The Falmouth Conservation Commission
MEETING MINUTES - WEDNESDAY, MARCH 24, 2021, 7:00 P.M.

In accordance with the Governor’s Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20, relating to the 2020 novel Coronavirus outbreak emergency, the March 24, 2021 public meeting of the Falmouth Conservation Commission shall be physically closed to the public to avoid group congregation.

Alternative public access to this meeting shall be provided in the following manner:

1. The meeting will be televised via Falmouth Community Television.
2. Real-time public comment can be addressed to the Conservation Commission utilizing the Zoom virtual meeting software for remote access. This application will allow users to view the meeting and send a comment or question to the Chair via the Chat function. Submitted text comments will be read into the record at the appropriate points in the meeting.
   a. Zoom Login instructions:
      i. Instructions and the meeting link for this specific meeting can be found at the following web address: http://www.falmouthma.gov/Conservation
      ii. Please plan on 10-15 minutes of preparation time to log in though it may be less if you have previously used Zoom on the device you will use to access this meeting.
3. Additionally public comments may be sent in advance of the meeting to concom@falmouthma.gov at least 5 hours prior to the beginning of the meeting. Documents and audio or video files may also be submitted via email. Submitted email comments and documents will be made a part of the meeting record and may be read into the record, summarized or displayed during the meeting at the discretion of the chair.
4. Applicants, their representatives and individuals with enforcement matters before the Conservation Commission may appear remotely and are not required to be physically present. Applicants, their representatives and individuals with enforcement matters before the Conservation Commission may contact the Conservation Department to arrange an alternative means of real time participation if unable to use the Zoom virtual meeting software. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to concom@falmouthma.gov so they may be displayed for remote public access viewing.

Present: Courtney Bird, Vice-Chair
Betsy Gladfelter
Maurie Harlow-Hawkes
Kevin O’Brien
Peter Walsh
Steve Patton
Pat Harris, Alternate
Jennifer Lincoln, Administrator  
Kevin Newton, Agent

Absent: Jamie Mathews, Chair, Mark Gurnee, Alternate

Also present: Amy Coughlin, Administrative Clerk, Alissa Bergeron, Agent.  
Mr. Bird opened the meeting at 7:00 p.m.  
Mr. Bird instructed the public on how to use the Chat function for questions or comments on any of the hearings. All submissions will be read into the record.  
Mr. Bird promoted Pat Harris to a voting member.

**VOTE MINUTES**

3/10/2021

Ms. Gladfelter: Move to adopt the minutes as written.  
Mr. Walsh: Second.  
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; Patton, aye; O’Brien, aye; Walsh, aye, Harris, aye. Unanimous, so moved.

**REQUESTS FOR DETERMINATION OF APPLICABILITY**

Michael Rodriguez, 339 Carriage Shop Road, East Falmouth, MA – For permission to remove an existing patio and to construct a deck.  
Mr. Newton: The applicant has requested a continuance until April 21, 2021.

Ms. Harlow-Hawkes: At the request of the applicant I move to continue the hearing until April 21, 2021.  
Ms. Gladfelter: Second.  
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; Patton, aye; O’Brien, aye; Walsh, aye, Harris, aye. Unanimous, so moved.

Jane McLeod, 3 Pasnecoy Lane, East Falmouth, MA – For permission to remove an existing set of steps and to construct a 10’ x 12’ deck with steps and railings.  
Mr. Newton: Jurisdiction: within flood zone AE12. This RDA is seeking permission to remove an existing set of steps and to construct a new 10’ x 12’ deck with new steps and railings. Project is located within flood zone only. No other resource areas are located within 100 ft of the proposed project. No mitigation is required. Staff recommends a negative 2 (under the State and under the bylaw). Resource area boundaries are not confirmed by this RDA.

Ms. Gladfelter: Move to accepts staff’s recommendation.  
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; Patton, aye; O’Brien, aye; Walsh, aye, Harris, aye. Unanimous, so moved.
Mark and Wendy Murphy, 72 Bournes Pond Road, East Falmouth, MA – For permission to construct a 14’x14’ addition.

Mr. Newton: Jurisdiction: within 100 foot resource area buffer to salt marsh, BVW and within flood zone AE12. This RDA is seeking permission to construct a 14’ x 14’ addition. During project review staff requested applicant to submit a revised plan showing buffer zones to the BVW and salt marsh. Proposed addition is outside of buffer zone set backs. Unpermitted patio discovered during review is also outside of buffer zone set backs. No mitigation is required. Staff recommends a negative 2 (under the State and under the bylaw). Resource area boundaries are not confirmed by this RDA.

Ms. Gladfelter: Move to accepts staff’s recommendation.
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; Patton, aye; O’Brien, aye; Walsh, aye, Harris, aye. Unanimous, so moved.

Manuel Gonzalez, Trustee, 223 Edgewater Drive Realty Trust, 223 Edgewater Drive West, East Falmouth, MA – For permission to replace existing timber pier decking, float decking, hand rails, and posts; and to request permission to replace the timber pilings as necessary for the life of the permit.

