

Conservation Commission**January 24, 2022****Minutes**

1. **Chairman's Welcome and Media Notification:** Mr. Haworth opened the meeting at 6:33p.m. Ms. McClees read the protocol for Zoom meetings and open Public Meeting Law. Ms. McClees advised that the meeting was being conducted remotely, consistent with Chapter 20 of the Acts of 2021. The legislation suspends the requirement of Open Meeting Law to have all meetings in a publicly accessible physical location. For this meeting, the Conservation Commission convened by telephone and video conference via Zoom as posted on the Town's website identifying how the public may join. The meeting was recorded and will be televised at a later date and some attendees participated by phone and video conference and used chat on Zoom.
2. **Quorum/Attendance:** Present: Chairman, Geoff Haworth, Karen Isherwood, Gary Lavalette, Michael Kelly, Jacob Galary, Corey Pietraszek and Amy DeSalvatore. Non-voting consultant, Ron Medina was also present. All members were attending via zoom. Staff: Whitney McClees, Conservation Agent
3. **Review and approve minutes**
 - a) Ms. DeSalvatore made a motion to approve the November 15, 2021 minutes and was seconded by Mr. Galary. The motion passed unanimously via roll call vote (6-0-1, Corey Pietraszek abstained).
 - b) Mr. Galary made a motion to approve the December 13, 2021 minutes and was seconded by Mr. Lavalette. The motion passed unanimously via roll call vote (7-0).
4. **Requests for Certificates of Compliance**
 - a) SE 023-1251, CON 023-139: **279 Mill Road**

Ms. McClees informed the Board this is a request for a Certificate of Compliance for a solar development project. The site visit concluded that the solar array storm water facilities, along with more technical parts of the project, have been constructed in substantial compliance with the approved plans and the Order of Conditions. The wetland replication area was planted in September 2020 and inspected December 8, 2021. The Commission will need to discuss a second year of monitoring.

The other items with concern were the stream and wetland crossings. The as-build and approved plans show the PVC pipes that maintain hydrologic connectivity, underneath the crossings, were lengthened, but Ms. McClees did not see the ends of the PVC pipe during the site visit. The rip rap had caved around this piping. The Commission should discuss whether this shifting allows hydrologic connections to function properly and whether they have the ability to maintain wetland and stream connectivity. It needs to be determined whether those connections are still in substantial compliance with the approved plans, or if adjustments are required to ensure hydrologic connections are maintained.

Ms. McClees added the monitoring report submitted shows a substantial amount of wetland tolerant vegetation. There is data lacking in what was planted in the replication area, as well as exact quantities.

Mr. Haworth asked why the Commission did not receive quantities for vegetation plantings.

Ms. McClees commented that the project was approved without a detailed wetland replication layout and detailed planting plan. Goddard Consulting is unable to get in touch with the original wetland scientist, to obtain an original wetland replication.

Mark Arnold, Wetland Scientist with Goddard Consulting, stated he performed a survey in Fall 2021. He confirmed they have not been able to get in touch with the original wetland scientist on the project. He is now determining if the wetland area meets the criteria of a wetland replication area. Replications along perennial rivers, such as this, flood more consistently, due to intermittent situations. He believes a decent wetland vegetation coverage exists and that the area has successfully replicated. It is important to check if it is replicating hydrologically, elevation wise, and species. This assessment criteria can determine if the wetland has replicated in the same form.

Mr. Haworth has concerns issuing a Certificate of Compliance with no data of quantities planted, or a plan on how to fix the shifted rip rap.

Mr. Arnold stated he was not aware the rip rap had shifted. There were no issues noted during the last visit. It seems to be a relatively minor issue that can be adjusted by hand. He believes the solar team could adjust during their monthly visits, but he will follow up with the team, if necessary. If the Commission needs more time to review the project, his team will be happy to meet them on site.

Ms. Isherwood would like to see a second year of growth, to properly identify species and add if necessary. She also expressed concerns about future maintenance.

Ms. DeSalvatore does not recommend going against MACC recommendations and issuing a partial Certificate of Compliance. She believes two growing seasons is a standard we should adopt and keep. She would like to see a formal engineering report on the hydrological connections. She would also like to participate in a site visit.

