

Conservation Commission  
February 22, 2021  
Minutes

1. Chairman's Welcome and Media Notification

Mr. Haworth opened the meeting at 6:35 p.m.

Ms. McClees advised that the meeting was being conducted remotely consistent with Governor Baker's Executive Order of March 12, 2020, due to the current State of Emergency in the Commonwealth due to the outbreak of COVID-19. The Governor's Order 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, with attendees who participated by phone and video conference and even used the chat on zoom. Ms. McClees read the Open Meeting Law rules and regulations.

2. Quorum/Attendance

Present: Chairperson, Geoff Haworth, Amy DeSalvatore, Corey Pietraszek, Gary Lavalette, John Dallen, and non-voting consultant Ronnie Medina.

The Conservation Agent, Whitney McClees was also in attendance. The Public also participated in the meeting by phone, video, and chat.

3. **Minutes**

a) Approve the minutes of January 4, 2021

Ms. McClees stated that the Recording Secretary had issues with her equipment and received the minutes too late to make the meeting packet.

Mr. Haworth made the motion to table the minutes of January 4, 2021 and it was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote. (5-0)

b) Approve the minutes of January 25, 2021

Mr. Haworth made the motion to table the minutes until the next meeting, so people could review, and it was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote. (5-0)

c) Approve the minutes of February 8, 2021

Not yet available for review.

4. **Action Items**

a) Review and approve draft of buffer zone policy

b) Review and approve draft of winter delineation policy

Mr. Haworth made a motion to table both A&B Action items at this time and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote. (5-0).

5. **Requests for Certificates of Compliance**

a) SE 023-0725, CON 023-204: **746 Sconticut Neck Road**

Mr. Haworth stated this is a client of his and will recuse himself and not be voting.

Ms. McClees reviewed her staff report. She stated the order of conditions was issued as part of the grant funded "Winsegansett Marsh Restoration Project" dated November 2000. She stated the order of conditions approved the replacement of the undersize culverts under three privately foot pads to alleviate tile restrictions to the upper marsh.

Ms. McClees stated the Certificate of Compliance was for the reconstruction of the building of the property although based on the file that wasn't on the scope of the work and the bank withheld money from property owner until the order of the conditions was cleared from the deed. This order of conditions does cover the grant funded from three private parcels under one DEP Number. The request came from one of the property owners. She stated there were three separate orders of conditions filed, and there was some confusion on how it was issued back in 2000. The final grant report stated that it was completed, and no special conditions were noted on the conditions. Ms. McClees stated there are three separate orders of condition, and the other two notices will be asked to submit a request for a Certificate of Compliance that are related to this file number. Ms. McClees stated she did recommend issuing a certificate of compliance for this project.

Ms. DeSalvatore stated that she thought they may need to hear input from the other two property owners.

No other Commission members had further comments.

Ms. DeSalvatore made the motion to grant the Certificate of Compliance for 746 Sconticut Neck Road SE 023-0725, CON 023-204, and was seconded by Mr. Lavalette. The motion passed unanimously via roll call vote. (4-0-1). Mr. Haworth abstained on voting.

b) SE 023-1280, CON 19-018: **84 Fort Street**

Ms. McClees stated the order was issued in December of 2018 for the construction of a ramp, pier and float. She stated she did do a walk through at the site, and that the shellfish mitigation fee has been paid and the dock has been completed according to the plans. She also stated the applicant has submitted an affidavit signed by the engineer and it has been constructed in compliance. Ms. McClees recommended to issue the certificate of compliance.

Mr. Haworth asked if the property owner or property representative is online. Ms. McClees stated she didn't think anyone was on the line for this project.

Commission members had no further questions. Mr. Haworth stated he too, had no further questions as it appeared pretty straight forward.

Mr. Haworth made the motion to issue a certificate of complete certification for SE-023-1280, CON 19-018, 84 Fort Street and it was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote, 5-0.

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

**Requests to Continue to a Future Meeting**

a) SE 023-1332, CON 023-173: **18 Bass Creek Road – request for continuance to May 24, 2021**

Abbreviated Notice of Resource Area Delineation filed by John Kalife requesting confirmation of a boundary delineation of a Bordering Vegetated Wetland at the property located at 18 Bass Creek Road, Assessors Map 43C, Lots 296, 298, 300, 302, 304, 306, 309, 310, and 311.

Ms. McClees stated that the request was made to allow for the growing season to begin, and so the peer reviewer needed to review and comment on the wetland.

Mr. Haworth made the motion to continue SE 023-1332, CON 023-173, 18 Bass Creek Road at the request of the applicant to May 24, 2021 and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote, 5-0.

- b) SE 023-1324, CON 023-153: **86-88 Middle Street – request for continuance to April 12, 2021**  
Notice of Intent filed after-the-fact by Patrick Carr, A1 Crane Company, Inc., for the paving of an existing pervious parking area with concrete at the property located at 86-88 Middle Street, Assessors Map 11, Lots 6D, 6E, & 7. Work to take place in Land Subject to Coastal Storm Flowage.

Ms. McClees stated that they are going before the Zoning Board in April and so they would like some time to address the issues there and then address the stormwater.

Mr. Haworth made the motion to continue SE 023-1324, CON 023-153: 86-88 Middle Street at the request of the applicant to April 12, 2021 and was seconded by Mr. Lavalette. The motion passed unanimously via roll call vote. (5-0).

Ms. DeSalvatore asked if they should do a notification of the abutters where some time has elapsed.

Ms. McClees stated because it is continued to a date certain it is not required.

Mr. Haworth asked Ms. McClees to ask the applicant to notify the abutters, but not required.

