

MINUTES OF MEETING OF WAREHAM CONSERVATION COMMISSION

Date of Meeting: September 5, 2018

I. CALL MEETING TO ORDER

The meeting was called to order at 7:00 P.M.

II. ROLL CALL

Members Present: Sandy Slavin, Chair
Ken Baptiste
Joe Leggett
Mary Taggart
Elissa Heard
Jim Smith
Robert Lassen
David Pichette, Agent

Member Absent: Mark Carboni, Associate Member

III. PRELIMINARY BUSINESS

A. Approve meeting minutes: June 6, 2018

To be handled later in the meeting.

NOTE: The meeting proceeded w/ item V. Continued Public Hearings.

C.NOI – Greg Carey/Clean Energy Collective, c/o G.A.F. Engineering, Inc. – SE76-2489

The applicant has requested a continuance to September 19, 2018.

MOTION: Ms. Heard moved to continue the public hearing for Greg Carey/Clean Energy Collective to September 19, 2018. Mr. Baptiste seconded.

VOTE: Unanimous (7-0-0)

E.SouthCoast Hospitals Group, Inc. – SE76-2497

The applicant has requested a continuance to September 19, 2018.

MOTION: Ms. Heard moved to continue the public hearing for SouthCoast Hospitals Group, Inc. to September 19, 2018. Mr. Baptiste seconded.

VOTE: Unanimous (7-0-0)

A. RDA – Robert C. Gleason

Present before the ConCom: Robert C. Gleason

Mr. Pichette stated the abutter cards were received.

Mr. Pichette described the project. The property is located at 1 Seahorse Lane. The project involves the construction of a garage w/in a coastal flood zone. A 28x30 ft. garage is proposed w/in flood zone AE, elevation 16. The garage would have a concrete slab foundation. The garage would not be w/in the buffer zone to any other resource areas. The site is relatively flat & there are no grade changes proposed. He recommended the issuance of a Negative Determination #2 for the project.

MOTION: Mr. Baptiste moved to close the public hearing for Robert C. Gleason. Ms. Heard seconded.

VOTE: Unanimous (7-0-0)

MOTION: Mr. Baptiste moved to grant a Negative Determination #2 for Robert C. Gleason. Ms. Heard seconded.

VOTE: Unanimous (7-0-0)

B. NOI – Edward Ryan, c/o JC Engineering, Inc. – SE76-2494

Present before the ConCom: John Churchill, JC Engineering, Inc.
Edward Ryan

Mr. Pichette described the project. The property is located at Bakers Island Road in Onset. The project involves the installation of new water main in the buffer zone to salt marsh & w/in a coastal flood zone. The project is also w/in the estimated habitat of rare & endangered species. 1,023 linear ft. of 4 inch water main is to be installed w/in the existing gravel roadway known as Bakers Island Road to replace the existing water main that is failing. The existing water main that services this area comes from Sunset Island & goes under part of Sunset Cove & it is not feasible to replace the main in the same location. The salt marsh is close to portions of the road & the new main will be 10.5 ft. from the edge of the marsh at its closest point. The work is also w/in coastal flood zone AE, el. 14. Trenching will occur w/in the existing gravel road to install the new main. Haybales will be installed along the edge of the road between the work & the salt marsh. It appears that dewatering may be necessary during the trenching work where it is close to the salt marsh elevation. Connections to the individual homes are also included in this application. This will occur w/in existing lawns & driveways. Comments have been received from NHESP. NHESP has commented that the project will require a turtle protection plan approved by the Division of Fisheries & Wildlife if the project is to occur during the turtle nesting season, June 1 – July 31. If the work occurs outside this time period, then no such plan will be required. A DEP file number has been received. He recommended the issuance of an

OOC w/ standard conditions, conditions for dewatering, & the conditions required by the NHESP.

Mr. Churchill stated the line will need to be at least 4.5 ft. deep.

MOTION: Mr. Baptiste moved to close the public hearing for Edward Ryan. Ms. Heard seconded.