Mr. Arnold confirmed that the report does list vegetation, such as, Cattails, Marsh Seedbox, Dominant Sensitive Fern and Red Maple. An exact count is difficult; and usually cover is approximated.

Mr. Haworth believes information from the original firm should be obtained to procure counts. The hydrologic connection is still an issue and wants to know what is causing the piping to shift; is the pipe blocked or impeded. If not properly resolved and monitored, it could turn into a long-term problem.

Mr. Haworth made a motion to deny the Certificate of Compliance and request a planting plan that reflects the species and quantities installed at that location, and that a hydrological connection be examined.

Mr. Arnold will submit additional information and would like to be heard again at the February 14, 2022 meeting. He appreciated the time allowed by the Board to submit additional information.

Mr. Haworth did not follow through with a motion and will allow Mr. Arnold to submit additional information to Whitney McClees.

Mr. Lavalette temporarily left the meeting at 6:56pm

b) SE 023-1269, CON 19-007: **20 Yankee Lane**

Ms. McClees stated at last meeting there was a vote to deny the Certificate of Compliance, until monitoring was completed. Due to conflicts in communicating with the wetland scientist, there was a discussion to allow continuance to the next meeting for the solar array project.

Mr. Haworth made a motion that the Board denies the Certificate of Compliance for 20 Yankee Lane, SE 023-1269, CON 19-007, until such time as two years of wetland replication monitoring has occurred; the Commission will then review the wetland monitoring and make a decision. The motion was seconded by Ms. Isherwood and passed unanimously via roll call vote (6-0).

5. **Public Hearings** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and/or the Code of the Town of Fairhaven Chapter 192, Wetlands:

Continued to a Future Meeting

a) SE 023-1356, CON 023-229: **12-18 Rio Way – continued to February 14, 2022**

Notice of Intent filed by George Mock, Nye Lubricants, Inc., for stormwater upgrades and reductions in impervious surface associated with building upgrades at the property located at 12-18 Rio Way, Assessors Map 19, Lot 242. Work to take place in the Riverfront Area and 100-foot buffer zones to Coastal Bank and Coastal Beach.

Requests for Continuance

b) SE 023-1374, CON 023-258: **89 Akin Street – request for continuance to February 14**

Notice of Intent filed by Daniel Pounds for the removal of the existing house and construction of a new residence with town water and sewer connections and associated site work at the property located at 89 Akin Street, Assessors Map 30B, Lots 54-67. Work to take place within Riverfront Area and the 100-foot buffer zone to Bordering Vegetated Wetland.

Mr. Haworth made a motion to continue 89 Akin Street, SE 023-1374, CON 023-258, to February 14, 2022 and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (6-0).

Abbreviated Notices of Resource Area Delineation

c) SE 023-1366, CON 023-251: **Bridge Street, Map 36, Lot 15J**

Abbreviated Notice of Resource Area Delineation filed by Paul Downey, Fairhaven Properties, LLC, requesting confirmation of all jurisdictional resource areas under the Wetlands Protection Act and Fairhaven Wetlands Bylaw at the property located at Bridge Street, Assessors Map 36, Lot 15J.

Mr. Haworth made a motion to continue Bridge Street, Map 36, Lot 15J, SE 023-1366, CON 023-251, to February 14, 2022 and was seconded by Ms. DeSalvaore. The motion passed unanimously via roll call vote (6-0).

Request for Amended Order of Conditions**d) SE 023-1340, CON 023-195: 1 Bella Vista Island**

Request for Amended Order of Conditions filed by Heiam Alsawalhi requesting modifications to the scope of work approved in the Order of Conditions issued May 28, 2021 under both the Wetlands Protection Act and Fairhaven Wetlands Bylaw. Work to take place on Coastal Bank, Coastal Dune, in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Salt Marsh, Coastal Bank, and Coastal Dune.

Ms. McClees stated this is a different project than the one discussed at the previous meeting. This entails the Order of Conditions, with scope of work approval outside the administrative consent order, required by MA DEP. The Order of Conditions required that work begin by December 1, 2021. That date was not met and the Commission voted at the December 13, 2021 meeting to impose a \$300 per day fine from December 1, 2021 to December 12, 2021, for failing to begin work by December 1, 2021.

They have submitted an amendment request to modify the scope of work that was approved by the Order of Conditions. These modifications include a request by the landscaping company to leave some items in place.