- c) SE 023-1342, CON 023-196: **3 Hidden Drive – request for continuance to March 8, 2021**  
Notice of Intent filed by Richard and Elizabeth Perreira for the installation of a fence, removal of stumps, and loaming and seeding previously disturbed area at the property located at 3 Hidden Drive, Assessors Map 39, Lot 27C. Work to take place in the 100-foot buffer zone to Bordering Vegetated Wetland.

Ms. McClees stated the applicants asked for a continuance as the walk through was scheduled for the week of the meeting and they wanted time to gather additional information.

Mr. Haworth made the motion to continue SE 023-1342, CON 023-196: 3 Hidden Drive at the request of the applicant to March 8, 2021 and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote, 5-0.

#### **Requests for Determination of Applicability**

- d) CON 023-203: **14 Turner Avenue**

Request for Determination of Applicability filed by Victor Carlevale for the replacement of an existing shed, relocation of existing driveway, installation of a new porch, and the replacement of the existing fence at the property located at 14 Turner Avenue, Assessors Map 2, Lot 228. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zones to Coastal Dune, Coastal Beach, Barrier Beach, and Bordering Vegetated Wetland.

Ms. McClees stated the property does fall in the velocity of the flood zone. She stated the existing shed would be the same size and also going in the exact spot and they are also relocating the driveway to the rear of the property and paving it. The old driveway will be replaced by a wrap around deck. And they

are proposing to replace the fence with vinyl plastic and 50% openings. She stated the size of the driveway would be 20x60 feet. The deck would be placed on footings that are compliant with meeting with the flood zone regulations.

Ms. McClees stated the Commission can consider whether the impervious surface in a velocity and in the buffer zone resource area might have an impact on storm damage prevention and flood control and prevention pollution and she has outlined two potential recommendations, as outlined in the staff report.

Mr. Haworth asked a question why they are going on this route with this particular project.

Ms. McClees stated that they are using the existing slab and not pouring a new one, there would be no impact and the fence project is a replacement, is a minor activity. Ms. McClees felt the biggest project is the driveway.

Mr. Haworth stated he questioned this, on the amount, of items requested.

Mr. Lavalette stated is only problem he had was with the driveway and felt it was too excessive. He said he did look at the property and felt even by plantings proposed they would never make up for that much space taken away with the driveway. He had no further issues on the project.

Mr. Haworth asked if the applicant was on-line and would like to comment on this.

Mr. Carlevale stated he just bought this property as a retirement home in October and is trying to make some uplift and basically the fence is falling down and the shed is falling down. He said he doesn't mind making it smaller as long as they can fit two to three vehicles.

Mr. Haworth asked if they have spoken to the Board of Public Works?

Mr. Carlevale stated that was the next thing after we spoke with Ms. McClees and let's see what the project is like. My next step is the Board of Public Works, over there, you can go right on the grass does not need an opening and talk to them and see what they will recommend.

Mr. Haworth stated that you are required to get a curb cutting and he understands there is no curbing there.

Mr. Carlevale stated there is no problem to get approved. He stated he felt 60' for parking of six cars because there is nothing on the back property and he could plant flowers and bushes in that area.

Mr. Haworth stated that Mr. Lavalette had a problem with the size driveway and asked if they've considered other material other than asphalt.

Mr. Carlevale stated that we can put pat stone, we can put whatever you would like, but that everyone in the area has asphalt.

Mr. Haworth explained they are trying to stop asphalt from this area. He explained the difference of water speed from pervious to impervious surfaces.

Mr. Lavalette stated they could agree to go half and half, we could do the regular size driveway in blacktop and if needs more parking go put the gravel up.

Mr. Carlevale agrees, and that the existing driveway is very dangerous.

Mr. Lavalette stated they could do 30 and 30.

Ms. DeSalvatore stated she would like to know where the 100 ft. lines are to the BBW and to the saltmarsh are.

Ms. McClees shows on the map the line to the BBW and nothing is mapped as saltmarsh and all just mapped swamped marsh, which is equivalent as vegetated wetland.

Ms. DeSalvatore stated that it is good that we are moving the driveway out of the 100 ft and to the coastal beach and dune. She asked if the porch was being considered as impervious space.

Ms. McClees stated that she did include the porch as impervious space and even if most porches are solid and do allow water to go thru it does change the way water is hitting the surface. She stated from a zoning perspective and lot coverage if porches are included.

Ms. DeSalvatore stated that we have looked into this before and certain percentage that is counted and is a good, approximated guess. She still has concerns that it is flood zone, and they are adding a whole lot and would like to the driveway being pervious and maybe a reduced foot print. A driveway that big in the buffer zone and flood zone should be pervious.

Mr. Dalen stated he agreed with Mr. Lavalette that perhaps a 50/50 layout and maybe some type of mix driveway and wouldn't affect anything.

Mr. Piestrazek stated he agreed with Ms. DeSalvatore and would recommend it with a more pervious material be used.

Mr. Medina had no further comments.

Mr. Haworth stated the entire driveway would be a lot of impervious and maybe some impervious and pervious driveway would be good compromise and the BPW works required the first 8 ft be paved and in order for it to fit with street line. He said he would like to see a compromise on the driveway. Mr. Haworth said he wasn't concerned about the shed or deck. He also stated the plantings are a great idea to offset the impervious and pervious surface.

Mr. Carlevale stated they would work with the commission for the best outcome possible.

Mr. Haworth stated he would recommend, or motion is to allow you up to the maximum of 50% of request of impervious and pervious. We would prefer less impervious.

Mr. Haworth made a motion to close the public hearing for 14 Turner Avenue, CON 023-203 and issue a Negative 3 and Negative 6 determination with the conditions as outlined in the staff report, and a more detailed planting plan shall be submitted for review by the Commission or agent prior to the start of work; also that no more than 50% of the driveway shall be impervious surface, confirm with the DPW on what portion should be 50/50 and also seek their approval before the start of work. The motion was seconded by Mr. Lavalette.

