



CONSERVATION COMMISSION MEETING MINUTES –March 27, 2023

Present: Crystal Kelly – Chair, Carolyn Nielsen- Vice Chair, Bob Hidell, Bob Mosher, Tom Roby, Nina Villanova and Laurie Freeman, – Commissioners and Loni Fournier- Interim Conservation Officer (ICO)

Absent: none

The remote meeting was held via Zoom with Dial in #929-205-6099, Meeting ID # 899-2944-2951

The meeting was called to order at 7:02 PM.

Chair Kelly stated that the meeting is being held remotely as an alternate means of public access pursuant to Chapter 107 of the Acts of 2022 and all other applicable laws temporarily amending certain provisions of the Open Meeting Law. You are hereby advised that this meeting and all communications during this meeting may be recorded by the Town of Hingham in accordance with the Open Meeting Law. If any participant wishes to record this meeting, please notify the chair at the start of the meeting in accordance with M.G.L. c. 30A, § 20(f) so that the chair may inform all other participants of said recording. No participants expressed a wish to record the meeting.

Approval of Minutes

January 30, 2023 not eligible- Kelly & Roby

Motion: Comm'r Freeman moved to approve the 1/30/23 draft meeting minutes as amended.

Second: Comm'r Hidell

Roll Call: Comm'r Villanova: aye, Comm'r Hidell: aye, Comm'r Mosher: aye, Comm'r Freeman: aye, and Comm'r Nielsen: aye

February 13, 2023 not eligible- Freeman

Motion: Comm'r Mosher moved to approve the 2/13/23 draft meeting minutes as amended.

Second: Comm'r Nielsen

Roll Call: Comm'r Kelly: aye, Comm'r Hidell: aye, Comm'r Villanova: aye, Comm'r Mosher: aye, and Comm'r Nielsen: aye,

March 6, 2023 not eligible – Mosher & Villanova

Motion: Comm'r Nielsen moved to approve the 3/6/23 draft meeting minutes as amended.

Second: Comm'r Freeman

Roll Call: Comm'r Kelly: aye, Comm'r Hidell: aye, Comm'r Roby: aye, Comm'r Nielsen: aye, and Comm'r Freeman

Certificates of Compliance

171 Prospect Street – DEP 034-1235, cont'd to 4/10/23

Applicant: Megan & Wesley Farish

Representative: Gregory Morse, Morse Engineering Co., Inc.

Property owner Wesley Farish was present on the call, gave a brief explanation that their septic needed work and how in the process of filing for that, an old Order of Conditions and lack of a Certificate of Compliance, had been discovered. The ICO explained that the representative on the project had reached out to the office that afternoon and requested a continuance to the Commission's April 10 meeting agenda.

Motion: Comm'r Nielsen moved to continue 171 Prospect Street, MA DEP 034-1235, to April 10, 2023.

Second: Comm'r Villanova

Roll Call: Comm'r Kelly: aye, Comm'r Hidell: aye, Comm'r Mosher: aye, Comm'r Roby: aye, Comm'r Villanova: aye, Comm'r Freeman: aye, and Comm'r Nielsen: aye

Requests for Extension of Order of Conditions

Hingham Harbor – DEP 034-1332

Applicant: Bare Cove Marina & Hingham Harbor Marina

Representative: Mary Kate Schneeweis, Beals + Thomas, Inc.

Meeting Documents & Exhibits: Staff memo & Request for Extension of Order of Conditions

Excerpts from the Staff memo: The Order of Conditions for the Hingham Harbor dredging project, inclusive only of the Town Mooring Field, was issued in January 2019. In August of 2019, the Order was amended to include the Marina Dock Basin, an area occupied by two private marinas: Bare Cove Marina and Hingham Harbor Marina. The Town Mooring Field was dredged in the winter of 2019-2020 and a Partial COC was issued in May 2020. The Order is currently set to expire on April 25, 2023.