The Commission has appointed third-party oversight to mediate and ensure a project timeline.

Mark Manganello, of LEC Environmental Consultants, Inc., is the peer reviewer for the project for the Commission.

Rich Rheume, project engineer for the applicant, stated there was a timeline to remove certain vegetation. The client hired Bourne Knowles to establish a wildflower field and to rip out shrubs and fruit trees. The removal of these trees was questioned, due to their habitat value. The modification request ensures 95% of what was approved, by the Commission, is accomplished.

Mr. Haworth stated that all piping should be removed, so it is not used in the future. Wiring could easily be removed by pulling it through the conduit, and the ground could be refilled. He also enquired if the trees were being relocated throughout the property.

Ms. McClees confirmed that the notation on the approved plan states existing fruit trees, water spickets, and lighting to be moved outside the 80-foot resource area buffer and relocated to the perimeter of the property.

Mr. Haworth stated he is going by the plan dated April 5, 2021. It states existing fruit trees, lighting, and spickets are to be moved outside the 80-foot resource buffer. Relocating these items will create an opportunity for the resource area to reestablish itself. These trees are not indigenous vegetation; they are not vital to the health of the resource area.

Mark Manganello agrees and does not think it will be burdensome to move the trees, although costly and would create temporary ground disturbance. The area is relatively flat, so as long as the relocation is done carefully, at the right time of year, the trees will be preserved.

Mr. Haworth asked Mr. Manganello if it would be better for the environment to remove the trees entirely.

Ms. DeSalvatore would like the fruit trees removed. She believes they pose problems for the future. Once they mature, they will require maintenance, including fertilizer. She also would like anything not deemed necessary underground, removed.

Mr. Haworth would like the fines paid by the February 14, 2022 meeting.

Ms. McClees believes it is imperative we get the fine paid first. A clear timeline will only make it clearer and easier in terms of enforceability on fines. The \$3,600 fine has not been paid. If the Commission specifies that work must be done within this timeline, and not if it is not completed by a certain date, then a \$300 a day fine will be retroactively imposed from December 13, 2021, when the Commission paused the fines.

Mr. Manganello was asked if it is necessary to amend the Order of Conditions to reestablish timelines for the Spring. An Amended Order is a willable document that needs to be recorded and he did not feel that would be necessary. He preferred a simple letter establishing a new timeline.

Mr. Rheume stated the fine will be paid tomorrow.

Ms. DeSalvatore made a motion that the existing fine must be paid by January 25, 2022, or a \$300 a day will begin accruing; furthermore, if the work is not completed by June 30, 2022, fines of \$300 a day will be retroactive from December 13, 2021. The motion was seconded by Karen Isherwood and passed unanimously with Board members present via roll call vote (6-0).

Mr. Haworth made a motion for the Commission to deny the request for an Amended Order of Conditions for 1 Bella Vista Island, SE 023-1340, CON 023-195, under both the Wetlands Protection Act and the Fairhaven Wetlands Bylaw and was seconded by Ms. DeSalvatore. The motion passed unanimously with Board members present via roll call vote (6-0).

Notices of Intent

e) SE 023-1345, CON 023-206: **2 Oxford Street**

Notice of Intent filed by Robert Weeks, 2 Oxford Street, LLC, for the construction of a fixed pier, gangway, and floating docks at the property located at 2 Oxford Street, Assessors Map 13, Lot 1. Work to take place in Land Under the Ocean, Land Containing Shellfish, Land Subject to Coastal Beach.

Mr. Haworth made a motion to continue 2 Oxford Street, SE 023-1345, CON 023-206, to the February 14, 2022 meeting and was seconded by Ms. Isherwood. The motion passed unanimously with Board members present via roll call vote (6-0).

f) SE 023-1369, CON 023-255: **10 Diamond Street**

Notice of Intent filed by Ruby and Jaime Medeiros for the construction of a garage, mud utility room, and expansion/reconstruction of the existing dwelling at the property located at 10 Diamond Street, Assessors Map 29, Lots 46 & 72. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone Bordering Vegetated Wetland.

Ms. McClees stated the zoning officer reviewed the submitted site plan and stipulated a determination from the Zoning Board of Appeals is required. The Wetlands Protection Act

requires applicable decisions from multiple Boards, prior to submitting an Order of Intent to the Conservation Commission. Additionally, there was a site visit which discussed some of the items on the application. The agent recommended the applicant provide additional information to the Commission and file with ZBA.