On the question, Mr. Lavalette stated that if we go 50/50 now is planting plan would be revised and won't need as many plants now, correct?

Ms. McClees stated so based on what was submitted we didn't know how much, and a planting plan is needed period. She stated it was unclear on the planting plan.

Mr. Carlevale asked if you could recommend someone to us.

Ms. McClees stated she has resources to provide you.

Mr. Haworth stated that the applicant could work with Ms. McClees to make up a plan and if the Commission was okay with Ms. McClees approving the planting plan.

Ms. DeSalvatore stated she would like to see the plan, as well as Mr. Lavalette who wanted to see the plan.

Mr. Haworth stated they would vote so he can go speak to the DPW but asked if the applicant might have something ready to return to their March 8, 2021 meeting.

Mr. Carlevale agreed.

Ms. McClees stated that the revised plan needs to be submitted by March 1, 2021.

Mr. Haworth stated if the applicant was not ready on March 8, 2021, they would continue the project until the next meeting.

Per the motion, via roll call vote, the motion passed unanimously 5-0.

**Notices of Intent**

e) SE 023-1296, CON-19-050: **46 Sconticut Neck Road**

Notice of Intent filed by Joshua Alves, Alexander Grey Development LLC, for the construction of an 8-house subdivision, roadway, stormwater facility, and utilities and for wetland mitigation of historical impacts at the property located at 46 Sconticut Neck Road, Assessors Map 28, Lot 24. Work to take place within Bordering Vegetated Wetland and Buffer Zone to Bordering Vegetated Wetland.

Ms. McClees stated it was sent out for peer review and we got our results last week and the applicant has not responded on this yet and that is why he is here tonight to update the Board.

Engineer, Arden Hambardzumian was present on behalf of the applicant. He stated they did receive the last round of peer review and there were comments they agreed and disagreed with. He said that he went thru the first three pages and felt that there are things they have already addressed.

Ms. McClees stated storm water and wetland crossing has to comply per the Wetland Protection By-Law in Fairhaven.

Ms. DeSalvatore asked if it was review for the MACC handbook working in the buffer zone?

Ms. McClees stated no.

Ms. DeSalvatore stated it might be good to look at those issues. I wonder is that lot you were going to take out part of the wetland.

Mr. Hambardzumian stated that they recommended that in their peer review and provide a replication in a better area Army Corp is fine, the water quality might have any issue and we are reaching out to them or see if we can provide a better wetland.

Ms. DeSalvatore stated the lot is pretty close to the wetland itself and they may want to watch for the impact for that lot.

Mr. Hambardzumian stated where the access way is proposed, is a pathway there now and historically people have been driving to access the property and the fill was placed thru that way. He said it was a pretty graded area and certainly needs help.

Ms. DeSalvatore stated they are still not sure what will happen to that lot.

Mr. Hambardzumian stated since the peer reviewer brought it up and I have asked wetland scientist to look into a little bit further.

Ms. DeSalvatore asked what was going to protect the wetland, she asked about shrubs or lawn and how it was going to affect the water quality in that area.

Ms. McClees stated that initially they had proposed to fill this little piece of wetland on that property but because of future violations and thru DEP water quality permitting process they recommended not doing this. The DEP wanted to preserve the wetland as is. Ms. McClees asked Mr. Hambardzumian if the requirement is a part of the Army Corp and DEP water quality permitting to maintain the wetland at its' current state.

Mr. Hambardzumian stated that it is thru his understanding that the wetland survey and Army Corp that they did not have an issue filling and water quality might have an issue. We are going to push that issue.

Ms. McClees asked that right now you don't know water quality will potentially allow that would be filled or required that be maintained? There may be additionally permitted entity that is at play here with that particular piece of wetland.

Mr. Haworth stated that common sense here would be removing that piece of wetland and replicate it at the other end of the wetland and would be much better situation for the wetland and 1 for 2 we are its better off anyway. You are double sizing the wetland in an area where it has a better chance to survive. It would not be in the 100 ft buffer zone. I understand that you have the crossing there and it's going to be cut it off and it's going to be docked there. We might be able to say something to them to help along with the process. It will be better overall a better quality of the project and a better quality of wetland.

Mr. Hambardzumian stated he agreed and would convey that to the wetland scientist and see if he can survey that.

Ms. McClees stated based on previous discussion. The board would like to see 2 to 1 in terms of a replication.

Mr. Hambardzumian stated that in this case we are providing more then what it is called for. We have no issue with that.

Mr. DeSalvatore stated it would be helpful to have the setbacks from the resource area on the plan and see what they are.

Ms. McClees stated there is 50 ft here and 100 ft here showing on the map.

Ms. DeSalvatore asked do we know what the measurements are at each point? It would be hard to delineate. She referenced how far the road is from the wetlands.

Mr. Haworth stated it is 50 Ft. and the outer line outside of the red light is 100ft which Ms. McClees's showing on the map on the screen.

Mr. Haworth stated that if you take the little wetland out of there you're going to move that 50 ft. out of the house and also might move that 100 out.

Ms. DeSalvatore asked if most of the construction is in the outer 50 ft.

Ms. McClees stated yes and out of the buffer zone entirely it is really just inside the buffer zone it's this lot and this section of the road here and a portion of this driveway and the cul-de-sac and the 2 lots on this side which is shown on the map.

Mr. Dallen stated he is ok with them taking out that section and replicating off the side.

Mr. Lavalette and Mr. Piestrazek had no further comments.

Ms. McClees asked the engineer if they had a chance to look at the comments at the wetland crossing in terms box culvert vs pipes which there is no more crossing those points are moved. If for some reason that piece of wetland does have to maintain intact, wanted to see if you had a chance to take a look of their comments in regard of this wetland crossing?