Mr. Newton: Jurisdiction: within 100 foot resource area buffer to salt marsh, coastal bank, land under the ocean, land containing shellfish, and within flood zone VE 14 and AE 13. This RDA is seeking permission to replace the existing timber pier decking, float decking, hand rails and posts. No timber pilings are proposed to be replaced at this time. If applicant determines pilings need to be replaced, they must contact the Conservation Office to determine if additional filings are necessary. Staff discovered unpermitted alterations on site. After reviewing with applicants representative, Holmes and McGrath, it was determined the activities appear to result in a net decrease in impervious surface. Applicant still needs to properly permit activities and will be including them in an upcoming NOI filing. Staff recommends a negative 2 (under the State) and negative 3 under the bylaw). Resource area boundaries are not confirmed by this RDA.

Ms. Gladfelter: Move to accepts staff’s recommendation.
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; Patton, aye; O’Brien, aye; Walsh, aye, Harris, aye. Unanimous, so moved.

THO of Massachusetts (SHM Fiddler’s Cove LLC) C/O Scott Carpenter, 42 Fiddlers Cove Road, North Falmouth, MA – For permission to replace 11 licensed piles and 6 cement pads in kind.

Mr. Newton: Jurisdiction: within 100 foot resource area buffer to land under the ocean, coastal bank, and within flood zone VE 14 and AE 13. This RDA is seeking permission to replace 11 licensed piles and 6 cement pads in kind. Old piles will be removed and new piles installed using a vibratory hammer operated from a barge. Estimate work will take 1-2 days. Cement pads will be removed using a jackhammer. A metal piling will be drove to depth of refusal. Old cement will be disposed of offsite and new cement will be poured into a constructed form. Estimated time for pad work is 2-3 days. Work is proposed to be conducted as soon as permit is obtained. Staff recommends a negative 2 (under the State) and negative 3 under the bylaw). Resource area boundaries are not confirmed by this RDA.
Ms. Gladfelter: Move to accepts staff’s recommendation.
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; Patton, aye; O’Brien, aye; Walsh, aye, Harris, aye. Unanimous, so moved.

REQUESTS FOR A HEARING UNDER A NOTICE OF INTENT

Sarah Turano-Flores, Nutter McClennen & Fish LLP, 24 Willis Lane, East Falmouth, MA – For permission to raze the existing single family dwelling and garage, to construct a new single family dwelling with garage, to install a pool, to relocate an existing shed, to install mitigation plantings, and to conduct invasive species management and restoration.
Ms. Lincoln promoted Sarah Turano-Flores, Seth Wilkinson, Jack Vaccaro, Sean Riley and Charlie Page to panelists.
Sean Riley (Coastal Engineering) Resource areas include: coastal beaches, coastal dunes, salt marsh, land under ocean, BVW, flood zones VE elevation 15 and AE elevation 13, Falmouth V zone. We added the A and B zones from the resource areas. There is an extraneous red dashed line on the plan that will be removed. The property is 6.9 acres and there will be a new dwelling with an attached garage, pool and spa. This is a challenging project because of the elevation of the AE zone and the elevation 14 of the first floor. The grade is currently 6 to 8-ft so we will need retaining walls to get the driveway up to the front door. There will be a retaining wall within the A zones to the BVW and salt marsh in the developed area. 8 of 11 of the oak trees will be removed and replaced with native trees. There will be a new Title 5 septic system outside of any buffer zones. There are no waivers required for the septic system and no new structure within the FEMA mapped V zone. There will be some minor grading to get to the existing lawn. We will be filling a large area of the A zone with mitigation and a restoration will be done within the resource areas.
Seth Wilkinson (Wilkinson Ecological) The mitigation is based on the regulations. We are proposing 6,620-sq.ft in the existing lawn and an acre of additional mitigation is also planned. The key on the plan – the dark green is the mitigation in the lawn and the green shaded area is the restoration. The invasives are limited (5-10%) in one area – but if we leave them they will spread. In the woodland restoration area there are 25-30% invasives. The maritime shrub area has a more significant invasive area (75-80%). Any natives will be preserved. We will plant 6 native oaks (shrub oaks) because the existing oaks are struggling here – they are alive but stunted. There will be 1100 native shrubs and an additional 700 native species. In the yellow area there was to be 1450-sq.ft of mitigation, but we are revising the plan and adding the area in blue. There is a detailed restoration plan.
Mr. Riley: We will plant the yellow areas with natives and the blue areas are for credit.
Ms. Lincoln: You received staff’s questions and comments. Do you have the plan with the overlay?
Mr. Riley shared the plan overlay.
Ms. Lincoln: Is the small square the cabana?
Mr. Riley: It’s the rinse area. I will modify it in the plan revision.
Ms. Lincoln: Is it included in the mitigation?
Mr. Riley: Yes, but it won’t be mitigation.
Ms. Lincoln: We need the top of the revised wall and the pool elevation on the plan.
Mr. Riley: Yes.
Ms. Lincoln: What is the Title 5 system set up for?
Mr. Riley: It’s for 7 bedrooms with 770 gallons per day. It meets all the setbacks.
Ms. Lincoln: Have you filed with the Board of Health?
Mr. Riley: No.
Ms. Lincoln: Who wants to address the wall?
Mr. Riley: We have to reach out to the neighbor if we need to go on his property to build the wall.
Ms. Lincoln: This came up recently on another property and they did need to get access from the adjacent property to construct a wall. They handled the access under an RDA. You can decide how you handle that.
Mr. Riley: They have a hedge on their property. Two trees will have to be removed.
Ms. Lincoln: Please X out all the trees being removed on the revised plan. What are the caliper inches to be removed in the A and B zones?
Mr. Wilkinson: I will calculate that.
Ms. Lincoln: What type of driveway are you planning?
Mr. Riley: It’s steep as you come up the hill. 10% of the shells will slide if we use them. We’ll have to address that on the revised plan.
Ms. Lincoln: You need a little more staking.
Mr. Riley: I will work with you on that.
Ms. Lincoln: The mitigation needs more detail.
Mr. Riley: I will work with you directly on that.
Ms. Lincoln: Please give us the septic plan design, the cut and fill calculations for the grading and the over dig on the abutting property. We went through the resource areas. The bank looks like a dig out for the original house.
Mr. Riley: On the original plan the lot was flat and they had to dig out for the house. I will give the information to you. It is not a coastal bank.
Ms. Lincoln: You are moving the stairway closer to the resources. Bring up the overlay plan. The architect will have to re-design the stairs back further.
Mr. Riley: I’ll work with the landscape architect on that.
Ms. Lincoln: That covers the general notes on the house. The numbers did not add up.
Mr. Wilkinson: I will take care of that.
Ms. Lincoln: Make sure there is a revision date on the plan.
Mr. Wilkinson: Okay.
Ms. Lincoln: The mitigation area needs to be staked much better. There are 1100 plants for mitigation. I saw comments on the use of sod in the bulk of the mitigation. The Commission is used to seeing shrubs – not sod. We need a revised plan to put in individual shrubs. You are proposing 86 individual shrubs not counting the sod. I’m not comfortable with that. It would be much greater if they were individual plants. The Commission can weigh in on the use of sod. The product is not good. We also need a monitoring report. Can you go back and tell the percentage of invasives on the first two areas?
Mr. Wilkinson: The edge of the dune is 75-80%. The woodland area is 25-30%. The edge of the marsh is 5 to 10%. If it’s less than 50% invasive we don’t add a lot of plants back.
Ms. Lincoln: What is the square footage of the maritime area with the 75-80% invasives?
Mr. Wilkinson: 10,115-sq.ft.
Ms. Lincoln: We need to dig into the numbers. Please write it out for us. In the maritime area
you are removing 75-80% and proposing putting 36 plants back in the area. Look into this a little more. We need more information on the restoration plan.