Mr. Haworth stated it was imperative that it gets approved with ZBA, especially if the plan has been modified.

Bob Field, with Field Engineering, represented the property owner. He stated that before a resubmittal of the site plan, he wanted the opportunity to discuss items that arose during the site visit. He has proposed some modifications and understands the Commission is looking for more than what was proposed. They are able to move out of the 25-foot buffer zone and propose a 50-foot zone. Field Engineering could move to a previously disturbed area, with surface recharge, to mitigate the impervious surface.

Mr. Field understood there were questions on the existing vegetation. What is revegetated around the old garage area is mostly invasives like bittersweet, honeysuckle, and rose. The applicant's attorney has been in communication with the Zoning Officer and believes this does not require a Variance, since they are not increasing any nonconformities under MGL 40A, Section 6.

Mr. Haworth was under the impression it needed to go before Zoning and asked Ms. McClees if an RR District makes a difference.

Ms. McClees received an email from the Building Commissioner January 20, 2022, regarding Zoning. As the lot requires 30,000 square feet and it only has 24,136 square feet, it is considered a preexisting nonconforming property. If the applicant wishes to expand the nonconformity, they must receive a determination from the Board of Appeals that the expansion is not more substantially detrimental to the neighborhood, pursuant to MGL 40A, Section 6.

Mr. Field will follow up with the attorney. He would like a sense from the Board on plantings and any other issues.

Bob Field would be happy to discuss directly with Ms. McClees, prior to the next meeting and file with the Zoning Board of Appeals. He asked for continuance to February 14, 2022.

Mr. Haworth does have an issue with the addition being proposed within the 25-foot buffer zone.

Mr. Haworth made a motion to continue 10 Diamond Street, SE 023-1369, CON 023-255, to February 14, 2022, at the applicants request and was seconded by Ms. Isherwood. The motion passed unanimously with Board members present via roll call vote (6-0).

g) SE 023-1376, CON 023-262: **Nasketucket Bay**

Notice of Intent filed by Northeast Maritime Institute for a 2-acre aquaculture development area in Nasketucket Bay off Fish Island at all times of the year to: (1) plant and grow shellfish on and off the bottom; (2) place shellfish in or under protective devices; and (3) to grow shellfish by

means of racks, bags, or floats. Work to take place in Land Subject to Coastal Storm Flowage, Coastal Waters, Land Under Ocean, and Land Containing Shellfish.

Ms. McClees stated the impact to existing Land Containing Shellfish would increase the productivity to the area, which does conform to the Wetlands Protection Act. The design is consistent with other aquaculture projects permitted by the Commission, as well as minimizing adverse impacts on Land Under Ocean. The proposal does not have significant or cumulative impacts on the wetlands, valued by the bylaw. The Harbormaster/Shellfish Warden does not have any concerns regarding impact on recreation, as the area is adjacent to three other active aquacultures. The project is under water and marked with buoys.

MA DEP did not provide any comment when they issued the file number. The Department of Marine Fisheries (DMF) issued their comment letter today, January 24, 2022, with no concerns, aside what was included in the Notice of Intent. Proper equipment maintenance is required to minimize any sort of marine mammal or turtle entanglements, or fishery impacts.

Ms. McClees has not yet received comments from the Mass Wildlife's National Heritage Endangered Species Program. The area of work does fall within priority habitat for rare and endangered species. Until the Commission receives comments from National Heritage, it is advised not to close the public hearing. The project does appear to be compliant with all applicable regulations, under both the Wetlands Protection Act and the Fairhaven Wetlands Bylaw. An Order of Conditions may be ready at the next meeting, if the Commission does not have any significant concerns.

Mr. Haworth questioned the impacts on recreation. Will the project prevent jet skis, kayaks, etc.

Gary Lavalette returned at 7:48 – he read the narrative and is fully aware of the discussion taking place.

David Bill, Program Director for the aquaculture degree program at the Northeast Maritime Institute addressed the recreational boating concerns. This area has been parceled as aquaculture by the Marine Resource Commission. Kayaking can take place in the area, there will only be floating cages. The school's area will be a demonstration farm for the program. Motorized craft is not recommended through the area, due to shallow spots and could damage engine from floating aquaculture gear.