Mr. Hambardzumian stated if it does go away that issue will be removed and I have a comment that the Army Corp of Engineers would like to have a 3 by 3 box culvert to allow habitat and flow between the two wetlands but that is when you are splitting 2 areas size wetland, but in this case you're not going to have much you're going to have 2 18 pipes instead and Army Corp has reviewed the plants and has had no issue with it and Don't believe comments that applies but hopefully it goes away.

McClees stated that she wanted touch basis on that because of more wetland related comments.

Mr. Hambardzumian stated that their suggestions was to lower the whole crossing to allow surface flow between the two wetlands and just provide a dense material underneath but that will not serve the wetlands itself.

Mr. Haworth stated agreed that is why the replicated of the wetland would be much better somewhere else.

Mr. Medina stated he is all set.

Mr. Haworth opened it to the Public to speak on this project.

Ms. McClees stated no one has asked to speak on 46 Sconticut Neck Road.

Mr. Haworth asked the applicant to ask for a continuance. Would you like next meeting, or the next meeting after that?

Mr. Hambardzumian stated he would like to shoot for the next meeting, but if something comes up, he will let Ms. McClees know.



Mr. Haworth stated he made a motion to continue SE 023-1296, CON 19-050, 46 Sconticut Neck Road to March 8, 2021 and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote 5-0.

f) SE 023-1341, CON 023-194: **North Street – Map 15, Lot 43**

Notice of Intent filed by Lee and Elizett Miguel for the installation of a six-foot perimeter fence at the property located on North Street, Assessors Map 15, Lot 43. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Salt Marsh and Coastal Beach.

Mr. Haworth stated North Street had been continued to March 8, 2021 and no discussion will be heard tonight.

Mr. Haworth opened up the Public Hearing for the next two as they are a combined project, but separated as it is a large project.

g) SE 023-1309, CON 023-110: **1 Bella Vista Island**

Notice of Intent filed by Heiam Alsawalhi for the reconstruction of an existing eastern groin, modification of the existing seawall, dredging the bridge channel, providing beach nourishment, a line of wooden posts and planting a lawn in the non-jurisdictional depressions, the construction of a ten-foot-wide crushed stone path to the beach, and an after-the-fact electric gate at the causeway bridge at the property located at 1 Bella Vista Island, Assessors Map 43B, Lots 326, 359, and 360. Work to take place in Land Under Ocean, Coastal Beach, Coastal Bank, Land Subject to Coastal Storm Flowage and buffer zone to Salt Marsh.

h) SE 023-1340, CON 023-195: **1 Bella Vista Island**

Notice of Intent filed by Heiam Alsawalhi for the construction of a pier, ramp, and float, as well as planting trees, shrubs, lawn, and installing underground electric and water at the property located at 1 Bella Vista Island, Assessors Map 43B, Lots 326, 359, and 360. Work to take place in Land Under Ocean, Land Containing Shellfish, Land Subject to Coastal Storm Flowage and the 100-foot buffer zones to Salt Marsh, Coastal Dune, Coastal Bank, and Coastal Beach.

Ms. McClees stated they did the site visit last week and she reviewed her staff report. She stated the Notice of Intent has been split off from some items not required by the administrative consent order.

Per the filing of the non-administrative consent order, Ms. McClees stated the applicant has requested an after the fact determination for conditions on the property which previously not been permitted. She stated the applicant has requested that the commission disregard the previously permitted rain gardens, plantings and existing lawn and irrigation, landscaping and lighting which has been installed without permits. As discussed during the site visit, the applicant has been told to remove the debris from the resource areas and buffer zone immediately including the booms, anchors, stack wood, piping, anything else that should be not in the buffer zone in addition the wooden post along the property line and it should be remove by hand. The Commission should consider imposing fines if these items aren't removed by the March 8, 2021 Public Hearing and proof provided to the Commission and all of those items have been removed previously asked by the Commission on numerous occasions.

The other items that were discussed during the on-site visit was that the work that was previously done in the un-permitted work that was done in the buffer zone would have not permitted had it come before the Board it was installed and the plan should be submitted to the removal of the planting beds,

electrical features, lighting, mulch beds and the lawn from the buffer zone and the plan, show included proposed an establish the installation of native shrubs and grasses within the 25 feet of the resource areas and involving limited mowing and no fertilizers, herbicides, or pesticides. Ms. McClees stated the Commission could consider a 25 to 50 feet buffer zone in the area to be restored to meadow with seed mix or a larger area if feels it is necessary and the restoration, should only be mowed once a year outside the active wild season which is sometimes between Nov 15 and March 31. The limit of lawn area and the limit of restored buffer zone should be demarked with permanent markers such as concrete monuments, pressured treated 2 by 4 markers or posted rail fence, to ensure that, no encroachment occurs in the buffer zone and should be specified and shown on any revise plans. Once these plans are received and review and the Commission may consider this proposed landscaping as a compromise to the work that was not completed under a previously filling which would involve restoring the buffer zones and permitting the remaining the lawn which was supposed to include a 2 rain gardens and extensive planting so if the Commission is comfortable with this compromise they can issue a certificate of compliance for the previously filling for which plantings and rain gardens we re required and an order of conditions could be issued under this filling, for the restoration activity and to address the non-permitted items that are being asked after the fact. We can discuss any potential conditions which might be associated such as the restoration activity that is supposed to be done by June 15 or the commission could impose daily fines. The other items that should be addressed is the float which is be stored on the beach should be moved to an upland location and the applicant should clarify the permitting status and the peer reviewer recommends it being included in the future notice of intent.

