



CONSERVATION COMMISSION MEETING MINUTES –June 27, 2022

Present: Crystal Kelly – Chair, Carolyn Nielsen -Vice Chair, Bob Hidell, Tom Roby, and Bob Mosher - Commissioners, Emily Sullivan-Conservation Officer

Absent: Nina Villanova

The remote meeting was held via Zoom with Dial in #929-205-6099, Meeting ID # 851-9068-7373

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

Chair Kelly stated that the meeting was being held remotely as an alternate means of public access pursuant to Chapter 20 of the Acts of 2021 temporarily amending certain provisions of the Open Meeting Law. She advised that the meeting and all communications during the meeting may be recorded by the Town of Hingham in accordance with the Open Meeting Law. She stated that if any participant wished to record the meeting, to notify her in accordance with M.G.L. c. 30A, § 20(f) so that she could inform all other participants of the recording. No participants expressed a wish to record the meeting.

Approval of Minutes

3/28/22

Motion: Comm'r Hidell moved to approve the meeting minutes for the 3/28/22 meeting.

Second: Comm'r Nielsen

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

5/2/22

Motion: Comm'r Mosher moved to approve the meeting minutes for the 5/2/22 meeting.

Second: Comm'r Hidell

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

5/23/22

Motion: Comm'r Mosher moved to approve the meeting minutes for the 5/2/22 meeting.

Second: Comm'r Hidell

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

6/6/22

Draft meeting minutes were not distributed. No vote was held on the 6/6/22 meeting minutes.

Certificates of Compliance

299 Rockland Street – DEP 034-1373

Applicant: Stephen & Jessica Govoni

Meeting Documents & Exhibits: staff memo

Ahead of the meeting, the applicant had emailed a request to continue to the next meeting.

Motion: Comm'r Nielsen moved to continue the Request for Certificate of Compliance for 299 Rockland St (DEP File #034-1373) to July 11, 2022.

Second: Comm'r Mosher

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

10 Taurasi Road – DEP 034-1407

Applicant: Adam Fleury, APF Development Group, LLC

Meeting Documents & Exhibits: staff memo, Request for COC package and As-Built site plan

Excerpts from the staff memo: An Order of Conditions was issued in April 2021 for demolition and reconstruction of a single-family house. The as-built plan largely adheres to the approved plan. Staff made site visits on 4/27/22 and 6/14/22. The site is stable and no issues were noted. At the first site visit, shrubs had been planted in the mitigation planting areas and seeding completed, but there was no herbaceous growth yet. At the final site visit, most of the mitigation areas had filled in with new plants. The Order has a plant survivability condition that plantings survive at least two growing seasons with a minimum of 75% survival rate.

No one was present on the call representing the project, but the Commission felt comfortable issuing a partial Certificate of Compliance.

Motion: Comm’r Mosher moved to issue a partial Certificate of Compliance for 10 Taurasi Road (DEP 034-1407) for all work with the exception of plant survivability, and all conditions still ongoing.

Second: Comm’r Nielsen

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

Requests for Determination of Applicability

74 Clubhouse Drive, cont’d from 6/6/22

Applicant: Catherine Varitek

Proposed: Replacement & extension of existing deck

Meeting Documents & Exhibits: Staff memo from 6/6.

Note from staff: This item was not discussed at the last meeting as the applicant or a representative were not present. The staff memo is attached, but has not changed as no new information has been submitted. We still need confirmation from the applicant/owner authorizing the revisions that are described in the memo, as the revisions were just relayed by the contractor. If this is received, the Commission could condition submittal of the actual revised plans as in the memo, if comfortable with this.

Ahead of the meeting, the applicant had emailed a request to continue to the next meeting.

Motion: Comm’r Mosher moved to continue the Request for Determination of Applicability for 74 Clubhouse Drive to July 11, 2022.

Second: Comm’r Hidell

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

Otis Street at Governor Long Road

Applicant: Massachusetts Bay Transportation Authority

Representative: Samantha Hogan, WSP

Proposed: Sidewalk improvements

Meeting Documents & Exhibits:

Excerpts from the staff memo: no staff memo

Chair Kelly briefly confirmed that the Request for Determination of Applicability had not been properly noticed and was therefore continued to July 11th.

Motion: Comm’r Mosher moved to continue the Request for Determination of Applicability for Otis Street to July 11, 2022.

Second: Comm’r Nielsen

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

Abbreviated Notice of Resource Area Delineation

210 East Street

Applicant: Michael Cushing

Representative: Colin McSweeney, McSweeney Associates, Inc

Meeting Documents & Exhibits: ANRAD application and ANRAD Plan 210 East Street dated 6/9/22

Note from staff: There is no staff memo as additional information is needed. Staff did review the wetland and inland bank flags as is in agreement with them, however the representative needs to provide additional written documentation

on the methods of delineation and field observations. In addition, the plan was not stamped and signed by a professional land surveyor (PLS) and staff recommends that flags be formally surveyed before the delineation is confirmed by the Commission.