Mr. Haworth brought up the concern that the steady growth of shellfish areas limits recreation areas for taxpayers.

Mr. Bill believes Mr. Cox would be the best person to answer these questions, as he has been quite involved in public use planning. David Bill has participated in Marine Resource Commission meetings, and was able to confirm the committee has looked carefully at restricting the area set aside for aquaculture. Once this designated area has been filled by applicants, there will not be any continued expansion of the area, until the Marine Resource Commission renews again.

Mr. Haworth inquired if it will have profit potential.

There is potential in the permit application for profit, but primarily, this project is for community outreach and education.

Ms. DeSalvatore would like to see where any profit made will be used.

Mr. Haworth does not believe that is within our purview to ask, but will look into it.

Ms. Isherwood initially had concerns over entanglement, but feels comfortable with the DMFs assessment and opinion.

Mr. Haworth made a motion to continue Nasketucket Bay, SE 023-1376, CON 023-262, to February 14, 2022, and was seconded by Ms. Isherwood. The motion passed unanimously via roll call vote (7-0).

- h) SE 023-1370, CON 023-256: **Winsegansett Avenue, Map 42A, Lots 232, 232A & 233**
Notice of Intent filed by Alexander and Elizabeth Kalife, Trustees of the Kalife Residence Trust, for the reconstruction of the existing garage with a flood-zone compliant garage at the property located at Winsegansett Avenue, Assessors Map 42A, Lots 232, 232A & 233. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Coastal Beach.
Ms. McClees said representative not available.

Mr. Haworth made a motion to table Winsegansett Avenue, Map 42A, Lots 232, 232A & 233, SE 023-1370, CON 023-256, to the end of the meeting and was seconded by Ms. Isherwood. The motion passed unanimously via roll call vote (7-0).

6. **Violations/Enforcement Orders/Cease and Desist Notices**

- a) 25 & 29 Mangham Way: The Commission members at the site visit provided some feedback to the Wetland Scientist, subsequent to that site visit, the Wetland Scientist had further discussion with the property owner. Rather than presenting a fully revised Restoration Plan, they are looking for input on a potential change and scope of the Restoration Plan to exclude the 25-foot no disturb area. A shrub border directly in front of the wetland line was proposed, along the rear of the property. The Conservation Agent presented the proposed revision, which no longer includes the 25-foot buffer zone, being restored with conservation seed mix, and instead includes a shrub border.

Bruce Webb, with Ecosystem Solutions apologized, as he and the property owner, despite his best efforts, was not able to coordinate this change in a timely manner. Upon further review, the disturbed area, which constitutes the 25-foot no touch, actually predates the adoption of the 25-foot no touch Commission regulation. Photos were found concluding it predates April 2021. The change proposed should better protect the resource area than the original submission. The area south of the shrub line will be seeded with Conservation mix. North of that wetland line has been disturbed for quite some time, and they see no great change or impact here.

Ms. DeSalvatore would like to see a shrub border at the outer edge of the 25 foot no touch zone, to protect any encroachment from lawn, along with seeding to restore the area.

Ms. Isherwood was in agreement that the reason for the 25-foot no disturb is for a buffer. Even if it was previously disturbed, it needs be fixed.

Mr. Haworth asked Mr. Webb for the purpose of the buffer zone.

Mr. Webb stated the buffer zone provides additional protection for the wetland resource area, from not only encroachment, but fertilizers and sediment runoff. It will slow and stop various substances from finding their way into the wetland, or impeding the functions of the wetland.

Mr. Haworth wanted the public to understand the importance of the buffer zone. This house was approved and built with a clear 25-foot no touch zone. This was stated on the original Order of Conditions, in the early 2000's. The Order of Conditions should not be violated and the 25-foot zone should be reinstated with a bush line at the 25-foot zone.

Mr. Webb asked if the Board would be open to reducing the 25-foot no touch to 15 feet, given the historical fill. In photos, refuse is seen in the wetland dating back to the 1800's up to the 1920s. This is not a perfectly pristine wetland and wondering if they would be open to this modification.

Mr. Lavalette, Ms. Isherwood, and Ms. DeSalvatore expressed they were not in favor

Ms. McClees stated they still need to submit a Restoration Plan but there does not need to be a formal vote. He can come back the next meeting with a revised restoration plan that addresses the comments from the Board from the site visit and tonight's meeting.