Ms. McClees went on to explain the project under the administrative consent order. She stated the first filing was the primary concern is that the plan and project specifications address the Division of Marine Fisheries letter in response to the letter of NOI from Jan 2020, the peer review recommends that they email the Division of Marine Fisheries and copy to the agent. We want to establish dialogue associated with the filing of the revised plans. Some of the items to the original letter to the dredging and related to the disposal proposed to put on the beach and be consistent with DEP nourishment guide. These are items that needs to be addressed. The other items that were noted in during the site visit that needed to be addressed include the coastal bank and the sea wall that was removed. The slope should be covered with loam and seed. The condition of the existing fabricate on the slope should be removed. The peer reviewer that the comm should not be issuing any order of conditions or certificate of compliance until this debris is cleaned up.

Mr. Rheume stated he prepared the plan and the filling and understands everything Ms. McClee s explained to them stated he was sure they will be forwarded the peer reviewer and as well as her staff report. We have been already preparing the plans to show the location of the shrubs, electrical, plumbing and light. We should have that available to u review by Monday March 1, 2021 for the next meeting. The only question I have is the float, I will need permit from the Harbormaster to anchor the float out there, but I don't think I need waterways or conservation?

Mr. Cox stated you need to get a mooring permit from the harbormaster.

Mr. Cox is having technical problems right now.

Mr. Rheume stated he thinks all the suggestions will be approved by the Commission and put into effect and we will go ahead and prepare the plan.

Mr. Haworth asked if some of this will be done by the next meeting the debris, etc.

Mr. Rheume stated he does understand that the debris is on the beach and the resource area has to be removed, but it frozen on our site walk and on a warm week, we should be able to remove it by that next meeting.

Ms. McClees stated that it is also the items over some of the planting beds right up next to the resource area. That should be all removed out of the buffer zone entirely.

Mr. Rheume asked if it is alright to be in the flood zone, you just want us to be out of the 100-foot buffer zone.?

Ms. McClees stated yes.

Mr. Rheume stated he can't imagine that not being done.

Mr. Haworth asked if that would be done by March 8, 2021?

Mr. Rheume stated that he will pass on that message and I will try to make sure it's done.

Ms. McClees stated if it is not done on March 8, 2021, I strongly suspect that the Commission would consider a \$300 fine a day until it is removed.

Mr. Haworth stated this is a serious subject and has been dragging on for a year, and something need to be done it needs to be taken care of.

Mr. Rheume stated that the day of the site walk he communicated in writing that it had to remove immediately, so I will reinforce that with email, calls, and certified mail.

Mr. Piestraszek stated that the debris would have to removed when we went for the site walk, it was all over the surrounding area of the resource area and that should be on the top of the do list.

Ms. DeSalvatore stated it was quite apparent that the lawn which was not permitted was being treated and fertilize and it was with in the 100 ft buffer zone in the saltmarsh and so I do understand that it was requested to be meadowed and not lawn. With this Applicant there has been a lot a record of violations. I feel and understand that the rain gardens that they would have a strong function to protect the saltmarsh and the entire 200 feet should be protected. According to the MACC guidelines for buffer zone it takes 30 ft minimum to provide some protection and I should think there should be 30 ft no touch zone and the rest of the 100 foot should be meadowed. I don't think we should be slacking off of the 100 ft buffer zone particularly with all the violations on this site.

Mr. Lavalette stated agreed a 100 % with Ms. DeSalvatore that the first 30 feet should be planting, and the next 70 feet be meadowed and that will give us 100-foot buffer to the saltmarsh. You could tell that grass was like walking on a carpet and that meant he was putting down fertilizer. It is not a hardship on as far as land goes and there is more grass than he knows what to do with.

Mr. Dallen stated he has nothing new.

Mr. Haworth asked Mr. Cox if he has any comments tonight about this project.

Mr. Cox stated he was going to talk to Ms. McClees about the beach nourishment.

Ms. McClees stated that the peer reviewer and the commission had discussed during the site visit was that Division of Marine Fisheries had mention in their letter last year was the proposed dredge material under the bridge that goes out to the island they are proposing to put the material between the two existing groins on the coastal beach. The division of Marine Fishery needs proof to be submitted that the disposal of the beach fill in the internal tile area be consistent with DEP beach Nourishment guide and they are equal grain size and slope to avoid premature loss from the beach and impacts to near shore habitat. When we were out there last week the area that they are proposing to deposit is fairly good size cobble beach and not necessarily fine grain beach sand and wanted to make sure what is being proposed as beach nourishment consistent as what is there.

Mr. Cox stated that is what happened the last time that bridge was dredge the just put the material out and put it on the beach. You will always have settlement with the tide going to the causeway. So, when they took what was there and made it worse. Would like to see that settlement out some where instead of their beach.

Mr. Haworth stated agreed both Ms. McClees and Mr. Cox and I think what will happen is that underneath that causeway hasn't been dredge, therefore your affect in the inner harbor that we take all the sand out and put in on the other side it washes right back out and it fills right back in and we are back to 2, 3, or 4 feet.

Mr. Cox stated that under the causeway there is not really a depth. In the deed it was supposed to be maintained at 4 feet at low tide. There isn't 4 feet of clearance in the causeway now. At moon tides the water does flow between the 2 of them. But 90% of the time she is dry in the middle.

Mr. Haworth stated there is no flushing. You are not getting the flushing at all and it has been brought to my attention.

Mr. Cox stated he has had issues in the past. We have issues not passing water quality testing for shell fishing.

Mr. Haworth stated that if water is not being flushed out with tide water is a concern. This has been a concern.

Mr. Rheume state that if you dig an acre of the shellfish on either it would be flushing for a few years and those are very good shellfish. The concept of losing a shellfish bed so once a year someone could kayak under the cause way bridge seems like a counter-productive from an environmental standpoint.

Mr. Cox stated he is looking at water flowing between the 2 lands, if we could get a steady flow in tides and out tides it would help the shellfish. I am not looking to doing this for just kayaks. My objective is keeping the shellfish beds growing strong.