A representative of the private marinas provided the following update on the Marina Dock Basin: "In the timeframe since issuance of the amended OOC, the marina owners have diligently pursued a permit from the Army Corps of Engineers but have encountered unavoidable procedural delays as well as a seasonal Time-of-Year restriction in effect for winter flounder. The marina owners are in the process of finalizing a contract for the dredging to be completed during the 2023/2024 dredge season. Accordingly, the marina owners respectfully request a one-year extension of the Order...." The marina owners are also requesting a waiver of the By-law fee.

The Harbormaster, to whom the original and amended Orders were issued to, as the project manager and Town representative, submitted a letter of support for this request. Town Counsel has advised staff that the Town Administrator needs to authorize this request, as it pertains to a Town permit. Additionally, Town Counsel requested clarification on the marina property owners and managers, and whether each party was represented as part of this request. As of 3/24/23, these items were actively being addressed.

If the additional items noted above are submitted in advance of the meeting, staff recommends issuing a one-year extension to the Hingham Harbor dredging project (DEP 034-1332). The new expiration date for the Order will be April 25, 2024.

Representative Mary Kate Schneeweis from Beals + Thomas, Inc, was present on the call representing the private marina owners who were also on the call. She gave a brief overview of the permitting; the Town received a dredging permit in 2019 for a 2.1 acre area; this was amended later in 2019 to allow the private marina owners to dredge to the same elevation. Since that time the marinas have pursued their permitting with the Army Corps of Engineers and due to time of year restrictions were not able to complete the work. They are requesting a one year extension to April 2024, with the work to be completed this upcoming fall or winter.

The ICO commented that there were no substantive outstanding items for this request. The Commission all felt comfortable issuing the extension.

Chair Kelly invited any members of the public to comment. No members of the public wished to speak.

Motion: Comm'r Freeman moved to issue a one-year Extension Permit for the Order of Conditions issued to the Town of Hingham for the Hingham Harbor dredging project (DEP 034-1332) and waive the By-law fee.

Second: Comm'r Mosher

Roll Call: Comm'r Kelly: aye, Comm'r Hidell: aye, Comm'r Mosher: aye, Comm'r Roby: aye, Comm'r Villanova: aye, Comm'r Freeman: aye, and Comm'r Nielsen: aye

5 Bare Cove Lane – DEP 034-1329

Applicant: Peter and Lois Scanlon

Representative: Jeffrey Couture, SITEC Engineering & Environmental Consultants, Inc.

Meeting Documents & Exhibits: Staff memo & Request for Extension of Order of Conditions

Excerpts from the Staff memo: The Order of Conditions for 5 Bare Cove Lane was issued in January 2019 for the construction of a pile-supported dock. The Order benefits from an automatic extension as a result of the pandemic, so it is set to expire on April 25, 2023. The representative is requesting a three-year extension.

The representative provided the following construction update: "Dock construction is nearly complete, however, a few components of work still remain. This work includes the restoration and replication of all disturbed salt marsh. The contractor intends to resume construction as soon as the weather allows."

Representative Jeffrey Couture, from SITEC Engineering & Environmental Consultants, Inc, was present on the call, described the project, and stated that the Order of Conditions was issued in January of 2019 and construction

began in Spring 2020. He explained that there had been construction and financial issues with the contractor, and after 2 years of litigation, an agreement was reached for several repairs to the dock based on the original construction. Repairs of the dock began in 2022. Most of the work was done, however work was dependent on weather and tidal conditions and the contractor ran out of time; the contractor will resume work when the weather allows in Spring but the order expires in April 2023. He added that he doesn't think they will need three years, but just in case, have asked for it.

Neither the ICO nor the Commission had comments or questions.

Chair Kelly invited any members of the public to comment. No members of the public wished to speak.

Motion: Comm'r Nielsen moved to issue a three-year Extension Permit for the Order of Conditions issued to 5 Bare Cove Lane (DEP 034-1329).

Second: Comm'r Freeman

Roll Call: Comm'r Kelly: aye, Comm'r Hidell: aye, Comm'r Mosher: aye, Comm'r Roby: aye, Comm'r Villanova: aye, Comm'r Freeman: aye, and Comm'r Nielsen: aye

Chair Kelly read the Notice of Intent statement.