Ms. McClees presented the originally submitted Restoration Plan, which shows the disturbed area within the 25-foot zone. Based on the site visit, the property on the left is pretty well vegetated.

Mr. Haworth stated only the area disturbed has to be restored.

Mr. Webb stated the client is very aware of the situation and made it clear that he does not wish to violate any further provisions of the Wetland Protection Act.

Mr. Haworth reiterated the importance of maintaining that 25-foot buffer zone. He recommended Mr. Webb discuss with the client and put together a revised Restoration Plan.

b) SE 023-1341, CON 023-194: North Street Marsh, Map 15, Lot 43

Ms. McClees discussed the items voted on at the December 13, 2021 meeting. The following items were to be submitted: a revised Restoration Plan that met all the outlined requirements; the Enforcement Order; and payment of the \$1,200 fine, no later than January 17, 2022. The fine has not yet been paid and the agent's comments on the restoration narrative need more detail than what has been provided. Details are needed on the depth of the stone proposed to be replaced, once the filter fabric has been removed. The agent is currently looking for information on all of the boulders replaced at the edge of the salt marsh. A note on the plan states one method of reseeding with the use of sod, which she does not feel is appropriate, being directly adjacent to a salt marsh. Additionally, there is no timeline of when this proposed

work will be completed. While each item in the Enforcement Order was addressed, more information is needed for a robust Restoration Plan.

Dan Gioiosa, of SITEC Engineering, represented the client. He is Looking for additional information aside from the letter dated January 14, 2022. He was looking for clarification on the requests still needed.

Mr. Lavalette asked if the filter fabric would help stabilize the parking area.

Mr. Gioiosa stated it would help, but it is not outlined in the original request.

Ms. McClees stated the current proposal is to remove the filter fabric, unless the Commission is inclined to allow it to stay.

Mr. Haworth agreed with the Conservation Agent. He reminded him that the \$1,200 fine has not been rectified (item 2 of the memorandum).

Ms. McClees stated the area is supposed to be returned to a gradual slope. She would prefer it restored to what it was before, with minimal stones.

Lee Miguel, owner of 3 North Street Marsh was present to address the Board. He stated he was aware of the fine, but was waiting for Steve Gioiosa to provide proper information to the Conservation Agent.

Ms. DeSalvatore looking for point of clarity on contours; did the EPA leave contours when they finished the restoration of the marsh.

Ms. McClees does not have anything on file from the EPA; however, the site plan approved for the fence project stipulated that grades return to preconstruction levels. Stones are for stabilization, after work is complete, and should not be 3-5 inches of stone.

Mr. Miguel stated three to four inches of stone gives plenty of filtering; Steve Gioiosa had revised the plan to satisfy the Board. He stated the original plan approved shows the entire area covered in stone.

Ms. McClees clarified there shouldn't be a need for 3 to 4 inches of stone to stabilize the area.

Ms. DeSalvatore would like to see native grasses with deeper roots for more protection of the salt marsh, in the seed and loam area.

Mr. Haworth stated this project has gone far out of scope. He explained to Mr. Lee the importance of the marsh and following the plan.

Mr. Miguel believes he followed the scope of work and followed the rules of permitting. He believed there was agreement with Steve Gioiosa and Ms. McClees that the work could be done in phases.

Ms. McClees clarified that the phases of the project related to the fence and at no point did the phases of the project ever address the placement of stone. The permit states very clearly that no regrading was to occur on any part of the property. This is primarily why we have an Enforcement Order; that piece of the Order of Conditions was violated in this particular area. Additionally, there was a cease and desist, by the Board Chair, due to a violation in the Order of Conditions. The Restoration Plan is addressing that violation. The conversation with Mr. Gioiosa did not consist of agreeing to the stones.

Ms. Isherwood agreed with native grasses instead of loam, as Ms. DeSalvatore stated.

Ms. DeSalvatore believes we are looking at unpermitted work that needs to be restored to original condition.

Mr. Haworth asked Dan Gioiosa to discuss these concerns with Steve Gioiosa and come back on February 14, 2022.

Mr. Haworth stated either the fine gets paid within 7 days or a \$300 a day fine will be implemented, until such time as a formal Restoration Plan is submitted.