Ahead of the meeting, the applicant had emailed a request to continue to the next meeting.

Motion: Comm'r Nielsen moved to continue the matter of 210 East Street to July 11, 2022.

Second: Comm'r Mosher

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

Chair Kelly read the Public Hearing Notice of Intent.

4 Puritan Road – DEP 034-1442, cont'd from 6/6/22

Applicant: Ryan Novak

Representative: Kenneth Thomson

Proposed: Construction of an addition

Meeting Documents & Exhibits: Request for Determination of Applicability

Excerpts from the staff memo: no staff memo was prepared as no new materials were submitted

Ahead of the meeting, the applicant's representative had requested to continue to the next meeting. Chair Kelly requested that any members of the public who were present hold any comments to the next meeting.

Motion: Comm'r Mosher moved to continue the hearing for 4 Puritan Road to the July 11, 2022 meeting.

Second: Comm'r Hidell

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

14 Seal Cove Road – DEP 034-1445, cont'd from 6/6/22

Applicant: Leonard Monfredo

Representative: Joseph Hannon, Atlantic Coast Engineering

Proposed: Covered boat lift

Meeting Documents & Exhibits: Staff memo, ECR Performance Standards Memo, and Plan 'Proposed Boat Lift – 14 Seal Cove Road revised 2/16/22

Excerpts from the staff memo: The purpose of this Notice of Intent is to evaluate the potential impacts of constructing a new boat lift with a 16' x 18' roof, accessory to an existing pier, ramp, and float at a single-family residence. The boat would be installed on four new 10-inch diameter piles.

Jed Hannon from Atlantic Coast Engineering was present on the call along with Brad Holmes of Environmental Consulting & Restoration and the applicant's attorney Walter Sullivan. Chair Kelly noted that this hearing was continued from the 6/6 conservation meeting when the Commission heard the initial presentation. She invited J. Hannon to review the newly submitted materials.

J. Hannon described the boat lift and covered roof; the roof is to protect the boat and mechanical systems associated with the boat lift; it is pile supported (10" piles) and the pile spacing is 12.5' by 14' with a 16' by 18' roof. He added that the proposal had been through the Zoning Board of Appeals (ZBA) and received a permit, and that the Harbormaster had reviewed it and hadn't stated any concerns for navigability or any other negative aspects of the proposal. J. Hannon pointed out that they are not proposing to go out any further into the navigable waters and that the boat lift would be adjacent to the existing seasonal float. He stated that Mean Low Water (MLW) had been established using their theodolite survey system at a zero zero mean low water. He added that they are aware that, as a water dependent structure, this would require a Chapter 91 License.

W. Sullivan stated that he had represented the applicant for the ZBA. They had solicited an opinion from the Harbormaster who indicated support for the project and the benefits to the aquastructure; by taking the boat out of the water sun gets to the area.

B. Holmes stated that he'd reviewed the application and submitted a resource area analysis going through each of the performance standards for the Tidal Flat, Coastal Beach and Land Containing Shellfish. He commented that this project is different from most dock related projects because usually concern is related to the height of the pier or float and for this project, all is lifted up and away from the resource areas, leaving only the concern of the pilings. He stated that overall it's a benefit to lift the boat and keeping it out of the water, reducing shading impacts and is a better system

than adding floats or piers or structures. He suggested that these would become more common in the future as they are more environmentally friendly.

The CO commented that in staff's review of the project, rather than recommendations, they had identified a few points for the Commission's consideration. She pointed out that nowhere in the regulations does the phrase 'boat lift' come up. Staff felt the Commission could use the performance standards for the pier and dock regulations and Town Counsel also recommended this. The CO stated that the performance standards for the pier and dock regulations include size limitation, and the Commission could compare the size of either or both the lift and the roof, to size constraints in the regulations. Another performance standard relates to plank spacing and light penetration and the Commission can consider the fact that the roof is unlikely to have either. The CO stated that the Division of Marine Fisheries and MA DEP had little to no comments on the application and the Harbormaster is generally supportive of the project just in terms of how it changes boat storage. She noted that floats in the regulation are limited to one for each residential dock or pier and the Commission can consider how a boat lift fits into that provision. She noted that the term 'cumulative adverse impacts' appears multiple times in the dock regulations and the Commission could consider whether this would contribute to cumulative effects.