Notices of Intent

166 Downer Avenue – DEP 034-1462, **Cont'd to 4/10/23**

Applicant: Robert & Lisa Delmonico

Representative: Paul Seaberg, Grady Consulting, LLC

Proposed: Construction of a single family home

Prior to posting of the agenda, the applicant's representative had requested to continue to the Commission's April 10, 2023 meeting. Chair Kelly requested if there were any members of the public on the meeting for 166 Downer Avenue, for them to hold any comments until April 10, 2023.

Motion: Comm'r Hidell moved to continue the hearing for 166 Downer Avenue to April 10, 2023.

Second: Comm'r Mosher

Roll Call: Comm'r Kelly: aye, Comm'r Hidell: aye, Comm'r Mosher: aye, Comm'r Roby: aye, Comm'r Villanova: aye, Comm'r Freeman: aye, and Comm'r Nielsen: aye

6 Village Lane – DEP 034-1456, cont'd from 3/6/23

Applicant: Sachindra & Melanie Nimboorkar

Representative: Joseph Hannon, Atlantic Coast Engineering, LLC

Proposed: Deck and hardscaping

Meeting Documents & Exhibits: Staff memo, ECR Revised Mitigation Plan – Riverfront Area Redevelopment-Memo(3/21/23), Revised Site Plan(3/23/23), Revised Mitigation Plan (3/21/23), and a Degraded Riverfront Area Schematic (3/21/23)

Excerpts from the Staff memo: **Scope of work:** 1) After-the-fact – removal of an above ground swimming pool and impervious patio, expansion of an impervious driveway, and construction of a retaining wall, pervious patio, and fire pit; 2) Proposed – an impervious deck, pervious patio, and mitigation plantings

The proposed improvements were not discussed in much detail at the last hearing. The applicants would like to expand the elevated rear deck into an "L" shape. The deck would be "watertight" to protect a proposed pervious patio area, where crushed stone currently exists, and a single parking space, where crushed stone and asphalt currently exist. The representative previously calculated the impervious and pervious areas associated with the recent improvements and proposed 890sqft of mitigation in accordance with the Commission's Buffer Zone Mitigation Policy. The mitigation plan has since been updated to include 2,620sqft of plantings, largely due to the Riverfront Area standards, and is asking the Commission to count the new total towards the required Buffer Zone mitigation. If the Commission were to consider both forms of mitigation separately, at total of 3,510sqft of plantings would be required.

Lastly, one administrative item remains unresolved. A previous Order for this property, dating back to 1985 and permitting the above-ground pool, which has since been removed, remains open and unrecorded. In an effort to keep the office files organized and reduced in number, staff typically asks that applicants close out old Orders, recording them if necessary, and request a Certificate of Compliance, especially when the proposed work overlaps with previously

approved work. This matter has not be raised on this project to date, given the number of filings (it was initially submitted as a Request for Determination of Applicability, but then withdrawn) and complicated scope of work.

Cameron Larson from Environmental Consulting and Restoration, was present on the call and summarized where they had left off at the last meeting, the unpermitted work that had been done, and what is proposed. He explained that ECR had revised their mitigation plan to account for the unpermitted work done and the proposed work. He explained that they had originally proposed 890sf of mitigation, however discussion of whether the work constituted redevelopment or new development in the riverfront area resulted in the conclusion that it was redevelopment. He stated that in order to account for redevelopment within the riverfront, the mitigation had tripled in area, now totaling 2620sf of mitigation. He shared the mitigation plan to the screen and pointed out the area, in the same general location, and how it had been expanded. It includes native shrubs and native saplings, about 13 trees, and had provided calculations to staff. Jed Hannon, Atlantic Coast Engineering, LLC, was also present on the call.

The ICO stated that it was a much improved plan and in her discussion with DEP had come to agree that this was not new development. She noted that one point not yet discussed was that one criteria is that the development meet current stormwater standards. She had noted erosion coming off the driveway towards the wetland and saw an opportunity to add a stone trench or French drain and had drafted a condition to address that.