Ms. DeSavatore felt fees should accrue from the time it was due to be paid up until today, if not paid tomorrow then police should issue a ticket.

Ms. McClees stated that when the fine was issued the Board voted to issue a \$1,200 fine for the following activities: (1) a \$300 a day fine anytime a cease and desist notice needs to be issued; (2) ignoring the cease and desist notice and continuing work; (3) regrading the stock pile area including removal of vegetation in violation of the Order of Conditions and; (4) placement of unwashed crushed stone in excess of what was needed to stabilize the area, and the placement of new large boulders at the edge of the salt marsh.

Mr. Miguel claimed the large rocks were done by the DEP [meaning EPA].

Mr. Haworth stated another layer of rocks was added outside the plan.

Mr. Miguel claims he paid \$3,000 for the rocks and did not regrade. He asked the Board to eliminate this violation. He believes the area was not regraded.

Ms. DeSalvatore made a motion that since the fine was not paid on the due date that a \$300 a day fine be added to the fine, up to today (\$2,100), and if it is not paid by January 28, 2022, then another \$300 a day will accrue and the police will be notified. The motion was and seconded by Ms. Isherwood.

Mr. Galary does not agree with Ms. DeSalvatore's motion and does not feel it is fair for the Board to backtrack. If the fee is not paid by tomorrow, he is fine with fining each additional day going forward. He also asked if there is a paper record, where he bought the stones, that shows if they were washed.

Mr. Haworth added the filter fabric under the stone was also a violation.

Mr. Lavalette would assess a \$600 fine and does not want excessive fines.

Ms. DeSalvatore withdrew her motion.

Mr. Miguel asked to continue to the next meeting, so he can show the Board the paperwork on the stone.

Mr. Haworth stated \$900 by January 26, 2022 and the \$300 fine will be discussed at the February 14, 2022 meeting.

Mr. Haworth made a motion for the property owner of North Street Marsh, Map 15, Lot 43, SE 023-1341, CON 023-194, will pay the \$900 fine by January 26, 2022, to properly satisfy the \$900 of the \$1,200 fine; the additional \$300 of the fine will be discussed at the February 14, 2022 meeting, after review by the Chair, Conservation Agent, and other parties review the placement of the boulders. If the fine is not paid by this date, then further action will be taken at the next meeting. The motion was seconded by Mr. Lavalette and passed unanimously via roll call vote (7-0).

Ms. McClees clarified the fine was issued on October 18, 2021; the items discussed were the necessity of posting a cease and desist, ignoring it and continuing work, and the regrading, which included removal of vegetation. The Order of Conditions clearly stated that the removal not be in excess of what was needed for the fence project. The placement of the boulders and large amounts of unwashed crushed stone were also a violation to the Order of Conditions. The Board has already synthesized all these violations into 4 items for that \$1,200 fine.

Ms. Isherwood believes the boulders is the only violation negotiable, and would like to see photos. She would like fine paid for the remaining items within the agreed to timeline.

5. Public Hearings

Notices of Intent

h) SE 023-1370, CON 023-256: Winsegansett Avenue, Map 42A, Lots 232, 232A & 233

Notice of Intent filed by Alexander and Elizabeth Kalife, Trustees of the Kalife Residence Trust, for the reconstruction of the existing garage with a flood-zone compliant garage at the property located at Winsegansett Avenue, Assessors Map 42A, Lots 232, 232A & 233. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Coastal Beach.

Ms. McClees said representative not available.

Mr. Haworth made a motion to untable the hearing for Winsegansett Avenue, Map 42A, Lots 232, 232A & 233, SE 023-1370, CON 023-256 and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (7-0).

Ms. McClees stated the Commission asked for a peer review at the December meeting. The applicant would now like to discuss the scope and costs of the peer review.

Mr. Davignon from Schneider, Davignon, and Leone represented Mr. and Mrs. Kalife. Mr. Davignon, and the applicant, do not believe the proposal received was reflective of what was discussed at the December 13, 2021 meeting. His recollection was to provide \$2,500 for the Commission to engage a Coastal Geologist. The Coastal Geologist was to witness the test pit (in

the back right corner of garage) and verify that there is no evidence of any coastal dunes in that location. If coastal dunes were discovered, they would improvise on the site and do additional testing. Mr. Davignon would provide the backhoe for the peer reviewer, and Schneider, Davignon, and Leone would bring in their soil evaluator to represent the Kalife's. Subsequently, a write up on this test pit would be performed. The proposal submitted was beyond \$4,930. Mr. Davignon and his clients asked for the consultant to scale the review back to what was described and voted on at the last meeting.