Chair Kelly asked J. Hannon if they had a manufacturer's brochure for the boat lift and if he could provide more details. J. Hannon replied that they do have a cut sheet he can provide. He explained the boat lift does not use hydraulic fluid but instead has an electric winch for each side of the lift and is operated via remote control with a minimally invasive design. Responding to a Commission question, J. Hannon stated that the boat will be kept approximately 5 ft above mean high water, coinciding with the FEMA flood elevation for that area. He added that system had been designed to withstand a CAT 5 hurricane.

Chair Kelly stated that one concern she has is that boat lifts are not addressed in the regulations and questioned if the Commission has the authority to vote on this, where it's not specifically allowed. She added that there are performance standards for other aspects of docks and piers and regulations related to floats, but the legislative body hasn't contemplated boat lifts yet. She acknowledged that it sounds like they are environmentally friendly and the Harbormaster seems to be behind it, but she's unsure whether the Commission has the authority to allow it.

Vice Chair Nielsen commented on that, stating that in her earlier service on the Commission, she had led the effort to draft the current regulations the Commission operates under, including the section on docks and piers. She stated that when they wrote the regulations, boat lifts but were considered, but were deemed inappropriate for Hingham Harbor at that time, and that is why the regulations mention the types of structures that the Commission would specifically be willing to permit, being docks, piers, walkway and float. The intention being that those would be the only structures that would be permissible under the regulations. She stated that she doesn't believe the Commission can permit a boat lift under the regulations simply because the regulations don't include that. She pointed out that if permitted for one, there would be others coming forward, so, if considering boat lifts, she suggested it would be more reasonable to take a look at the regulations, consider amending them, and have regulations and performance standards specific to boat lifts, rather than just proceed now. She emphasized that had they wanted to permit boat lifts, they would have studied and included them in regulations. Vice Chair Nielsen spoke of the structure itself noting that the Commission has a protective interest in the Hingham Wetlands Regulations that includes aesthetics and feels there would be a lot of discussion about aesthetics and the impacts of a boat lift on the harbor. On navigation, Vice Chair Nielsen commented that she participates in watersports in Hingham and pointed out that Seal Cove is a narrow water way and a boat lift would have an impact on the available water sheet. Vice Chair Nielsen concluded by saying that if the Commission were to approve this, then it would be setting a precedent on two aspects; one, on if the Commission wants boat lifts and two, how faithful the Commission is to their regulations. Chair Kelly thanked Vice Chair Nielsen for her comments and past experience with the regulations.

Comm'r Hidell commented that proposed are four pilings that support the roof structure and roof. He stated that his understanding of the wetlands and coastal side of the regulations is that no new structures are to be built in this zone. He stated that this sounds a lot like a structure, essentially a garage for a boat, independent of the pier.

Comm'r Mosher commented that the present dock does not have the MA DEP # posted on it and J. Hannon confirmed that there is a DEP # for the dock but that it is not posted; the homeowner purchased the home 2 years ago and it would be taken care of. Comm'r Mosher asked for confirmation that the Harbormaster had had no problem with the roof, which he would think would shade a big area; the CO confirmed that the Harbormaster had no comments beyond that the applicant would have to work with him for shellfish mitigation. Comm'r Mosher commented that it is a

big roof and stated he also shared the concern that a boat lift is not allowed in the regulations. Comm'r Roby commented that he seconded the concerns that other commissioners had already expressed.

Chair Kelly summarized that the Commission feels it is unclear if what is proposed can be permitted with the way the regulations are currently drafted. Responding to a Commission question about any further anticipated information, the CO stated that the representative had provided the memo addressing their interpretation of Performance Standards and how this project complies, but added that the Commission had brought up more concerns and questions that staff can do research on and consult with Town Counsel.

Responding to a Commission question, J. Hannon confirmed that the structure is not connected to the pier. J. Hannon stated that prior to the applications to both ZBA and Hingham Conservation Commission, they'd emailed the Conservation Commission, specifically asking if there was any language in the current by-law that precluded boat lifts, and was told no, however, they would need to seek a special permit from the ZBA. He stated that they will go through the by-law, verify what they were told that boat lifts are not precluded, and go through the language about structures.

W. Sullivan stated that he thought it made sense for the Commission, to get opinion of town counsel, at the expense of the applicant. As he understands it, the language is not exclusive on structure. He heard what Vice Chair Nielsen stated, but added that in fairness to the applicant, one looks at the regulations and interprets them. He does believe it is permissible by the Commission and perhaps Town Counsel, by written opinion, could advise the Commission on that issue. He added that they'd put in a lot of work and feels they started in the right order going to the ZBA. He stated that he would provide the Commission with the ZBA decision so they could see the analysis behind it and he also noted that the Harbormaster opined that the boat lift was safer for navigable purposes because the boat would be out of the water and out of the way of craft. He added they would be happy to address all that in more detail at the Commission's next meeting.

