

MEMBERS PRESENT – James Kilcoyne (JK) Chair, Bert O'Donnell (BO) Vice Chair, Arthur Lage (AL), Joe Ring (JR), Rick Carberry (PC), Craig Hannafin (CH), Bill Grafton, Conservation Administrator (BG).

MEMBERS NOT PRESENT – None

CALL TO ORDER, INSTRUCTIONS BY CHAIR – JK motions to open the meeting at 6:30 PM. JR second. Approved 6-0-0 by Roll Call Vote: BO-yes, PC-yes, JR-yes, AL yes, CH-yes, JK-yes.

MINUTES

- The minutes of the March 17, April 7, and May 4 meetings were presented for approval. One correction to the April 7 minutes was received by e-mail; no further corrections were made.
- JK motions to approve the minutes of March 17, 2020 as written. BO second. Approved 6-0-0 by Roll Call Vote: BO-yes, PC-yes, JR-yes, AL yes, CH-yes, JK-yes.
- JK motions to accept the minutes of April 7, 2020 as edited. CH second. Approved 6-0-0 by Roll Call Vote: BO-yes, PC-yes, JR-yes, AL yes, CH-yes, JK-yes.
- JK motions to approve the minutes of May 4, 2020 as written. BO second. Approved 6-0-0 by Roll Call Vote: BO-yes, PC-yes, JR-yes, AL yes, CH-yes, JK-yes.

CHAIRMAN'S ADDRESS

- JK thanks the Commissioners for their presence at this meeting, noting that all public hearings had been tolled until the lifting of the State of Emergency. He hopes this meeting will allow the Commission to continue the Town's business and avoid a backlog of issues. Going forward, the Commission will assess the backlog and state of affairs in deciding when to resume the public hearings.
- JK notes for the record that meetings will be held remotely until further notice as per the Governor's Emergency Executive Order of March 12, 2020, suspending certain provisions of the Open Meeting Law. This meeting will take up administrative matters only, and members of the public may only comment if invited by the Chair or hearing officer to do so.

Complaints/Violation Policy

- The Commission briefly discusses the newly drafted complaint/violation policy set forth in the new policies and procedures manual. Under the new policy, complaint logging is managed by the Conservation Administrator and copies of all complaints will be maintained by the Conservation Office, searchable at least by property address and applicant name. Complaints should be submitted in writing but can be anonymous. Conservation Administrator will visit the site within 30 days and try to resolve an issue before initiating formal enforcement. The Administrator can issue a "violation notice" that documents a complaint was acted upon, and can escalate as necessary.
- BG feels the new policy is very well structured, but would like more Commissioner Involvement earlier in complaints that will clearly require escalation. JR suggests that the acronym "ATF", for "after the fact" be spelled out in the document. PC would like to know how many complaints are received per month; BG indicates this varies, but probably averages 2-3 a month; there tend to be more in the summer, when the town population is larger.

- AL feels that serious violations will need to quickly be escalated to formal action; JK agrees and states it is within the discretion of the Conservation Administrator to jump immediately to formal action as necessary. BG would also like Commissioners to be able to act in the same manner on serious violations in the event that the Conservation Administrator is not available; JK will write this into the policy; JR suggests using the term “administrator or designee”.
- With respect to the Commissioner involvement early on for serious violations, PC comments he has no issue with doing so but notes his own schedule is limited, and this task may need to be shared between Commissioners. JK feels a Level 1 violation can be handled by the Administrator alone; Level 2 should also immediately involve the Chair and one other Commissioner; Level 3 should immediately involve the Chair and Vice Chair.
- JK notes that these proposed policies are guidelines and can be changed or updated with a simple majority vote of the Commission. Administrative Clerk Liz Anoja is working to assemble the policies and procedures manual, distribute it to all Commissioners, and post it on the website.
- JK moves to accept the complaints policy as edited. BO second. Approved 6-0-0 by Roll Call Vote: BO-yes, PC-yes, JR-yes, AL yes, CH-yes, JK-yes.

BUSINESS

B1 15 Creek/Malone/SE42-2699 Amended NOI vs DeMinimus Deviation

- The Commission discussed various issues at the property including the addition of fill to the floodplain and the mowing of salt marsh on Town owned Conservation land. With respect to the latter, BG states that homeowner has stopped mowing the salt marsh and understands he can only mow his immediate lawn area. BG asks property owners, who are present on the call, to contact the Conservation Office if they wish to make any additional changes to the property.
- JK motions to accept the DeMinims Deviation under the As-Built Plan as part of the Request for COC for SE42-2699. AL second. Approved 6-0-0 by Roll Call Vote: BO-yes, PC-yes, JR-yes, AL yes, CH-yes, JK-yes.