Mr. Wilkinson: Okay.

Ms. Lincoln: No mulch. We need much more detail on the staking and the mitigation. Can you get it to staff more than one week before the next hearing so we can have a dialogue about it? Also the cut and fill calculations?

Mr. Wilkinson: Yes.

Mr. Newton: Jen covered everything. I am curious about the hedge species.

Mr. Patton: This is one of my favorite sites. The overlay map was helpful.

Mr. Walsh: I was particularly impressed with the septic system plans.

Ms. Harris: No questions or comments.

Ms. Harlow-Hawkes: What does mechanically conditioning the soil mean?

Mr. Wilkinson: It’s small hydraulic equipment. It will remove the bittersweet and prepare the soil for the native plants. It will only be used in the maritime area.

Ms. Harlow-Hawkes: It sounds pretty invasive. In the 5 to 10% area the work will be done by hand?

Mr. Wilkinson: Yes and in the woodland area also.

Ms. Harlow-Hawkes: When will you plant?

Mr. Wilkinson: When we have 80% functional control of the invasive species.

Ms. Harlow-Hawkes: There are a lot of revisions. If the plantings aren’t complete the restoration won’t get completed and you can’t get an occupancy permit. It’s a big area and it’s a very thorough plan. The staff did a great job. You don’t have to go to the Board of Health?

You will need a permit for the septic system.

Mr. Riley: I will provide a septic system plan. We do need to go the Board of Health agent for a permit.

Ms. Lincoln: There will be a provision in the Order of Conditions that if the restoration is not complete they must post a bond before occupancy.

Mr. O’Brien: It seems to be a well thought out plan. Coastal Engineering thinks the property is on Vineyard Sound and Wilkinson Ecological thinks the property is on Nantucket Sound.

Ms. Gladfelter: I’d like to know the cut and fill calculations. There will be storm water runoff to the driveway. There are no dry wells on the plan.

Mr. Riley: There will be. We will control the storm water by drip sticks or dry wells.

Ms. Gladfelter: You might be coming back with an asphalt driveway. There will be a lot of runoff in a storm.

Mr. Bird: I didn’t see a pool fence on the plan.

Mr. Riley: There will be automatic covers for the pool and the spa.

Ms. Lincoln: When you are submitting the building permit they will want to see the coverage with the permit.

Mr. Bird: Any public comment?

Ms. Lincoln: No.

Mr. Wilkinson: I’d like to understand the comment about mulch. We will just use it to establish the planting – not to re-mulch.