VOTE: Unanimous (7-0-0)

MOTION: Mr. Baptiste moved to issue an OOC for Edward Ryan w/ standard conditions, conditions for dewatering, & conditions set forth by NHESP. Ms. Taggart seconded.

VOTE: Unanimous (7-0-0)

D.NOI – Buzzards Bay Coalition - SE76-2496

Present before the ConCom: Sarah Quintal, Buzzards Bay Coalition

Ms. Quintal distributed a revised plan to the ConCom members.

Mr. Pichette described the project. The property is located at 38 Station Street which is the Horseshoe Mill Dam & Conant Hill property. The project involves controlling invasive plant species by physical cutting & the application of herbicides & trail enhancement. This work will be in the buffer zone to BVW & w/in BVW at the site. Two stands of Japanese Knotweed are to be treated & also a 2 acre stand of phragmites that has taken hold w/in a portion of Horseshoe Pond. A mechanical harvester is proposed to be used to initially cut the phrag stand down then treat the phrag w/ herbicide down the road. Also proposed is the enhancement of trails on the sites. This will include the installation of sections of ADA accessible trails, installation of canoe launches, & the rerouting of some trails & creation of new trail on the Conant Hill side of the site. Two sections of bog boards were proposed as part of the trail work. In review of that proposed trail location, it was found that the new trail location was in the wetland & not w/in the buffer zone to the wetland as was shown on the plan. He requested the trail be relocated outside the wetland at the last meeting & the revised plan shows the relocation. With this change, the sections of bog board will likely not be needed. A DEP file # has been received. He recommended the issuance of an OOC w/ standard conditions & added condition to have a licensed herbicide applicator for this project.

Ms. Quintal stated they are looking to apply the herbicide later this month & come back in the winter to cut.

MOTION: Ms. Heard moved to close the public hearing for Buzzards Bay Coalition. Ms. Taggart seconded.

VOTE: Unanimous (7-0-0)

MOTION: Mr. Leggett moved to issue an OOC for Buzzards Bay Coalition w/ standard conditions & the added condition to have a licensed herbicide applicator for this project. Ms. Heard seconded.

VOTE: Unanimous (7-0-0)

IV. PUBLIC HEARINGS

A. RDA – Kathy & Brian Milan

The public hearing notice was read into the record.

Present before the ConCom: Brian Bussen, Bracken Engineering, Inc.

Mr. Pichette described the project. The property is located at 324 Glen Charlie Road. The project involves the removal of several trees in the buffer zone to Glen Charlie Pond. Eight (8) large pine trees were proposed to be removed in the buffer zone to the pond. The trees are 80-100 ft. tall & the property slopes from a high elevation down to the pond. It is proposed to bring a crane in to reach the trees. In review of the site, three of the trees proposed to be removed are w/in the 30 ft. no activity zone. He recommended not allowing removal of those three trees. The other trees are outside the 30 ft. no activity zone. Trees will be flush cut to the ground, no stump removal or grinding is proposed. Trees & debris are to be removed from the site. He recommended approval of the five trees outside the 30 ft. no activity zone w/ a Negative Determination #3 for the work.

Brief discussion ensued re: which trees are not to be cut.

MOTION: Mr. Leggett moved to close the hearing for Kathy & Brian Milan. Mr. Baptiste seconded.

VOTE: Unanimous (7-0-0)

MOTION: Mr. Leggett moved to grant a Negative Determination #3 for Kathy & Brian Milan. Mr. Smith seconded.

VOTE: Unanimous (7-0-0)

B. NOI – Kenneth Keegan, c/o Bracken Engineering, Inc.

The public hearing notice was read into the record.