Mr. Haworth stated that people should be able to do what they want to their property unless it affects the people around them. This case that causeway does affect the environment the build up the sand and stops the coast from flushing and if he asked to dredge it every season or just take the causeway

out. It is clearly in the deed and doesn't understand why it hasn't been done. People don't come to me that they have debris on the beach and people are coming to me and saying that cove is not being flush why isn't that open and maintain and as Chairman of this Board I have to pay attention to.

Ms. McClees stated that is land containing shellfish is making sure that it is not affected negatively by a project. Part of the ACOP is requiring it to be dredge and the Commission is looking at it as a benefit to maintain those shellfish beds on the inner side of the cove and having it continuously dredge so that it maintains the integrity of those shellfish beds without affecting negative water quality negatively affect shellfish beds are important to consider when the Board is permitting this one.

Mr. Cox agreed.

Mr. Lavalette stated that its odd the dredging and put it in the groins and its so close where your dredging from in a very short time and would fill it in again. What if it was brought to the south side and might take a lot longer.

Ms. McClees stated again does the grain size match what is currently on the beach. If on the Island there is a match of the grain then we could. We need to find the grain size and would be good and consider that as a possibility.

Mr. Lavalette stated that I am sure that the first 2 or 3 feet are all silk and maybe take away and the other parts underneath might match.

Mr. Cox stated that you are going to find the top part very fine nice sand and the bottom part will get more grainy. No matter where you put that on the Island if it is not done properly It will end up back at the causeway.

Mr. Rheume stated whether the fill is taken off sight or put a proper place on sight. The Causeway bridge gap is going to refill from the area around it and not from the beach.

Mr. Haworth asked what the depth is say 50 ft. out on each

Mr. Cox stated about 5 or 6 feet at high tide.

Mr. Haworth stated the dredging causeway requirement is just underneath the causeway?

Mr. Rheume stated yes.

Mr. Haworth stated we are at zero at most times.

Mr. Cox asked how is there going to bring that back up to standards. Because if you just dredge underneath the causeway, you will just be filling and I think it should on either and many so many feet that they will have to clean up to get started.

Mr. Rheume stated we have a plan that was approved by DEP that this was the limit.

Mr. Haworth asked if we go from zero to 50 ft. out to each direction, that is going to tell us we shouldn't be able to maintain 5 ft at high tide.

Mr. Rheume stated until we get a big storm and it will back in.

Mr. Cox stated that if this is something they are going to maintain, then they will have to address it every couple of years.

Mr. Haworth stated that he must be maintained and will have to keep on them. Mr. Rheume when was the last time it was done?

Mr. Cox stated over 10 years.

Mr. Haworth stated it was about 13 years. I have been on the Board for the last 13 years.

Mr. Cox asked how long has the new owner owned the Island.

Mr. Rheume stated at least 10 years.

Mr. Cox stated it did it the first year he was there and quickly dug it out and threw it on the beach, He did not do it properly.

Mr. Haworth stated this is the most important. This affects the Shellfish, boating people and the over all health of cove itself.

Mr. Lavalette stated that funneling effect that goes thru that causeway bridge area is destined to a failure and constant maintenance.

Ms. McClees stated that the bridge crossing wasn't constructive to the plans that was permitted. under the by law in terms also includes, recreation, erosion control, etc. just wanted to put that out there that is under the By-law.

Mr. Haworth stated by the next meeting we would like to see the debris, how the owner is looking to get rid of the fill. If this continues to drag on and going forward we need to see progress on this project. Work is not getting done and we keep continuing.

Mr. Rheume stated they need a dredging permit and the State is slow and it is not going to happen this Spring. The first step is to get an Order of Conditions for the things mandated and defined by the Administrative Consent Order it says you should dredge to these limits and to these depths. The only thing that is stopping us from getting the order of conditions to do that.

Mr. Haworth stated you should be already dredging and have a schedule and shouldn't be a special project and it should be a maintenance permit. Seems like nothing get done and we talked about this last Summer, had we gotten things done, we would have had those permits for this Spring.

Ms. McClees stated peer review letter of all things that needed to be done was dated February of 2020.

Ms. DeSalvatore stated it was clear on the walk through and the Board is leaning towards deadlines and giving penalties if not met. After 10 years of noncompliance and outright violations and Our patience is wearing thin and your Applicant should be aware of this.

Mr. Rheaume stated it is 48 years of non-compliance. This causeway didn't get built last year, it was 1972 and nobody pushed on getting the dredging done.

Ms. McClees stated that what Mr. Cox might be talking is about is a specific window time of year where you can't dredge.

Mr. Cox stated time restriction on when they can dredge or not dredge.

Mr. Rheaume stated it is permitted on the dredging permit and not by the order of conditions.

Mr. Haworth made a motion to continue SE 023-1309, CON 023-194 1 Bella Vista Island and SE 023-1340, CON 023-195 1 Bella Vista Island to March 8, 2021 at the applicant's request and it was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote, 5-0.

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

**8. Correspondence**

**None**

**9. Ongoing Projects**

**a) SE 023-1283, CON19-024: 7 Union Street**

Mr. Haworth stated he issued a cease and desist order last week. The reason I issued that letter is because things are going on there and not sure of what is really going there. First, they say they are digging footings and there are not on the plans. Temporary structure and portable structure. Until such time there is a clear of what is going on there and doesn't match our order of conditions and so there is a ceased on the project. Mr. Carmichael is here tonight to discuss his end of the project. I thought the applicant would be here tonight and I don't want to be in the middle of this.