Ms. Lincoln: It’s the re-mulching we don’t like. It’s okay for retaining moisture but not to add more.

Mr. Wilkinson: I agree. The term sod is misleading. It’s a transplanted native community. It’s a nice understory dominated by huckleberry. It will develop quickly. Huckleberry plants get to
Ms. Lincoln: You are proposing 1100-sq.ft of mitigation, 1,000-sq.ft is huckleberry. You need to provide more shrubs and more detail. Staff will consider that. Send us some pictures of other areas where you have used this sod and we can re-evaluate it.

Ms. Gladfelter: At the request of the applicant I move to continue the hearing until April 21, 2021.
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; Patton, aye; O’Brien, aye; Walsh, aye, Harris, aye. Unanimous, so moved.

Jay M. and Lea S. Decoteau, Trustees, Menauhant Three Realty Trust, 507 Central Avenue, East Falmouth, MA – For permission to finish constructing a shed and to install mitigation plantings.
Ms. Lincoln moved Attorney Turano-Flores, Mr. Wilkinson, Mr. Vaccaro, Mr. Riley and Mr. Page to attendees. The applicant has requested a continuance until April 7, 2021.

Ms. Gladfelter: At the request of the applicant I move to continue the hearing until April 7, 2021.
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; Patton, aye; O’Brien, aye; Walsh, aye, Harris, aye. Unanimous, so moved.

Jay M. and Lea S. Decoteau, Trustees, Menauhant Three Realty Trust, 507 Central Avenue, East Falmouth, MA – For after-the-fact permission to install a patio and to install mitigation plantings.
Ms. Lincoln: The applicant has requested a continuance until April 7, 2021.

Ms. Gladfelter: At the request of the applicant I move to continue the hearing until April 7, 2021.
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; Patton, aye; O’Brien, aye; Walsh, aye, Harris, aye. Unanimous, so moved.

Victor E. Calcaterra and Mary L. Scanlon, Trustees, Twenty Four Shaker Lane Realty Trust, 24 Shaker Lane, East Falmouth, MA – For permission to enlarge the existing concrete patio and to install mitigation plantings.
Ms. Lincoln promoted Raul Lizardi, Mary Scanlon and Randy Sherman to panelists.
Raul Lizardi (Cape & Islands Engineering) Resource areas include: land subject to coastal storm flowage, coastal bank. There is an existing patio (125-sq.ft) and the applicant would like to extend it. There are two bay windows and some trees to be removed. 381-sq.ft mitigation will be planted in the buffer to zone A. No ornamentals will be planted. They recently filed an RDA for approval of a septic upgrade.
Randy Sherman: The invasive species will be removed according to Falmouth regulations.
Ms. Lincoln: I have no questions or comments.
Mr. Newton: Are you matching the existing patio or will the new patio be different material?
Mr. Sherman: It will be different material.
Mr. Bird: Will you take the existing patio out and build a new one?
Mr. Sherman: No it will remain and we will add the new patio on to it.
There were no questions or comments from the remaining members of the Commissioners.
Mr. Bird: Any public comment?
Ms. Lincoln: No.

Ms. Gladfelter: Move to close the hearing and take it under advisement.
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; Patton, aye; O’Brien, aye; Walsh, aye, Harris, aye. Unanimous, so moved.

Daniel and Lori Jean McConaghy, 68 Waterside Avenue, Falmouth, MA – For permission to conduct invasive species management and restoration.
Ms. Lincoln moved Mr. Lizardi and Mr. Sherman to attendees and promoted Tim Santos and Seth Wilkinson to panelists.
Tim Santos (Holmes & McGrath) Resource areas include: coastal bank, BVW, Palmer’s Pond, land subject to coastal storm flowage. The project is invasive species and phragmites removal in the BVW, in Palmer’s Pond and along the coastal bank.
Seth Wilkinson (Wilkinson Ecological) This is a straightforward restoration project. This is a community of phragmites. I recently eradicated phragmites on 46 Waterside. We will manage upland and invasive wetland species. There is 90% infestation. Once the phragmites are managed the native species will come back. We are proposing bayberry, Carolina rose and inkberry (natives). Presently there is ragosa rose and bittersweet. The shrub honeysuckle, cattails and swamp rose will come back. 150 herbaceous species and a seed mix will be planted.
Ms. Lincoln: Is the herbaceous species being added into the wetland area, along the bank or where the phragmites are?
Mr. Wilkinson: At the edge of the phragmites and in the bank area.
Ms. Lincoln: 90% invasion – in the future when we go out in the field give us a percentage. I see you’re adding sweet fern.
Mr. Wilkinson: For the boundary.
Ms. Lincoln: You could put in a single rail fence. Sweet fern is a small plant and could get mowed. A low fence will stop a mower. When was the tree taken down by the garage?
Mr. Wilkinson: It was news to us. Maybe when the property changed hands. Tupelos did well at 46 Waterside and will be an appropriate replacement.
Ms. Lincoln: We can condition the replacement – two tupelos in the side area and a single rail fence. The Board can talk about the sweet fern. Please give us the percentage of coverage of the invasive species in the future.
Mr. Newton: No questions or comments.
Mr. Bird: What is the methodology – mow back and treat?
Mr. Wilkinson: Yes.
Mr. Bird: The wipe method?
Mr. Wilkinson: Yes.
Mr. Bird: Do you get rid of 90% the first year?
Mr. Wilkinson: Yes, there may be some misses.
Mr. Bird: In the next year the mitigation will be planted.
Mr. Wilkinson: Yes and the cattails come back.
There were no further questions or comments from the remaining Commissioners.
Ms. Lincoln: No.
Ms. Harlow-Hawkes: What about a revised plan?
Ms. Lincoln: I can make a finding.
Ms. Harlow-Hawkes: What about the more woody species?
Ms. Lincoln: We can condition that.

