existing cart path on his property. His client was required to file a Notice of Intent to maintain the cart path. One of the conditions imposed on his client was that there be no motor vehicles on the cart path. He feels if the Commission is to be consistent, they should take that into consideration.

Mr. Kennefick stated the access through Mr. Decas' property is not a legal right of access and could be terminated at any time.

Ms. Slavin stated there is a Conservation Restriction on the property (Decas), but believes this current restriction provides very limited access with prior approval.

Mr. Decas stated this was a verbal agreement between himself and his neighbors that they would be allowed to use his access while they tried to get their cart path permitted, but he did not intend for the process to go on this long and does not prefer to stay in the middle of the process.

Present before the Commission: Peter Balzarini, Trustee of Eighteen Burgess Point Realty Trust

Mr. Balzarini feels the issue of using Mr. Decas' property as means of access is irrelevant to the application.

Mr. Brodsky stated the relevance of the access on Mr. Decas' property is that on either end of the applicant's property, there are no activity zones. The Town Bylaw specifically prohibits work to be done in the no activity zone. In order to do the project, the applicant needs a waiver for this project under Section 17C which are the exceptions that define what you can do to get a waiver to perform work in a no activity zone. He stated the relevant provision is "D" which states that the Commission may waive or reduce the no activity zone requirements. He proceeded to reference the provision as follows:

"If in its judgement, such a reduction is necessary to accommodate reasonable access by path, or other least intrusive means of access, to other portions of a property or the shore line as long as there is no other alternative means of access in other portions of the property and that such alteration does not exceed a 5' naturally surfaced path or an elevated boardwalk not to exceed 3' in width in the 5' path. Such alterations may require wetlands replication"

Mr. Madden stated the access issue seems to have been resolved. The best way to achieve beach access from the applicant's property is by clearing the pathway. He stated an elevated boardwalk would actually be more detrimental to the wetlands replication area. The root system is not being cut out. There will be a natural surface maintained on the ground. An elevated walkway is not a natural path. He feels the cart path meets the requirements of the Bylaw.

Mr. Brodsky stated since the wetlands line is outdated, then they cannot determine that the project falls within the requirements.

Ms. Slavin asked Mr. Pichette if the wetland line needs to be re-flagged. Mr. Pichette stated the wetland line used is shown on a plan that is currently under appeal. He feels the wetland line does not need to be re-flagged.

Mr. Brodsky stated this NOI is a new filing and the old plan cannot be used due to the fact that this is not a filing from the appeal. He feels a plan should at least be submitted and reviewed for a boardwalk before the Commission decides the path is the least intrusive means of access.

MOTION: Mr. Leggett moved to close the public hearing for Ronald & Lois Enos/Eighteen Burgess Point Realty Trust. Ms. Taggart seconded.

VOTE: Unanimous (6-0-0)

MOTION: Mr. Leggett moved to issue an Order of Conditions with standard conditions for Ronald & Lois Enos/Eighteen Burgess Point Realty Trust as well as additional conditions that only standard golf cart be used with soft tires or non-aggressive tires; removal of any brush as far as maintenance goes should be removed from the area immediately; no removal of the root system at all; and natural surface shall remain on the path. Mr. Smith seconded.

VOTE: Unanimous (6-0-0)

NOTE: Mr. Baptiste & Ms. Lydon returned to the table at this time.

F. NOI – Fort Fairfield BP, LLC/Navionics, LLC, c/o G.A.F. Engineering, Inc. – SE76-2433

Present before the Commission: Bill Madden, G.A.F. Engineering, Inc.

The applicant has requested a continuance to July 5, 2017. Mr. Madden gave a brief update. He noted the activity in the 50' no activity zone was reduced on the plan and is reflected on the plan.

MOTION: Ms. Slavin moved to continue the public hearing for Fort Fairfield BP, LLC/Navionics, LLC to July 5, 2017. Mr. Leggett seconded.

VOTE: Unanimous (7-0-0)

VI. EXTENSION REQUESTS

A. Michael Connors – 13 Salt Creek Road

Mr. Pichette explained this project was for the construction of a pier. The Order of Conditions is to expire next month. The applicant has requested an extension of one year. He recommended granting the extension.

MOTION: Mr. Leggett moved to approve an extension for one year for Michael Connors. Ms. Slavin seconded.

VOTE: Unanimous (7-0-0)

VII. ENFORCEMENT ORDERS

VIII. CERTIFICATES OF COMPLIANCE

A. Kevin Reilly – 1 Michael Drive

The applicant had installed a septic system. Mr. Pichette recommended the issuance of the Certificate of Compliance.

MOTION: Ms. Slavin moved to grant a Certificate of Compliance for Kevin Reilly. Mr. Leggett seconded.

VOTE: Unanimous (7-0-0)

B. Dan Stafford – Beaver Creek Lane

A Certificate of Compliance has been requested for this project. Mr. Pichette feels the project is not complete and does not recommend the issuance of a Certificate of Compliance at this time.

IX. ANY OTHER BUSINESS/DISCUSSION

A. Discussion: Reappointments

B. Discussion: Conservation Restriction/Stewardship

Ms. Slavin feels the Buzzards Bay Coalition should come before the Commission to request a Conservation Restriction.

C. Discussion: Bills

1. Invoice #29110 – Wareham Week - \$40.00 – Legal Ad

MOTION: Ms. Slavin moved to approve the Invoice #29110 to Wareham Week in the amount of \$40.00 for legal advertising. Ms. Heard seconded.

VOTE: Unanimous (7-0-0)

D. Discussion: Appointments

X. ADJOURNMENT

MOTION: Ms. Slavin moved to adjourn the meeting. Mr. Leggett seconded.

VOTE: Unanimous (7-0-0)

Date signed: _____

Attest: _____

Ken Baptiste, Chairman

WAREHAM CONSERVATION COMMISSION

Date copy sent to Town Clerk: _____