The ICO suggested that the Commission discuss two remaining items. One, she noted that the proposed mitigation had been increased which is a positive for the site; would the Commission be willing to accept this or would it be looking for a larger total based on mitigation planting and riverfront planting, two different items that would total 3510sf. If the Commission is satisfied with what is proposed then they could eliminate draft condition #26.

As a second item for discussion and purely administrative, the ICO described the complicating factors since this project had started with Conservation, and stated that the matter of the old Order of Conditions (OOC) that permitted the pool had not been raised. She noted that the order was never recorded and staff typically encourages the recording and closing out of OOCs, to clear the administrative record, especially when there is an overlap in the projects. The ICO explained that a true attest copy of the OOC could be provided and could be recorded at the registry at the same time as the current Order. Afterwards, the applicant could submit a Request for Certificate of Compliance and waiving of the bylaw fee. Brief discussion followed with the Commission in agreement that the old order should be recorded. C. Larson stated that he didn't feel the recording of the old order would be a problem.

Comm'r Nielsen commented on the mitigation, stating that there are two circumstances that trigger mitigation and she feels the combination of the two should be provided. Extensive discussion followed. C. Larson argued in favor of not combining square footage for mitigation planting and riverfront planting, stating that it is already an expansive mitigation area for a single family lot, turf will be ripped up, and all activities are being covered by the plan. The ICO requested the schematic plan to be shared to the screen and pointed out the colorcoded areas indicating what existed prior, and what had been added since. Responding to a Commission question about the advantage of additional mitigation on site, the ICO pointed out the lack of understory vegetation as one gets closer to the river, noting that the area is very much a single story. She stated that additional square foot mitigation planting, not wider, but longer, would provide more restoration of area that's been cleared out. Further discussion followed about the conditions on site. Commissioners Nielsen and Freeman were in favor of requesting the higher square foot number, for habitat benefit and promoting the resource area's continued health. Commissioners Mosher and Villanova felt there were merits to both sides of the argument. Comm'r Hidell suggested a compromise, noting that the Commission would just want some vegetation that will stabilize the northern area, and questioned if that were too onerous, expensive, or would somehow disadvantage the property owners. C.Larson remained in favor of the current proposed plan, noting it is an extensive number of plants and a lot of labor involved. The Commission discussed further and the ICO shared photos of the areas to the screen. The ICO suggested that the mitigation area square footage could expand to the 3510sf, utilizing the current proposed number of trees and shrubs, the expanded areas could be filled in with more seed mix, which would have the benefit of being economical as well. The Commission all agreed and C.Larson agreed that it was a reasonable compromise and felt the applicant would be in agreement in order to get this wrapped up. Chair Kelly noted that the draft condition #26 is appropriate.

The Commission added a condition #45 in regards to the recording of the old Order of Conditions. Chair Kelly invited any members of the public to comment. No members of the public wished to speak.

Motion: Comm'r Nielsen moved to issue an Order of Conditions for the proposed work at 6 Village Lane (DEP 034-1456), as shown on the submitted plan(s), and adopt the findings of fact a through c, and special conditions 21 through 45 of the staff report as discussed at the meeting.

(Conditions below reflect the discussion at the meeting and addition of condition #45)

Findings:

- a. The project meets the submittal requirements for issuance of an Order of Conditions under the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations.
- b. The work described is within an area subject to protection under the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations, and will not alter or adversely affect the area subject to protection under the Act or the Regulations.
- c. For the purpose of this filing, the Commission makes no finding as to the exact boundaries of wetland resource areas.