Ms. Gladfelter: Move to close the hearing and take it under advisement.
Mr. Patton: Second.
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; Patton, aye; O’Brien, aye; Walsh, aye, Harris, aye. Unanimous, so moved.

Dorothy M. and Joseph P. Zampitella, 19 Coquit Road, North Falmouth, MA – For permission to raze an existing single family dwelling, to construct a new single family dwelling, install a Title V sewage disposal system, to install mitigation plantings, and for all associated clearing, grading, and landscaping.
Ms. Lincoln moved Mr. Wilkinson to an attendee. Mr. Santos remains as a panelist.
Tim Santos (Holmes & McGrath) Resource areas include: land subject to coastal storm flowage, coastal dune to the southwest side and across the street. The new house will have a p-stone driveway with dry wells for runoff. 365-sq.ft of mitigation will be planted in the southwest corner – 364-sq.ft is required and 365-sq.ft will be planted for the structure and retaining wall. A deck and hot tub are outside the 100-ft buffer. The deck and the hot tub are existing.
Ms. Lincoln: Will you re-locate the hot tub?
Mr. Santos: They are getting rid of it.
Mr. Newton: Where are the dry wells?
Ms. Lincoln: They’re on the four corners.
Ms. Gladfelter: No questions or comments.
Mr. O’Brien: No questions or comments.
Ms. Harlow-Hawkes: Does this trip anything – 20% of maximum? This is 30%.
Mr. Santos: We have to go to ZBA. It will be dealt with there.
There were no further questions or comments from the remaining Commissioners.
Mr. Bird: Any public comments?
Ms. Lincoln: No.

Ms. Gladfelter: Move to close the hearing and take it under advisement.
Ms. Harris: Second.
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; Patton, aye; O’Brien, aye; Walsh, aye, Harris, aye. Unanimous, so moved.

CONTINUED HEARINGS UNDER A NOTICE OF INTENT

Matthew and Susan Dempsey, 172 Antlers Shore Drive, East Falmouth, MA – For permission to remove a deck and stairs, to construct a front entry and walkway, to repair an existing stone revetment, to reconfigure the driveway, and to expand a porch.
Ms. Lincoln moved Mr. Santos to an attendee and promoted Wayne Tavares and Matt Dempsey to panelists.
Wayne Tavares (Tavares Landscape) We had items to provide after the last hearing (1) letter of
permission from the adjacent owner – provided; (2) PLS stamp on the plan – done; (3) methodology for the wall repair – we will excavate behind the wall and build up from the upland and place netting on the salt marsh to catch any debris – a letter with the method has been provided. There is no need to go on the salt marsh, but we will have a platform if needed.

Ms. Lincoln: We have the letter from Mr. Baker with his permission, the method re the wall was provided and we are satisfied re the impact on the salt marsh.

Mr. Newton: No questions or comments.

Mr. Patton: No questions or comments.

Mr. Walsh: What about the first floor elevation?

Mr. Tavares: You mean the height? I discussed it with the surveyor but it’s not on the plan. I will provide it.

Mr. Walsh: Is the house floor higher than the porch and alcove?

Mr. Tavares: Yes. There are steps to the porch and then a short step up. I will send a memo and add the grades to the plan.

Ms. Harris: No questions or comments.

Ms. Harlow-Hawkes: No questions or comments.

Mr. O’Brien: No questions or comments.

Ms. Gladfelter: No questions or comments.

Mr. Bird: Mr. Tavares will address the elevation on the final plan?

Ms. Lincoln: I’ll ask for a revised plan with the elevation on it.

Mr. Walsh: That’s fine.

Ms. Lincoln: We can condition that.

Mr. Bird: I’m comfortable with that. Any public comment?

Ms. Lincoln: No.

Ms. Gladfelter: Move to close the hearing and take it under advisement.


Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; Patton, aye; O’Brien, aye; Walsh, aye, Harris, aye. Unanimous, so moved.

David P. and Kathy E. Campbell, 0 Millfield Street, Map 49A 04 Parcel/Lot 064 001, Woods Hole, Falmouth, MA – For permission to construct a single-family dwelling and garage with associated paved driveway, crushed stone parking area, retaining walls; to install native trees and shrubs; and to install a drainage system.

Ms. Lincoln moved Mr. Tavares to an attendee and promoted Tom Bunker and Theresa Sprague to panelists.

Tom Bunker (BSS Design) The last hearing was continued for minor changes – the note for removal of the English ivy in perpetuity was removed from the plan; the limit of work for the vegetation management was added; connecting to the garage was taken off because there is no garage on the plan; the drainage calculations were submitted. I provided an updated revised plan because we slightly rotated the house away from the bank.