Building Commissioner, Chris Carmichael stated they do have proper permitting and it does read temporary but meant to say portable shed. He explained that the shed is meant to be moved within the same area as long as it maintains setbacks to accommodate different size ships. He said, if he misfiled then he should he should then refile. The Fairhaven Shipyard did meet all Federal, State and Local requirements and are in compliance with Zoning, building, and flood zone. They received a special permit from planning board and order of conditions from your board as well. Prior to permit issuance all signed off and proceeded to invest a sum of money and no court will overturn these permits. Furthermore, he said he knew there was a lot of discussion about the use of the inter model containers and he said that is not defined in the zoning bylaw, and the closest they have is the utility trailers and campers which are not allowed in the industrial district.

Mr. Haworth stated the part of this, is the temporary vs the portable and a mis file of conditions should take care of the problem. No one is overturning the permits, they are just clarifying what is going on.

Mr. Carmichael was permitted as portable thru the Building Dept. Again, just a mis file on the permit.

Mr. Haworth stated he should file for an amended order. There are no footing and anchor points being put into the ground.

Mr. Carmichael stated there will be anchor points in this case they could be moved quickly. This is a A-zone not a b-Zone, and signed off by engineers. He stated he asked them to pin down the corners.

Mr. Haworth stated they would need to put that on the filling.

Mr. Carmichael stated this is a 2- year permitting and our zone by law has temporary is a 1 year. I would ask you to ease the cease and desist and work with the client to file the correct order of conditions.

Mr. Haworth stated once all the proper filing is done, they will lift the cease and desist.

Mr. Carmichael stated Fairhaven Shipyard and those docks are spotless. The Town might be liable for this and if he has been received all the permitting and has been signed off.

Mr. Haworth state the Town would be liable since he filed the permit improperly and if he is going to be anchoring anything in the ground. I have no issues just want the correct filing of Order of Conditions. If we should lift the cease and desist, but something be required to be file within 60 days, or another cease and desist will be filed and that won't be in affect to such time as a new order of conditions is done and not just until they file. We try to work with everyone. There has been some accusation out there on this project and I want to make sure they are all transparent. People say things and could be damaging.

Mr. Carmichael stated it should be judged on the filing.

Mr. Lavalette stated I was one of the first one to go into the Building Dept. and met Chris and I think because the phase temporary and then your going to see all kinds of containers. I didn't get a clear answer from you and maybe if you said portable and would have been solved. Unfortunately, you said to me ask me to come to the board and explain your point. The terminology should have been portable from day one. We weren't led in the right direction. I'm in agreement to lift the cease and desist and have him refile.

Mr. Piestraszek stated he was not on the Board yet but would agree with Mr. Lavale tte.

Ms. DeSalvatore stated it is appropriate to add the deadline.

Mr. Dalen stated he as agreed with every that has been said.

Mr. Haworth made the motion SE 023-1283, CON 19-027: 7 Union Street is to lift the Cease and Desist Notice with the understanding that the applicant will file an amended of Order of Conditions within 90 days. Failure to file within 90 days will result in a Cease and Desist order and will not be lifted until such a new time of a New order of Conditions is filed.

Mr. Lavalette asked a question on the motion. Would he be able to work on the structure now without the refiling?



Mr. Haworth stated yes, he has 90 days to refile. If he doesn't do the filing within 90 days there will be a new cease and desist order will be sent.

Ms. DeSalvatore seconded the motion and it passed via roll call vote, 5-0.

Mr. Haworth asked Ms. McClees to send a new letter lifting the Cease and Desist of what they have and that they have ninety days to refile.

Mr. Carmichael stated there was a deteriorating building that he took down without anyone saying it was unsafe. This is a win, win, for all of us.

#### 10. Upcoming Projects

Ms. McClees stated there are a few that would be coming on the March 8 meeting. Two notices of intent. 1 is for a dock at 2 Oxford and 1 after the fact notice of intent for 10 Nelson Avenue addressing some of the items that were done, without a permit last year. A request of determination of a patio and will send out the advertising notice that will be in The Fairhaven Neighborhood News.

#### 11. General Business

##### a) Bills

\$495 to Massachusetts Association of Conservation Commission for 9 training courses for Mr. Pietraszek

\$335 to the Fairhaven Neighborhood News for legal ads for November meetings and the January 4 meeting

##### b) Next Meeting: March 8, 2021

Mr. Haworth went back to tabled items:

The first one is minutes of January 4, 2021 and asked if everyone had a chance to review.

Mr. Haworth made the motion to accept the Minutes of January 4, 2021 and was seconded by Mr. Lavalette. The motion passed 4-0-1, with Mr. Haworth abstaining as he didn't have a chance to read them.

#### 4A. Review and approve draft of buffer zone policy.

Ms. McClees stated this got tabled last meeting because, all the board members weren't present. I did have a discussion with Amy today about potentially changing the distance with the disturb zone. Asked the Board, if they had a chance to read thru the policy?

Ms. DeSalvatore stated that it states in the scientist studies that you need a minimum of 30 feet for any protection at all. I would like to see the no touch zone increase to 30 feet. I was impressed with the write up allows you the flexibility. I thought it was a pretty proposal. We are seeing the larger projects coming forward now we have to be careful to protect the areas.

Mr. Lavalette asked that we would going from 25 ft. to 30 ft?

Ms. DeSalvatore the scientist say we need a minimum of 30 feet.

Mr. Lavalette stated it would up to us to enforce that then if not.

Ms. McClees stated that is why there is variance procedure included.

Mr. Lavalette asked if we are voting 25 feet or 30 feet?

Ms. DeSalvatore stated that I would like to go 30 ft. and that will change to 30 ft. to 50 ft. and 50 ft. to 100 ft.

Mr. Lavalette stated he is waiting to see what majority of the board has to say.

Mr. Haworth stated he has a little concern adopting something that is this restrictive without a little more feedback and before we go ahead at 9:00 on a Monday night and we should open this up to public for comments. We don't need to be accused of slipping something in under the radar.