Special Conditions:

21. The applicant shall notify the Commission, in writing, of the name, address, and telephone number(s) of the project supervisor or contractor who shall be responsible for ensuring compliance with this Order and by telephone or writing, of the commencement of work on the site, at least 48 hours in advance of said work.
22. This Order shall be included in all construction contracts and subcontracts dealing with the work and shall supersede all other contract requirements.
23. Prior to the start of any excavation or construction, there shall be a pre-construction conference on the site between the project supervisor or contractor responsible for the work and an agent of the Commission to ensure that the requirements of this Order are understood.
24. Prior to the start of any excavation or construction, erosion and sediment controls shall be installed and inspected by an agent of the Commission; straw wattles and/or hay bales shall not be used as a form of erosion and sediment control.
25. Erosion and sediment controls shall remain in place until all disturbed or exposed areas have been stabilized with a final vegetative cover or the Commission has authorized their removal.
26. Prior to the start of any excavation or construction, a revised mitigation planting plan shall be submitted to the Commission for review and approval. The planting plan shall include a minimum of 3,510 square feet of plantings, including a mix of trees, shrubs and herbaceous species, in accordance with the Commission's Buffer Zone Mitigation Policy (adopted 9/27/21), Tree Removal and Replacement Policy (adopted 11/4/19), and 310 CMR 10.58(5)(g). Locations closest to the resource area(s) shall be prioritized for planting. All mitigation plantings shall be native species; no cultivars, non-native species, or invasive species shall be allowed.
27. The project supervisor or contractor responsible for the work shall have a copy of this Order available on the site at all times.
28. During all phases of construction, all disturbed or exposed areas shall be brought to a finished grade and either a) loamed and seeded for permanent stabilization, or b) stabilized in another way approved by the Commission.
29. All excavated material shall be properly disposed of at an off-site location.
30. Any on site dumpsters shall not be located within 50 feet of any resource area.
31. Any debris, which falls into any resource area, shall be removed immediately by hand and properly disposed of at an off-site location.
32. There shall be no stockpiling of soil or other materials within 50 feet of any resource area. All stockpiles that are not used for more than five days shall be covered and surrounded by erosion and sediment controls; straw wattles and/or hay bales shall not be used as a form of erosion and sediment control.
33. Issuance of these conditions does not in any way imply or certify that the site or downstream areas will not be subject to flooding, storm damage, or any other form of damage due to wetness.
34. Any dewatering activities on the project in which water will be released into any resource area or storm drain shall make use of a stilling pond or similar device to remove sediment before the water is released. Prior to construction, plans for the stilling pond or similar device shall be submitted to the Commission for review and approval.
35. No vehicle or other machinery refueling, lubrication, or maintenance, including concrete washout, or storage of fuel or maintenance chemicals shall take place within 50 feet of any resource area.
36. Runoff from the approved "watertight" deck shall be directed to lawn or other permeable areas and not to paved surfaces, and downspouts, if installed, shall first be directed to splash blocks or crushed stone for scour protection.

37. Driveway runoff shall be infiltrated on site, using either stone infiltration trenches, trench drains, or an alternative method approved in advance by the Commission.
38. The approved patio shall be constructed to be permeable, with permeable joints and an appropriate permeable subbase. The project supervisor or contractor responsible for the work shall submit documentation to the Commission confirming that the patio has been installed to be permeable in accordance with the final approved plan(s) and manufacturer specifications.
39. The mitigation area plantings shall be installed, and seeding completed, in accordance with the final approved Proposed Mitigation Plan.
40. Before executing any change from the plan(s) of record, the applicant must have the Commission's written approval. Any errors found in the plans or information submitted by the applicant shall be considered as changes. Approval from other Town Agents or Inspectors does not relieve the applicant from obtaining approval from the Commission.
41. The mitigation planting area shall be maintained with native plantings, or be allowed to naturally revegetate with native species following planting and remain as naturally vegetated, and shall not be mown or otherwise maintained, in accordance with 310 CMR 10.58(5)(g). This condition shall apply in **perpetuity** and shall not expire with the issuance of a Certificate of Compliance.
42. Prior to the issuance of a Certificate of Compliance, the mitigation area plantings shall survive at least two full growing seasons with a minimum of a 100% survival rate, in accordance with 310 CMR 10.58(5)(g). If a 100% survival rate is not achieved, replacement plantings of the same species shall be made by the applicant.
43. The applicant shall apply for a Certificate of Compliance as soon as all conditions of this Order have been fulfilled and prior to the expiration of this Order. If all conditions cannot be fulfilled prior to the expiration of this Order, the applicant shall contact the Commission in writing to apply for an extension at least thirty days prior to the expiration date.
44. The applicant shall submit an "as built" plan to the Commission as part of the Request for Certificate of Compliance. The plan shall be signed by the professional engineer of record, who shall certify that the work has been done in accordance with the final approved plan(s) and this Order.
45. The applicant shall record the Order of Conditions, MA DEP 034-195.