Theresa Sprague (Blueflax Design) I updated the plan and added the limit of work. There will be a straw bale barrier for the patio wall and I updated the construction detail.

Ms. Lincoln: No questions or comments.

Mr. Newton: They have covered everything.

There were no further questions or comments from the remaining Commissioners.
Mr. Bird: Any public comment?
Ms. Lincoln: No. We will need an engineer’s stamp on the plan for the wall.
Ms. Sprague: I will provide it.
Mr. Bird: Can you get it to us by next week?
Ms. Sprague: Yes.

Ms. Gladfelter: Move to close the hearing and take it under advisement.
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; Patton, aye; O’Brien, aye; Walsh, aye, Harris, aye. Unanimous, so moved.

HEARINGS UNDER AN ENFORCEMENT ORDER

Matthew and Russlyn Seiler, 10 Nashaweena Street, West Falmouth, MA – Failure to install mitigation and restoration plantings according to MA DEP 25-3968.
Ms. Lincoln: The applicant has requested a continuance until March 31, 2021.

Ms. Gladfelter: At the request of the applicant I move to continue the hearing until March 31, 2021.
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; Patton, aye; O’Brien, aye; Walsh, aye, Harris, aye. Unanimous, so moved.

Melanie and Klein Merriman, 513 Currier Road, East Falmouth, MA – Unpermitted removal of vegetation within Conservation jurisdiction.
Ms. Lincoln promoted Wayne Tavares to a panelist.
Ms. Lincoln: During an RDA inspection it was noticed that there had been clearing of trees in the buffer zones. A letter was sent to the applicant who has been very responsive and has already submitted a restoration plan. The plan shows the replacement of trees and it has been approved in concept. This hearing is for the implementation of the plan, to vote the enforcement order and site plan so that we can all move on.
Mr. Newton: No questions or comments.
Ms. Lincoln: The tree are to be installed no later than June 15, 2021.
Wayne Tavares (Tavares Landscape) Yes.
Ms. Lincoln: There will be monitoring reports for the next three years.
Mr. Tavares: Can that be conditioned?
Ms. Lincoln: Yes.
There were no comments or questions from the Commissioners.
Mr. Bird: Any public comments?
Ms. Lincoln: No.

Ms. Gladfelter: Move to issue an enforcement order as discussed.
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; Patton, aye; O’Brien, aye; Walsh, aye, Harris, aye. Unanimous, so moved.
Ms. Lincoln: The applicant has requested a continuance until March 31, 2021.

Ms. Gladfelter: At the request of the applicant I move to continue the hearing until March 31, 2021.


Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; Patton, aye; O’Brien, aye; Walsh, aye, Harris, aye. Unanimous, so moved.

CONTINUED HEARINGS UNDER AN ENFORCEMENT ORDER

Claudia Cenedese, 51 Pondview Drive, East Falmouth, MA – Unpermitted removal of vegetation within Conservation jurisdiction.

Ms. Lincoln promoted Attorney Brian Wall, Paul Miskovsky and Claudia Cenedese to panelists.

Ms. Lincoln: The hearing was continued to give the property owner a chance to meet with us. The Board has the staff report and Atty. Wall’s submittal. I’d like to go through some of the history of the property. In 2005 there was a derelict house on the property and it was ordered to be removed. The foundation was also removed. An RDA to construct the house was permitted in 2018. The buffer zone to Deep Pond is 100-ft. The house was built 110-ft away. The limit of work is the Pond. They requested a vista pruning that was permitted. We received alerts about the property being cleared and I spoke with the owner last spring right before the Covid-19 pandemic hit. There were additional complaints later on. The Board has seen the pictures. Atty. Wall wants to address the staff report. Staff met with Atty. Wall and Paul Miscovsky about the restoration efforts.

Ms. Harris: I have a professional relationship with Brian Wall re a matter not under the jurisdiction of the Commission. Pursuant to the Conflict of Interest Law I have filed a disclosure with our appointing authority and the Town Clerk outlining the relationship and stating that I can act without prejudice on matters presented to the Commission by Attorney Wall to dispel any potential appearance of conflict.

Brian Wall (Attorney) The property owner would like to give a statement after my comments. The property is in zone 2 and on a freshwater pond. In August of 2019 minor grading was done and wood chips were placed without a permit. There is also a fire pit in the buffer. In 2020 there was substantial clearing and I’d like to demonstrate that it was not done by Claudia Cenedese but by the prior property owner who is ultimately responsible to fix it. We would like to work out a just and reasonable ending to this problem.

Claudia Cenedese (homeowner) I was not aware that I can’t alter my backyard. I called Ms. Lincoln and we met together to discuss the trees and vegetation in the backyard. The area was like that when I bought the house – including the fire pit. Ms. Lincoln told me what I had to do to fix the problem and I panicked. These are big expenses for me.