Present before the ConCom: Brenden Mullaney, Bracken Engineering, Inc.
Kenneth Keegan, Homeowner
Joclyn Kenny, Homeowner

Mr. Pichette described the project. The property is located at 25 East Blvd. This application has been filed in response to an Enforcement Order that was issued for the unpermitted placement of trap rock on an eroding coastal bank at the site. The project involves the removal of the trap rock that was placed & the construction of a stone revetment on a coastal bank & w/in a coastal flood zone. A stone revetment is proposed along 116 ft. of a coastal bank at the site. Filter fabric & gravel will be placed behind the stone revetment to prevent sediments from washing through the stone. He requested the stone size & embedment depth of 5 ft. He asked if this is realistic. He recommended the stone revetment be located so as to match the existing bank instead of being built out in front of the coastal bank & then back filled behind it. The site is w/in coastal flood zone AE, elevation 14. Also proposed is to construct a deck between the two existing dwellings & to construct a retaining wall to allow for the expansion of a parking area. These activities are new features proposed w/in the 30 ft. no activity zone & therefore, should not be allowed. This site had previously been issued an OOC which approved work which included two parking areas for the property which are depicted in blue on the plan. A deck has already been partially constructed beyond the limit of what was approved under the previous OOC. A DEP file number has been received. He recommended a continuance of the hearing at this time for a revised plan removing proposed decks that are beyond what was previously approved & removing the proposed retaining walls & expanded parking area.

Mr. Mullaney stated the revetment will be 94 ft. long. He spoke re: the toe stone to be used to provide for a solid base. He discussed the history of the wall (seawall) at the property. He spoke re: the mean high water line & fill. He spoke re: the 30 ft. no activity zone. He spoke re: the proposed deck between the two structures & there was a deck there in the past. He discussed the goal of the retaining wall. He discussed a proposed catch basin.

Discussion ensued re: if the project will stay w/in the existing footprint, the width of the wall & preventing the neighbor's wall from deteriorating due to the close proximity.

Present before the ConCom: Bruce & Gail Hutchins, 37 East Blvd.

Mr. Hutchins supports the efforts to conserve the area w/ a wall to stop the erosion from the applicant's property & inadvertently on his property. He expressed concern re: the design of the new wall vs. the old wall which he explained. He doesn't approve of the right angle into his property for the wall to be maintained. He stated right angles do not work. He feels this right angle will be more of an issue for his property. Ms. Hutchins stated they would like the wall to hook up the new wall to their wall. Mr. Mullaney stated they would consider shifting the revetment in that general area to match up & meet the neighbor's wall.

Ms. Hutchins spoke re: the proposed walk/deck & she stated there was a deck there prior. She stated the deck is needed to get Mr. Keegan into his house.

Brief discussion ensued re: the elevation of the driveway.

Present before the ConCom: Lisa Morales
Mary _____

Ms. Morales asked if Mr. Keegan is the proper applicant. She stated he is not the current owner of the property. She noted Mr. Keegan transferred the property twice in the past months & the current owner is listed as Cape Cod Beach Vacations, LLC. Mr. Mullaney stated Mr. Keegan is the owner & the plans reference Cape Cod Beach Vacations, LLC. Mr. Pichette stated Mr. Keegan is the applicant. Ms. Morales stated the wrong applicant. Mr. Mullaney stated Mr. Keegan is the sole owner of the property. Mr. Pichette asked who the Assessors have the owner listed as. Mr. Mullaney stated Lenord Cubellis is listed as the owner per the Assessors. Mr. Pichette stated the Assessors records aren't always up-to-date. Ms. Morales stated the property transferred from Mr. Cubellis to Mr. Keegan in March 2018 then Mr. Keegan transferred it (as an individual) to Cape Cod Beach Vacations, LLC in May 2018. She stated the NOI doesn't reference the LLC. Mr. Keegan asked if this is relevant. Ms. Slavin also questioned the relevance of this to the Town's Wetland Bylaws. Ms. Morales stated a corporation owns this property & she feels the process needs to start over w/ the property applicant being named. Mr. Mullaney stated they would be happy to submit a revised sheet identifying the corporation on the NOI. Mr. Mullaney stated it is not a corporation. Mr. Pichette stated they can modify the NOI. Ms. Morales doesn't feel the NOI can be acted on at this time.

Ms. Morales spoke re: technical comments that were not read into the record from the NOI. She proceeded to read the comments relative to the bulkhead & the possibility for a Chapter 91 license. Mr. Pichette stated a proposed sloped revetment has been proposed. If a Chapter 91 license is warranted, it would come after this hearing. Ms. Morales feels this information should be made public.