B2 482 Holly Road (Lot 1) (Single Family Home & Septic)/ 20-04 Ridder/ RDA Withdrawal

- BG states that alterations to the above-referenced project have moved all work outside the Commission’s jurisdictional boundaries, so there is no longer a need for conservation permitting. Terry McGovern, Stenbeck & Taylor, has submitted a withdrawal letter on behalf of applicants, dated April 22.
- BG notes that the applicant will post (7) seven conservation markers along the 50-foot setback to the isolated vegetated wetlands as per the final revised site plan dated April 14, 2020 prepared by Stenbeck and Taylor signed and stamped by Terry McGovern, PLS and Gustavo Rapaso, RPE.
- JK motions to accept the withdrawal letter as submitted by Terry McGovern, PLS, representing homeowner, and authorize BG to distribute the approval letter. PC second. Approved 6-0-0 by Roll Call Vote: BO-yes, PC-yes, JR-yes, AL yes, CH-yes, JK-yes.

B3 60 Regis Road/Governor Winslow School (proposed fit trail) Conservation Permitting

- All parties discuss a proposed fitness trail around the perimeter of the Governor Winslow School. Wetlands delineations have been performed by Jason Zimmer (JZ) for the subject site and Brook Monroe, Pinebrook Consulting for an adjacent property which were depicted on an aerial prepared by JZ including the 100-foot buffer zone and proposed trail. Parts of the trail are inside the buffer zone to salt marsh. Applicants would like to know if the project requires Conservation permitting.

- BG believes the project would qualify for the exemption, under Chapter 505 10(B)2d, for “public space nature trails.” within the buffer zone.
- BO supports the project but would like to know if any fitness equipment would be located along the trail and how far from the wetlands any such equipment would be. JK polls the Commission: Commissioner consensus after poll is to obtain more information and address at a future meeting. BG will contact applicants.

B4 SHM Green Harbor LLC, 239 Dyke Road / Third Party Consultant Discussion/Applicant

- JK notes that at the April 7 meeting, the Commission decided to seek a third-party consultant with marina and stormwater management expertise to conduct a peer review of the project. BG sent out a RFP to seven firms and received back five replies, including Morse Engineering, Amory Engineering, Goldman Environmental, Seacoast Engineering, and Comprehensive Environmental. All Commissioners indicate they reviewed each of the proposals.
- JK suggests that for each proposal, he poll the Commissioners as to whether to accept; if a majority poll in favor, an official approval vote will be held.
- AL notes he was hearing officer at the April 7 and was pleased with the detail of Goldman Environmental’s proposal; he also notes there is a considerable range in the fee amount, with the highest bid being almost twice the amount of the lowest. AL is also impressed with the Amory Engineering proposal. PC notes that Morse always does a professional job presenting to the Commission, and has experience with a number of marinas in the area.
- JK polls the Commissioners as to whether to accept the GEC Goldman bid. AL yes, probably best choice; PC yes, wealth of experience but more expensive than Morse; CH yes, first choice, most comprehensive background and deep bench; JR yes; BO yes, their proposal was the closest to Commission expectations.
- JK motions that the Commission accept Goldman Environmental as the third party peer reviewer for the SHM Green Harbor project, SE42-2863. JR second. Approved 6-0-0 by Roll Call Vote: BO-yes, PC-yes, JR-yes, AL yes, CH-yes, JK-yes.

REQUESTS FOR CERTIFICATES OF COMPLIANCE & EXTENSIONS

2646 DiFolco, 11 Naomi Street [EXT]

- Applicant is requesting a three-year extension on their order of conditions.
- JK motions to grant a three-year extension on the order of conditions issued for the property. PC second. Approved 6-0-0 by Roll Call Vote: BO-yes, PC-yes, JR-yes, AL yes, CH-yes, JK-yes.

2655 Phelps, 71 Central Street Amended NOI [EXT]

- Applicant is requesting a three-year extension on their order of conditions.
- JK motions to grant a three-year extension on the order of conditions issued for the property. CH second. Approved 6-0-0 by Roll Call Vote: BO-yes, PC-yes, JR-yes, AL yes, CH-yes, JK-yes.