Atty. Wall displayed an aerial in 2020 showing the cleared area and fire pit. A photo in 2005 shows that the house that was later demolished is closer to the resource area than the new one. In 2009 a photo shows the disturbed area. This could have been a redevelopment project. The property was purchased by Jonathan Berit-Parkes and Ryan Berit-Parkes in 2016 from the estate. It was sold in 2017 to Sharon and Ralph Parkes. Sharon works for Sotheby Real Estate and Ralph works for the Argonaut Construction Company.
They submitted an RDA to build the house. The Commission made a negative determination because it would be built outside of their jurisdiction. Conditions three and four stated that permanent boundary markers must delineate the no disturbance zone and that there should be an existing conditions plan submitted before occupancy was granted. An RDA asking for a view corridor was granted. The construction ended and a markup of the existing conditions was submitted. A photo of the vista pruning was submitted in November of 2018 and a Certificate of Occupancy was given on December 20, 2018. Then there was clearing of more than what was approved. There is a shed in the buffer. There was substantial clearing to the Pond and a fire pit was added in 2019. The developer did build the house outside Conservation jurisdiction but in 2019 cleared the property knowing that the buffer was there. Atty. Wall displayed a picture of the property from the Argonaut website.

Ms. Lincoln: Atty. Wall summed it up. As I said we went to the property last spring but with the onset of the pandemic it was put on the back burner. We received repeated alerts and sent another letter. We need to come up with a restoration plan to protect the buffer and allow the owner to have some backyard space.

Paul Miskovsky (Miskovsky Landscape) Mr. Miskovsky displayed his plan. I’ll fill in the blanks. The top side is new forest – poplars and oaks. We will vegetate and fill in the blanks. The poison ivy and briars were taken out with permission. The clethra was affected and we can put the clethra back – re-located and closer to the current areas that are open. The existing water access will be left. We will fill in the area with evergreen shrubs – sweet fern, bayberry, clethra and inkberry. It’s not a woodland anymore. It will be a nice substantial restoration.

Ms. Gladfelter: I would like to defer any comments for now.

Mr. O’Brien: No questions or comments.

Ms. Harlow-Hawkes: What about the winterberry ground cover?

Ms. Lincoln: 120 plants will be scattered throughout and inter-planted with the clethra.

Ms. Harlow-Hawkes: I don’t mean to be hard on the owner but I don’t understand why in 12/20 you did additional work. Why did you make more of a problem? If you look at the pictures from staff prior to the illegal cutting, it’s a natural woodland. Planting 180 sweet fern, etc doesn’t do it. Ferns get mowed down and go away in the winter. I know kids like to play in the backyard, but a landscape plan with 180 ferns and ground cover is not what was there. You can’t put up a fence.

Ms. Harris: I sympathize with the applicant. As part of the mitigation plan will the fire pit remain?

Mr. Miskovsky: Yes.

Ms. Harris: It’s even closer to the resource area and not a good idea. This is a situation where the broker and builder should have set a higher standard when they were involved.

Mr. Walsh: No questions or comments.

Mr. Patton: No questions or comments.

Mr. Bird: This is not a simple slam dunk – there are a lot of mitigating circumstances. We are not out to punish but to ensure that our statutes and bylaws are followed. There have been other situations when people purchased a house and there were outstanding problems on the lot. The buyer should have been aware. With no Order of Conditions things happened and you’re stuck.