Ms. Morales stated this property is part of the Decree of 1916. This is not land subject to public take over. The land cannot be modified & cannot make it private. It is in his deed. Ms. Slavin stated the ConCom cannot act on anything other than Wetland Bylaws.

Ms. Morales stated Mr. Keegan has destroyed the marsh. He has removed the eel grass. She has photos of before & after Mr. Keegan took over the property & the property has been totally stripped of marsh land. Every single blade of eel grass has been removed. Mr. Pichette stated he has approached Mr. Keegan re: work that was done & the eel grass & corrections/restoration that need to be taken. It was not to the extent Ms. Morales is stating. Ms. Mary _____ stated she has walked that marsh for 20 years & there was never tan sand there & now there is 50 ft. of it.

Ms. Morales stated she is against any further work at this site & granting of any variances. She feels permits should be denied until the beach is restored.

Present before the ConCom: Ms. Hutchins

Ms. Hutchins spoke re: the tan sand. She stated Mr. Keegan raked the rock away & that is why there is tan sand there. She owns two homes in this area & they own their properties to the low mean water mark. That is what her deed reads.

Present before the ConCom: Glen Morrison

Mr. Morrison has walked this area for many years. He feels it is a good thing to put that wall back. There is a sign by the boat ramp that says don't walk on the grass. He stated there is no more grass there. The grass should be replaced before any other work is done.

The ConCom discussed the proposed deck plan & the proposed parking area. Mr. Pichette noted the Bylaw as it applies to the proposals. Mr. Mullaney asked re: various options. Ms. Slavin stated these options still enter into the 30 ft. no activity zone.

Present before the ConCom: Lisa Morales

Ms. Morales asked re: the 30 ft. no activity zone. She stated most everyone who lives in Onset has to comply w/ only being able to develop 20% of their lots. A deck is coverage of a lot. You cannot go against the 30 ft. no activity zone for a parking area.

Discussion ensued further re: the proposals.

MOTION: Mr. Leggett moved to continue the public hearing to September 19, 2018 to await revised plans. Mr. Baptiste seconded.

VOTE: Unanimous (7-0-0)

C. NOI – Stephen & Dorothy Sands, c/o Bracken Engineering, Inc.

The public hearing notice was read into the record.

Present before the ConCom: Brian Bussen, Bracken Engineering, Inc.
Stephen & Dorothy Sands

Mr. Pichette described the project. The property is located at 39 Crab Cove Terrace in the Parkwood area. The project involves the removal of an existing low timber retaining wall & replacing it with a vinyl sheet pile wall in the same location right at the edge of the salt marsh & w/in a coastal flood zone. The timbers from the old wall will be removed & disposed of off-site. The new vinyl sheets will be driven in from the upland side w/ an excavator. The wall is right at the edge of the salt marsh. The new sheets should be driven in w/out infringing further out into the marsh. Tie backs shall be installed to keep the sheets from leaning forward over time. The height of the new wall should be similar to the existing timber wall. He asked for an explanation of the proposed height of 5.5 for the top of the new bulkhead. It is also proposed to backfill behind uneven areas behind the wall. He asked how much material will be needed to accomplish this. He asked how the disturbed area be stabilized. He stated the MA DMF has commented on the project. They had concerns w/ the removal of the old wall & installation of the new wall in terms of its location. They also questioned the height of the new wall & how it might impact the salt marsh re: increased wave energy deflection. There is also concern re: appropriate containment techniques. A DEP file number has been received. He recommended the plan be modified to show a lower height for the new wall or conditions to that effect. If approved, he recommended the new wall match the existing height, installation to be done from the upland side, conditions for dewatering, & for proper disposal of the existing timbers.

Mr. Pichette also noted that the project is not actually on the property owner's property. It's on Association property which they sought approval to work on this property for this project.

Mr. Bussen addressed the comments made by DMF. He noted an excavator will be used w/ an attachment & the wall will be taken down in sections. He spoke re: the grade & asked permission to even out the grade in places as necessary. He spoke re: re-seeding after the project is completed.