2659 Highland Street Realty Trust, Highland Street [EXT]

- BG states that this order of conditions has not yet been recorded because work on the subdivision has not been started. Town Counsel recommends that the extension be approved on the condition that applicant record the OOC on or before the effective date of the extended OOC. Applicant’s attorney maintains the position that recording the OOC is not needed until work commences, and would prefer to receive the extension without having to record. BG notes that the Commission has generally granted 2-year extensions for subdivisions.

- JK polls the Commission as to length of extension: JK 2 years; CH 2 years; BO 2 years; JR 2 years; PC 2 years; AL 2 but would prefer 1 year. AL notes that meeting deadlines seems to be a recurrent issue with subdivision developers.
- BO notes that as this project was denied by the Planning Board, applicants may have to reappear before the Commission depending on the extent to which the project is redesigned.
- Given this, JK re-polls the Commission as to the length of extension: CH 1 year; JR 1 year; BO 2 years - 1 years is not enough time; PC 2 years; AL 1 year; JK 1 year. JK polls the Commission as to whether to require applicants to record the OOC as a condition of receiving the extension. CH no; JR yes; BO yes; PC yes; AL yes; JK no.
- Given poll results of 4-2-0 in favor of granting a one-year extension and 4-2-0 in favor of requiring applicant to record the order of conditions, a one-year extension was granted on the condition that the applicant record the order of conditions on or before the effective date of the extension.

2718 Brewer Green Harbor Marina, Inc., 239 Dyke Road (Boathouse) [COC]

- The wetland delineation line on the property did not match that shown on the approved site plan; as the delineation was updated on the as-built plan, BG recommended issuance of the COC.
- JK motions to issue a certificate of compliance for the property. JR second. Approved 6-0-0 by Roll Call Vote: BO-yes, PC-yes, JR-yes, AL yes, CH-yes, JK-yes.

0431 Ash (Now LeMoine), 242 Ridge Road [COC]

- BG and JK reviewed the site plan and as-built conditions, and recommended issuance of the COC.
- JK motions to issue a certificate of compliance for the property. CH second. Approved 6-0-0 by Roll Call Vote: BO-yes, PC-yes, JR-yes, AL yes, CH-yes, JK-yes.

1455 Whalin, 24 Wolcott Road [COC]

- Tammy McKenny (TM), Molisse Realty, representing new owner; Cynthia Byrne Guerrero (CB), sister of property owner, Anne Byrne (AB); and property owner's attorney Cynthia Snow (CS) present on the call. Attorney Snow indicates that her client purchased the property and learned there was an outstanding order of conditions whose terms were not satisfied. She has had to sell the property due to health issues, and needs the COC to sell. Her client, BG, and project engineer Bob Crawford (BC) have addressed most of the outstanding issues, and her understanding is that only an issue with the crawl space remains. Under the circumstances, she would like the Commission to grant relief with regards to the crawl space height discrepancy of 4.5", and issue the COC. TM notes that there is already a deed restriction whereby the crawl space cannot be used as living space.
- JK is unsure why the Commission at the time specified the 3'10" height limitation to the crawl space, and the intent of the deed restriction is that the space be non-habitable, which remains the case at its present height. One potential solution would be for owners to bring in crushed stone to reduce the area to 3'10"; or draft a new deed restriction specifying the current height.
- AL feels the Commission should look to a quick, common sense resolution, and either of the solutions proposed by JK would be acceptable. The crawl space discrepancy has no impact on the wetlands; PC, BO, and CH concur.
- JR asks what solution the applicant prefers? TM would like a new deed restriction to be drafted that eliminates the reference to the crawl space maximum height of 3'10".
- BO notes that the height discrepancy may have been created by settling.

- BG feels that the intent of the height limitation condition was to ensure the space was not habitable, and the condition is duplicative of the deed restriction requirement prohibiting the crawl space from functioning as habitable space.
- JK asks CS if she can provide a revised deed restriction? CS would have to contact buyer's title insurance company to determine who would have the right to change the deed. TM thinks the existing restriction can be edited to strike the specific 3'10" height reference. The matter will be tabled until the June 2 meeting.

ADJOURNMENT – JK makes a motion to close the hearing at 8:00 PM. PC second. Approved 6-0-0 by Roll Call
Vote: JR=yes, PC=yes, CH=yes, BO=yes, AL=yes, JK=yes.

Respectfully submitted,
Liz Anoja, Conservation Administrative Clerk
Marshfield Conservation Commission

Bill Grafton, Conservation Administrator	
James Kilcoyne, Chair	Bert O'Donnell, Vice Chair
Art Lage	Rick Carberry
Craig Hannafin	Joe Ring