Chair Kelly commented that all boards have separate spheres and separate jurisdictions and separate regulations that they apply and interpret. She welcomed more information for the Commission to review. Vice Chair Nielsen stated that unequivocally, when the regulations were written, it was the intention of the drafters and of the Commission seated at the time that approved the regulations, was that the regulations permit only the structures that are specifically mentioned; docks, piers, walkway, and a float; it was not intended to be a minimum. She added that the emphasis was that these were only the structures the Commission 'may' permit.

W. Sullivan suggested that the Town's Counsel would be able to weigh in on the regulations.

Chair Kelly invited any members of the public to comment.

DJ MacKinnon, of 177 HMS Halstead Drive at the Shipyard, explained that he is a rower in Hingham. He stated that he knows the location in Seal Cove and feels that this is appropriate and better approach to storing a boat in the water area. He added that he's also familiar with the boat lifts because he also rows the Cotuit Osterville system where they have a number of boat lifts. He personally feels that it establishes a location for the boat and one knows exactly where they are; he feels that it makes it safer than when a boat is on a mooring and with the tides that Hingham has, it ends up taking up a larger area of the water sheet. He stated that they are encouraged on the Cape because it's better for the area underneath the boat for shellfish. He recalled when first rowing in Hingham years ago, being surprised that boats were just sitting on the surface at low tide.

Ed McGrath, of 8 Seal Cove Road, and they look out over the subject property. He stated that someone stated earlier, if this is permitted, the town will see a lot more. He explained that currently from their view they see eight piers; if this is permitted, within a few years they'll see eight boat houses; as opposed to boat lifts. He stated that they spend half their time in Florida where boat lifts and boat houses are common. Boat lifts are typically adjacent to a dock and don't involve a roof or a side, they just lift the boat off the water. What is proposed, in Florida terminology, would be a boat house, having a much larger roof area, far exceeding the area of the boat, and more of a negative impact on the surrounding area.

The Chair invited any other members of the public to speak. There was no other member of the public on the call who wished to speak.

All parties agreed to continue the hearing to July 11, 2022. Comm'r Hidell commented that the any discussion regarding environmental benefits of the proposal is academic if it's not permitted in the regulations and stressed that the focus should be on that. Brief discussion followed regarding what further information could be provided by the petitioner as well as acknowledgement that discussion with Town Counsel was needed, regarding what was permissible

in the regulations, the public concerns, and Vice Chair Nielsen's points. The Chair added that in the interim, the manufacturer's details on the boat lift system could be provided, also the ZBA decision, to the extent that is relevant to the Commission's decision, and, if Attorney Sullivan was willing to write a brief memorandum with his interpretation of how the applicant's project fits in with the Commission's bylaws, that information would be welcome. W. Sullivan asked if Town Counsel might also write an opinion. Chair Kelly stated that she couldn't speak to what Town Counsel might be willing to provide; the Chair and CO would discuss with Town Counsel. Comm'r Mosher requested that they ask Town Counsel if this is a new and completely different structure or is it part of the pier. The CO added that she would specifically ask the Harbormaster about any concerns regarding the roof.

Motion: Comm'r Mosher moved to continue the hearing for 14 Seal Cove Road to July 11, 2022.

Second: Comm'r Hidell

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

Other Business:

a. Other Committee Updates

Climate Action Planning Committee - Comm'r Hidell stated that the CAPC committee is working toward getting public opinion on climate issues, for the town to know how to approach what needs to be done on the climate issues. The Committee is seeking info from the public, getting focused and working with a company called Energize.

Tranquility Grove – Comm'r Hidell informed the Commission that Martha Reardon Bewick, author and researcher of the book Tranquility Grove and huge proponent of the Tranquility Grove project has died. He stated that the remainder of the committee will work on the goals; \$14000 had been raised from CPC and once they reach \$20000, they will seek a perimeter survey.

b. Meeting Schedule 2022

The CO briefly summarized the situation regarding holding meetings remotely and how that is supposed to expire July 15th. She noted that there are efforts underway to amend that expiration making remote meetings permanent but there might be a lapse when the Commission will need to meet in person.

Adjourn

Motion: Comm'r Mosher moved to adjourn the meeting at 8:10 pm.

Second: Comm'r Roby

Roll Call: Comm'r Kelly: aye, Comm'r Hidell: aye, Comm'r Nielsen: nay, Comm'r Roby: aye, and Comm'r Mosher: aye
Submitted, _____

Sylvia Schuler, Administrative Assistant

Approved on August 1, 2022

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