Ms. Gladfelter: We’re not taking into consideration that the pond is part of the Town water supply and the entire area should have woody vegetation. I’m concerned about the fire pit because of high fire alerts when there is low humidity and high winds. Certainly the area should be planted as close to the resource as possible with woody vegetation. They can keep the path to
the water.
Mr. O’Brien: I’m more or less where Betsy is. The people responsible for the problem are not here. It is a Town water supply and we have the obligation to protect it. It’s not quite a complete requirement that it be all vegetated. We’ll have to go down a slippery slope I guess.
Attty. Wall: To Pat Hariss’s point Claudia is considering an action against the developer, but Massachusetts is a “buyer beware” State. There is no main way to hold the seller responsible because it was never discussed and thus they are not responsible. She may go after the developer but it won’t be a solution. Due diligence involves title search. It was exercised but nothing was available. The work she did do was because of an erosion problem and the wood chips helped. She is innocent. The people did this deliberately. The existence of the house on the property until 2006 qualifies for re-development. The 100-ft buffer is not pristine but gives the Board discretion. We have tried to develop a plan to reserve the fire pit and play area. If the plan is not acceptable is there something we can do to make it acceptable? We’re looking for a middle ground.
Ms. Lincoln: The Board is looking for a more robust planting plan. The fire pit is a problem. It could be one or the other. If you close the hearing now you are at the mercy of the Commission. You want to develop a more robust plan for the fire pit area. The Board can close the hearing or allow a continuance.
Ms. Cenedese: The wood chips were there when Ms. Lincoln came to the property. I took out the poison ivy and the briars with Ms. Lincoln’s permission. I used logs to make the stairs and I didn’t think that was wrong.
Mr. Miskovsky: If you’re looking for more woody plants we can close up the accent points with overstory and understory plants. If ferns are planted thick enough they don’t disappear. All the plants are native but I can amend the list. If the hearing is continued we can have another meeting with the staff.
Mr. Bird: My feeling is that we understand the conundrum on its face – the pond is part of the watershed and the buffer to it is important. As for the danger – could the fire pit be located closer to the house? There are lots of possibilities. We can come up with something that works. Go back and put your heads together with staff and come up with something that works for everyone.
Ms. Harlow-Hawkes: We have to protect the environment and the drinking water and wood chips are not protecting the resource. The play area should be up by the house as the buffer is necessary to protect the water supply. Ferns are dormant in the winter – remove the ferns and put in woody indigenous shrubs. Ferns won’t count with me. Both sides of the property are densely vegetated. We need more woody plants there and we need more time.
Mr. O’Brien: No more questions or comments.
Mr. Walsh: No more questions or comments.
Ms. Harris: No more questions or comments.
Mr. Patton: No more questions or comments.
Ms. Gladfelter: We need a more robust and no-touch buffer. It’s not a totally undisturbed area, however, and I can live with the play area landward of the robust buffer.
Mr. Miskovsky: There is a significant grade change and the play area would be on a slope. Goshen stone can be two foot pieces. There will be a more robust woody plan.
Mr. Bird: Staff can work with Ms. Cenedese and Mr. Miskovsky and come up with something re the fire put and play area.
Ms. Lincoln: What is the grade change?
Mr. Miskovsky: About 4-ft.
Mr. Bird to Ms. Lincoln: Huddle with staff and see if you can come up with something.
Atty. Wall: I am requesting a continuance until April 21st.
Ms. Harlow-Hawkes: We do not allow mitigation to be planted within 10-ft of the house.
Mr. Miskovsky: The 100-ft line is very close to the house and we put the plants there because we had to.
Mr. Bird: It would be good if Betsy and Maurie would be in the meetings. Your concerns are the most articulate and it might help.
Ms. Harlow-Hawkes: Jen and Kevin know what we want.
Ms. Gladfelter: At the request of the applicant’s representative I move to continue the hearing until April 21, 2021.
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; Patton, aye; O’Brien, aye; Walsh, aye, Harris, aye. Unanimous, so moved.

VOTE ORDER OF CONDITIONS

Mr. Patton and Ms. Harris are not on the quorum and left the meeting.
Erik Asgeirsson, Nina Cooper Thornton Trust, 41 Beccles Road, Falmouth, MA
Quorum: Maurie, Courtney, Kevin, Peter, Betsy
Ms. Lincoln: This is the stairway over the coastal bank.
Ms. Gladfelter: And blocking the existing trails.
Ms. Lincoln: And the mitigation.
Mr. Newton: Yes.
Ms. Lincoln: They don’t need a hinged end on the stairway.
Mr. O’Brien: The engineer explained the difference from the last job on a stairway.

Ms. Harlow-Hawkes: Move to adopt the Order of Conditions as discussed.
Ms. Gladfelter: Second.
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; O’Brien, aye; Walsh, aye. Unanimous, so moved.

Michael Carroll, Lot 64B, Lot 83, and Lot 503 Shoreview Avenue, Falmouth, MA
Quorum: Maurie, Courtney, Kevin, Peter, Betsy
Ms. Lincoln: This is the phragmites removal. We had them do the root barrier. Staff will meet on site prior to the beginning of the work.
Ms. Gladfelter: We need a plan for the root barrier.

Ms. Harlow-Hawkes: Move to adopt the Order of Conditions as discussed.
Ms. Gladfelter: Second.
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; O’Brien, aye; Walsh, aye. Unanimous, so moved.

Platon and Maria Velonias, 154 Edgewater Drive East, East Falmouth, MA
Quorum: Maurie, Courtney, Kevin, Peter, Betsy
Ms. Lincoln: This is the installation of the denitrifying system. There will be an increase in design flow to four bedrooms. Michael Borselli submitted the nitrogen calculations in accordance with the Cape Cod Commission. The new system will make a reduction in nitrogen levels to the resources.

Ms. Harlow-Hawkes: Move to adopt the Order of Conditions as discussed.
Ms. Gladfelter: Second.
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; O’Brien, aye; Walsh, aye, Unanimous, so moved.

Kristine Boyle, 15 Jae Road, West Falmouth, MA
Quorum: Maurie, Courtney, Kevin, Peter, Betsy
Ms. Lincoln: This is the amendment for vista pruning. There are deviations from the original plan in accordance with the regulations.
Ms. Gladfelter: It’s a really dense area. We can condition that they mark out what they are going to cut.
Ms. Lincoln: We need a revised plan.
Ms. Gladfelter: Staff should go to the site.
Ms. Lincoln: We will meet with them prior to the beginning of work.

Ms. Harlow-Hawkes: Move to adopt the Order of Conditions as discussed.
Ms. Gladfelter: Second.
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; O’Brien, aye; Walsh, aye.
Unanimous, so moved.

Ms. Harlow-Hawkes: Move to adjourn.
Mr. O’Brien: Second.
Mr. Bird: Harlow-Hawkes, aye; Gladfelter, aye; Bird, aye; O’Brien, aye; Walsh, aye,
Unanimous, so moved.

The meeting adjourned at 10:19 p.m.

Respectfully submitted,

Susan Cronin, Recording Secretary