Ms. McClees stated that if this is to be consider. We would be adopting this policy thru the regular process. The Board can create regulations without going back to town meeting and just thru regular hearing process.

Mr. Haworth stated that our By-Laws needs some updates.

Ms. McClees stated that it needs regulations.

Mr. Haworth stated that 25 ft. or 30 ft. there are unique parcels, there are reason and it may not work and plenty of reasons why it does work. I think we need the Public input on this. I would not make any motions to adopt this tonight and wait for the public.

Ms. DeSalvatore started that she agrees that we need the Public. We could still propose and then have the Public discussion. I had an interesting discussion today with Whitney. If we had this in place when we were discussing Hiller and Timothy it could, of saved so much time. Also Ms. McClees said it is coming up before the Town Meeting to change Zoning Restrictions that would all for developments, oh am I jumping the gun?

Ms. McClees stated that one of the things the Planning Board has potentially discussing as a Town Meeting Article is a Cluster By-Law. I believe is considering to how to address, open space and those kinds of things. This does allow a little more flexibility on how that would look and not locked in to the frontage, the road. I think that is coming forward not sure yet.

Ms. DeSalvatore stated would be compliment to this and we could a lot more recreation for Public enjoyment. Again, I would like to see the 30 ft. language in there that we proposed and open to the Public.

Mr. Haworth stated we have been at 15 ft and we have been shooting to 25 ft and would like to hold it at 25 ft. at this time. I would really like to hear from the Public about this. We have not address this and let's see where this goes with the Public.

Mr. Pietraszek stated he agreed to open it up to the Public.

Mr. Dalen stated he agreed, he feels the same way. When your making proposal for regulations that will impact the people in the Town. I would like to see their feedback. We can let them know what the current is and what we are proposing.

Ms. DeSalvatore asked Ms. McClees if she has what the scientist has at hand.

Mr. Medina stated he agreed with the rest of the Board.

Mr. Haworth stated that we should not adopt any policies without the Public input.

Ms. McClees asked would you want to do it as a regular meeting or have a special meeting.

Mr. Haworth stated at one of our regular meeting.

Ms. McClees stated that the advertising for the March 8 deadline has already passed and the soonest in terms of notice deadlines it would be March 22, 2021.

Mr. Haworth stated that is ok.

Mr. Lavalette stated anytime before the Spring time because then it's gets busy and we won't have any time for anything. The end of March would be perfect.

Ms. DeSalvatore stated that also for the next meeting, Ms. McClees could locate the scientist and have a brief discussion what the scientist is.

Ms. McClees stated that you all have a copy of the Buffer Zone Guideline that I emailed out to and the second section of that, gives you an overview which Amy is talking about that. I sent those out a couple meetings ago.

Ms. DeSalvatore stated there is a paragraph about them.

Mr. Haworth asked if we are going to get hard copies?

Ms. McClees stated she will put in an order for that tomorrow or Wednesday.

Mr. Haworth stated we would advertise for the March 22, 2021 and put it on the Web site and give the link to view it. Do you know who wants the hard copies vs digital.

Mr. McClees stated she will order 7 copies to have every member will get a hard copy and when someone leaves the Board, they can bring it back to the Office for the next person.

Ms. DeSalvatore asked what we are presenting to the Public to the relations to the scientist.

Mr. Haworth stated we are representing the document Ms. McClees produced for us.

Mr. DeSalvatore stated that I proposed amend that to 30 and propose that and we still have a discussion.

Mr. Haworth asked if we have a motion. Asked if Ms. DeSalvatore is breaking up or is it me and can't hear her. Ms. DeSalvatore had equipment troubles at 9:37 p.m. Her conversation could not be heard and documented.

Mr. Lavalette stated she was going to make a motion to 30 feet.

Mr. Haworth stated he would like to hold it at 25 ft and just want to understand what she wanted, don't want to dismiss her. I think she is trying to call in. She called Ms. McClees direct and can't make a motion that way it is illegal just so she knows.

Ms. McClees talked with Ms. DeSalvatore stated she wanted us to discuss what is getting presented at the March 22, 2021. You can't make a motion calling me direct, you can call into the zoom.

Mr. Haworth stated that for the 4b. Review and Approve draft of winter delineation policy, I agree with this completely but since we are having a Public Hearing for the other one, we might as well as it for this one.

Ms. DeSalvatore made the motion next week we will briefly discuss the science what language we have presenting to the Public.

Mr. Haworth stated that does not need a motion, you asked me to put it on the agenda as the Chairman. I didn't know what you wanted to do and didn't want to leave you out. Make sure you let me know by Tuesday before the next meeting.

Ms. McClees stated she will advertise for the Meeting of the 22nd for both of those policies. I will include them with the other filings. I think it is the 5th and I could put it in as a place holder.

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

In other business, Mr. Lavalette asked if they could give a permit for a 'temporary' structure. There was discussion on the word temporary vs. portable, vs tent structure.

Mr. Haworth stated that going forward we will watch what is on these applications.

Ms. McClees stated that any orders are attached to the deed. The responsible is with the current property owners.

Mr. Lavalette asked if there is a time limit on that?

Ms. McClees stated that Order of Conditions are good for 3 years unless an extension is issued for another 3 years. Technically when the project is done, you are supposed to come in for a Certificate of Compliance. If the order is expired and an issue of items from the issue of conditions has not been completed a new order has to be received.

Mr. Lavalette asked if these new owners know that there are outstanding conditions without sending out a letter.

McClees stated that is the property owner responsibility and is attached to the deed.

Mr. Haworth made the motion to adjourn, and it was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote, 5-0.

Respectfully Submitted  
Lisa M. Rose  
Recording Secretary