Mr. Haworth stated this quote has been scaled back as the initial quote was much higher. This was the only proposal the Commission received, out of multiple firms. They are charging for the three tasks outlined in the proposal.

Mr. Davignon had the understanding that everything submitted by Stan Humphries was adequate. If Stan Humphries could witness the test pit, no third party would be needed. Mr. Davignon would like the proposal fine-tuned and reworded to get a reduction in price. What was requested of this reviewer is not reflective of the scope that was voted on by the Commission.

Mr. Galary agreed that the original \$2,500 was on the high end, and now \$4,900 seems exorbitant. He believes there should be another solution and the Commission owes it to the homeowners to have a conversation about this.

Mr. Lavalette agreed and remembered the conversation was one hole at the back end of the garage, with someone on sight to analyze the soil. We did not agree to ship out that material for analysis. He asked why Stan Humphries could not verify proper depth.

Mr. Haworth stated that this must be a third-party review.

Ms. DeSalvatore asked if the Conservation Agent could read from the record what the Commission voted on at the December 13, 2022 meeting. In her understanding, anyone reviewing this would need to apply the MA Coastal Wetlands Manual for analysis. That is the required manual to analyze the data.

Mr. Haworth's original documentation does not show where they applied coastal regulations and if they used the manual. This original test pit was witnessed for a leeching field and septic system.

Mr. Davignon stated he feels this is where a disconnect lies. He believed Stan Humphries explained why the manual was not followed; it was not relevant for this situation.

Mr. Davignon requested continuance to the February 14, 2022 meeting. He and his clients would like another quote.

Mr. Haworth made a motion to continue Winsegansett Avenue, Map 42A, Lots 232, 232A & 233, SE 023-1370, CON 023-256, to February 14, 2022, at the applicant's request and additional quotes will be researched. The motion was seconded by Ms. DeSalvatore and passed unanimously via roll call vote (7-0).

7. Correspondence

Corey Pietraszek signed off at 9:55p.m. (6 members now present)

- a) Request to fill vacant non-voting consultant position; review and approve.
Karen Isherwood recused herself from the discussion and vote.

Chelsea Isherwood introduced herself and her desire to become a non-voting consultant. Over the years she has listened to meetings and learned about Conservation issues from her mom, Karen Isherwood. She has read the rules and regulations, along with the Conservation Commission's handbook. An interest has grown, due to a passion for protecting the wetlands and wildlife, all while allowing residents to live their life within these rules and regulations.

Mr. Haworth supports her request as a non-voting member, but would object if she was requesting to be a voting member, due to another voting member within the same household.

Mr. Haworth made a motion to appoint Chelsea Isherwood as a non-voting consultant, until the term expires in May 2022, and was seconded Mr. Lavalette. The motion passed via roll call vote (5-0), Karen Isherwood recused.

8. Ongoing Projects

N/A

9. Upcoming Projects

N/A

10. General Business

- a) Bills: None discussed
- b) FY23 Budget: If any Board member has any concerns in reviewing the budget, please send to Ms. McClees, so she can route to the appropriate people.
- c) 2022 Town Meeting Articles: Ms. McClees has requested placeholders for revisions to the Transfer of Tax Title Properties Bylaw.

She has spoken to chief Myers about putting in a placeholder to amend the General Provisions Bylaw, to include a ticketing provision in the Wetlands Bylaw. Other departments have the ability to write tickets. The Board can discuss the potential language for this revision at the next meeting.

- d) Update to Meeting Schedule: A revised application material submission deadline will allow Ms. McClees to get the packet to the Board a week prior to the meeting.

Mr. Haworth made a motion to adopt the 2022 meeting schedule as outlined in the packet and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (6-0).

- e) Next meeting: February 14, 2022

11. Any other business that may properly come before the Commission not reasonably anticipated 48 hours in advance of the meeting.

Mr. Haworth made a motion to adjourn at 10:07p.m. and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (6-0).