Mr. Lassen doesn't want to see the wall raised or extended. Ms. Heard stated 6-12 inches of raised wall is quite a difference. She understands the wall needs replacing, but a more specific height needs to be decided upon. She feels an increase in height of 6-12 inches is too much. Mr. Bussen discussed the difference in grade in certain areas of the wall & the attempt to make a uniform top. Ms. Heard asked where the baseline is for measuring the 6-12 inches; is it from the lowest point or highest point at the base. Mr. Pichette asked what the existing wall height is at its regular height. Mr. Bussen stated it is just around 5 ft. The top is showing at 5.5 w/ the grade behind the wall (5.2 ft. along w/ the cap on top of the wall). Mr. Pichette stated if this is the case, then it is not a significant change & should be fine. Mr. Bussen discussed the material to be used & minor fill will be needed.

Present before the ConCom: Mr. Andry

Mr. Andry thinks fixing the wall is a good thing.

Present before the ConCom: William Curtain

Mr. Curtain is in favor of the new wall & will be a great improvement to the area.

MOTION: Mr. Leggett moved to close the public hearing for Stephen & Dorothy Sands. Ms. Taggart seconded.

VOTE: Unanimous (7-0-0)

MOTION: Mr. Leggett moved to grant an Order of Conditions w/ standard conditions for Stephen & Dorothy Sands. Ms. Heard seconded.

VOTE: Unanimous (7-0-0)

V. CONTINUED PUBLIC HEARINGS

A.RDA – Robert C. Gleason (DONE)

B.NOI – Edward Ryan, c/o JC Engineering, Inc. – SE76-2494 (DONE)

C. NOI – Greg Carey/Clean Energy Collective, c/o G.A.F. Engineering, Inc. – SE76-2489 (DONE)

D. NOI – Buzzards Bay Coalition – SE76-2496 (DONE)

E. NOI – SouthCoast Hospitals Group, Inc. – SE76-2497 (DONE)

VI. NOTE: The meeting went back to item III. Preliminary Business

A. Approve meeting minutes: June 6, 2018

MOTION: Mr. Leggett moved to approve the meeting minutes of June 6, 2018. Ms. Heard seconded.

**VOTE: (6-0-1)
Ms. Slavin abstained**

VII. EXTENSION REQUESTS

VIII. ENFORCEMENT ORDERS

A. David & William Andrade – 0 Depot Street

Ms. Slavin stated the ConCom is still awaiting a pending NOI application for this matter.

IX. CERTIFICATES OF COMPLIANCE

A. Colin McNay – 31 Warren Point Road

Mr. Pichette stated this project was for construction of a pier. It has been completed per the OOC. He recommended issuance of a COC.

MOTION: Mr. Baptiste moved to grant a COC for Colin McNay – 31 Warren Point Road. Ms. Taggart seconded.

VOTE: Unanimous (7-0-0)

B. Geoffrey Morton – 228 Hathaway Street

Present before the ConCom: Geoffrey Morton

Mr. Pichette stated this project was for the construction of a single family home. The plan in the file & the as-built that was submitted does not match up to the site conditions. There is more yard area created behind the house. Mr. Morton is the second owner & claims the modifications were made prior to him buying the property. The previous owner's did not obtain a COC for the project. The work done in the backyard made the project closer to the wetland.

Mr. Morton stated the COC was applied for, but the builders never followed through with it. He can't speak to the clearing because he didn't own it then. He is trying to pick up the pieces of what was done. He is trying to sell the house.

Mr. Pichette stated the ConCom's options are to require restoration work or grant a COC based on what currently exists.

MOTION: Mr. Baptiste moved to grant a COC as the project currently exists for Geoffrey Morton. Ms. Taggart seconded.

Brief discussion ensued re: identifying the correct border for future owners.

Present before the ConCom: Terry Gilfauld

Mr. Gilfauld stated he is the potential buyer of the property. He plans to place a chain link fence along the current tree line. He doesn't know if this can be a marker/border or not.

Mr. Pichette stated if the ConCom grants a COC, the ConCom can place a condition in the COC to designate no further cutting work can be done beyond what has occurred as a continuing condition. The ConCom members concurred.