Second: Comm'r Mosher

Roll Call: Comm'r Kelly: aye, Comm'r Hidell: aye, Comm'r Nielsen: aye, Comm'r Hidell: aye, Comm'r Nielsen: aye, Comm'r Villanova: aye, and Comm'r Roby: aye

Other Business:

a. Request to include Triphammer Pond Conservation Area in the "MammothMarch" event

Michael Mitreuter, organizer for the 'MammothMarch' event, was present on the call and described that since 2021 they've organized nationwide hiking series, usually 1-20 events per year and the hikes are 20-30 miles long. They've organized one for June 10th at Wompatuck State Park and on a site visit, park staff had suggested to incorporate the Triphammer loop. They expect about 1000 people to sign up, 800 to show up and about 700 will finish. Responding to Commission questions, M.Mitreuter stated that littering has not been an issue; people who sign up for a challenge like that are environmentally friendly, it's not a race, and the organizers have sweepers who come right after the slowest hikers, picking up all trash, not just what might have been dropped by a hiker, and removing mileage markers and signage. Responding to a question, M. Mitreuter stated that they have their own liability insurance. The ICO shared photos of trail to the screen. The Commission was amenable to the proposal, discussed the existing condition of the trail, and stated they would be in support subject to the approval of the Town.

b. Renewal of Agricultural License Agreements 2023-2026

The ICO noted that J.Hornstra was not present on the call, but explained that this was the 3rd or 4th renewal of the Agricultural License Agreements in a row. J. Hornstra is still interested to use the fields and also filled out the proper paperwork for the prior year. Responding to a Commission question, the ICO stated that J.Hornstra is planning to grow alfalfa and hay. The Commission was in agreement to renew the licenses.

Motion: Comm'r Mosher moved to approve the renewal of the Agricultural License Agreements for 2023-2026

Second: Comm'r Nielsen

Roll Call: Comm’r Kelly: aye, Comm’r Hidell: aye, Comm’r Mosher: aye, Comm’r Roby: aye, Comm’r Villanova: aye, Comm’r Freeman: aye, and Comm’r Nielsen: aye

c. Preliminary discussion of amending Section 23.4 of the HWR

Chair Kelly noted for the record that there were no members of the public remaining on the call. She pointed out that the ICO had provided the Commission with a lot of information ahead of the meeting and this would be the starting point of a big discussion on Section 23.4.

The Commission and ICO discussed;

- publicity for public discussion
- boat lifts and need for research
- clarification of sections
- language consistency
- DMF release of recommendations for best practices
- process of changing regulations
- research the experiences of towns with boatlift prohibitions and those that don’t prohibit
- response email from Marshfield and their reasons for prohibiting boat lifts including electric current, aesthetics, leaking of fluids, prop wash, etc...
- length of piers; Hingham’s limit is 150ft.
- suitability of Hingham’s waters; tide, depth, etc..

Adjourn

Motion: Comm’r Villanova moved to adjourn the meeting at 8:57 pm.

Second: Comm’r Hidell

Roll Call: Comm’r Kelly: aye, Comm’r Hidell: aye, Comm’r Mosher: aye, Comm’r Villanova: aye, Comm’r Freeman: aye, and Comm’r Nielsen: aye

Submitted, _____
Sylvia Schuler, Administrative Assistant

Approved on April 10, 2023

This meeting was recorded. To obtain a copy of the recording please contact the Conservation office.