VOTE: Unanimous (7-0-0)

Brief discussion ensued re: adding language to the COC a timeframe for garnering a COC.

C. Jerome Praino – 79 Edgewater Drive

Mr. Pichette stated the project was for a septic system upgrade. The project has been completed. He recommended an issuance of a COC.

MOTION: Mr. Leggett moved to grant a COC for Jerome Praino – 79 Edgewater Dr. Mr. Baptiste seconded.

VOTE: Unanimous (7-0-0)

D. Gary DuMoulin – 20 Over Jordan Road

Mr. Pichette stated the project was for a septic system. He feels this isn't quite ready for a COC in terms of the re-vegetation of the disturbed area. He would like to hold off on this COC until the next meeting.

X. ANY OTHER BUSINESS/DISCUSSION

A. Discussion: Patricia Kells – Water Wizz

Mr. Pichette stated this is in regards to a violation that occurred at this site where work was done beyond the limit of work line. The ConCom requested a planting plan be presented to re-vegetated the disturbed area.

Present before the ConCom: Carolyn Cooney, Cooney Associates

Ms. Cooney discussed plan submitted to re-vegetate the disturbed area.

Mr. Pichette stated a timeframe should be established to accomplish this project. The ConCom recommended the project be completed by October 15th.

MOTION: Ms. Heard moved the ConCom require the project to be completed by October 15, 2018. Ms. Taggart seconded.

**VOTE: (6-0-1)
Mr. Baptiste abstained**

B. Discussion: Buzzards Bay Coalition – Wickets Island

Present before the ConCom: Sarah Quintal, Buzzards Bay Coalition

Mr. Pichette stated this is a project that the ConCom reviewed & approved previously to allow some improvements that the Buzzards Bay Coalition wanted to do. Proposed work included trail improvements, improvement of upper part of island for a recreation area, improvements to the stairway access, & improvements to the existing stone wharf & installation of a pier & float. Part of the project called for fill material to be brought onto the island. The original proposal approved called for the material to be brought in from a path on the other side of the island from a pier. A barge would off load the fill to the path. The Coalition has been receiving negative feedback from contractors not wanting to do this, so a modification is proposed to get the fill material on top of the island & is different from what was originally proposed.

Ms. Quintal described & discussed in depth the new plan she distributed to the ConCom which includes a crane & skid steer. She discussed some other small modifications, such as footings for the staircase & resurfacing of the stone pier w/ decking. Discussion ensued re: the stockpile area which would be right up to the top of the coastal bank.

Mr. Pichette suggested the ConCom consider an amended NOI w/ a modified plan. Discussion ensued re: how the ConCom wants to proceed. Mr. Pichette stated the OOC needs to accurately depict what the overall project is, which is now being changed.

A majority of ConCom members concurred to place a legal ad for an Amended OOC & requested new plans be submitted prior to the ConCom meeting on September 19, 2018. Mr. Baptiste stated, for the record, he is not in favor of placing an ad before the required documents are submitted.

MOTION: Mr. Smith moved to place an ad for Buzzards Bay Coalition for an Amended OOC prior to the submittal of any plan documentation. Mr. Lassen seconded.

**VOTE: (6-1-0)
Mr. Baptiste opposed**

C. Discussion: Reappointments

D. Discussion: Conservation Restriction/Stewardship

E. Discussion: Bills

NOTE: Present before the ConCom: Karl Clemmey, 18 Winship

Mr. Clemmey asked how far away do you have to be to be defined as an abutter. He stated there is an issue w/ the Buzzards Bay Coalition not notifying him. Mr. Pichette stated the requirements are to notify anyone w/in 100 ft.

Mr. Clemmey spoke re: ongoing violations of people parking in no activity zones near his property.

XI. ADJOURNMENT

MOTION: Mr. Leggett moved to adjourn the meeting at 9:16 P.M. Mr. Baptiste seconded.

VOTE: Unanimous (7-0-0)

Date signed: _____

Attest: _____
Sandy Slavin, Chair
WAREHAM CONSERVATION COMMISSION

Date copy sent to Town Clerk: _____