

**Conservation Commission
April 26, 2021
Minutes**

1. **Chairman's Welcome and Media Notification** - Mr. Haworth opened up the meeting at 6:42p.m. A quorum of members were present. There were 76 participants in the meeting via Zoom. Ms. McClees read from Governor Baker's regulations due to the Pandemic that all meeting would be via Zoom.

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 and some attendees participated by phone and video conference and used the chat on zoom.

2. **Quorum/Attendance: Present:** Chairperson, Geoff Haworth, Gary Lavalette, Corey Pietraszek, Amy DeSalvatore, Jake Galary, Dan Doyle, Ronald Medina, and Karen Isherwood.

Absent: John Dallen and Don Collasius

Conservation Agent, Ms. Whitney McClees was also in attendance.

3. **Minutes**

- a) Approve the minutes of February 8, 2021 - Mr. Haworth stated these had already been approved.
- b) Approve the minutes of February 22, 2021 - Mr. Haworth made a motion to approve the minutes of February 22, 2021 and was seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote (6-0).
- c) Approve the minutes of March 8, 2021 - Mr. Haworth approved as draft to post to website.

4. **Revision of Application Submittal Policy:** Mr. Haworth stated everyone had received the information in this packet. He asked for discussion from Board members, there were none. Mr. Haworth read the application submittal policy to suggest that applicant's strongly meet with the Conservation Agent prior to submitting their application. He stated there are a lot of projects that are being submitted that aren't fully prepared to be submitted and it results in delays.

No further comments or questions from board members. He asked if anyone from the public wanted to comment, there were none.

Mr. Haworth made a motion to approve the revision of the application submittal policy as read and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (6-0).

5. **Public Hearing on Proposed Buffer Zone and Winter Delineation Regulations pursuant to the Code of the Town of Fairhaven, Chapter 192, Wetlands**

Mr. Haworth opened up the public hearing on the proposed buffer zone and winter delineation regulations. Mr. Haworth stated a rough draft from Town Counsel was received and forwarded to Commission members.

Ms. McClees reviewed the suggestions from town counsel regarding the winter delineation. She stated that town counsel suggested shifting around words to present as a regulation versus a policy. She stated the delineation verification timeline from November to March may be presumingly more difficult to confirm during that period because it may be wrong. As far as the buffer zone regulations, town counsel kept the format the same, he suggested separating a few items for clarity and how the regulation applied in the same sections. He also made a few suggestions in the language to tighten up and provide better clarity.

Ms. DeSalvatore stated the regulations are much needed, however she would like to see the minimum buffer no disturb zone be 30' rather 25'. She stated per scientific evidence this allows for adequate run off and features for like cooling and animal habitat. She said a larger number is appropriate for the no disturb zone.

Mr. Haworth stated the public hearing was already opened up four weeks ago and a community member reached out to reopen this hearing to be heard.

Ms. DeSalvatore asked Ms. McClees for a summary of what was already discussed.

Ms. McClees said she hadn't received any public communication until today when a letter was sent. Mr. Haworth has the letter. She stated that there are provisions in the language for restricted areas that are already disturbed.

Mr. Haworth stated he did receive the 3-page letter, and it will be added to the minutes for the record, the letter was sent on behalf of Mr. McLaughlin, by his attorney Adam Brodsky. He asked if Adam Brodsky was present or Kevin McLaughlin was present to speak.

Mr. McLaughlin was present via zoom to express his concerns. He said he had a couple of questions from a practical standpoint and wanted to understand how the "resource area" is actually defined.

Ms. McClees explained the definition of the resource area as outlined in the Fairhaven Wetland By-laws.

Mr. McLaughlin stated he believed the term was quite broad. He said he was trying to understand the no work in the no disturb area zone from 0-25', which is probably 40-50% of his property and he is not understanding how that activity would affect the adjacent body of water (which is the Acushnet River, NB Harbor).

Mr. Haworth stated the mostly disturbed area; the 25' area wouldn't affect him.

Ms. McClees stated in the revised regulations, Section 4, subsection 4.2 reads, "The Commission may, in its discretion, permit a MBZA in a location closer than 25' to the resource area if, and only if, the proposed activity occurs exclusively within a previously disturbed area and is located no closer to the resource area than existing structures, activities, or disturbances. However, it is encouraged to increase the width of the buffer zone where possible." She stated she just received the changes and had posted them to the website per Town Counsel on the Friday before this meeting.

Mr. McLaughlin stated that it sounds like they are trying to identify a nonconforming use and he is concerned that his property that has been there all these years with go to conforming as he is not sure a buffer zone will be helpful to his properties.

Mr. Haworth reiterated that "IF previous disturbed" it wouldn't be an issue.

Mr. McLaughlin stated he wasn't sure he understood why it says "at the commission's discretion". He stated his overall concern was that residential areas are under the same as commercial

properties and if a resident wants to build a seawall or bulkhead, everything needs to go to conservation. He said that it would be taking away from one's properties.

Mr. Haworth explained the first 25' needs a buffer zone and he said the regulations are issuing a better understandable project in a timely fashion versus some of the information that is or isn't received currently.

Ms. DeSalvatore stated the regulations are to protect what remains of Fairhaven's wetlands as best as they can. She said they are increasing rare resource areas.

Mr. Haworth stated they are trying to give applicants a clearer understanding of what the board is looking for not preventing them from using their property.

Mr. McLaughlin stated he thinks he understands, although he doesn't agree. He said he worries about un-developed land and a lot of rules where there isn't a lot of land left to be developed.

Ms. McClees read from the regulation again and stated that previously permitted projects by conservation (example: lawn or patio/or shed); that those wouldn't be impacted as they would've already been permitted.

Resident, Dave Darmofal, thanked the Commission for the opportunity to speak again on this topic. He stated this sounded like a town originated regulation and not a state mandated. He said he believes the bylaw change is taken away from a very valuable asset, which is taking away more one one's land and that's what concerns him. He asked if perhaps maps could be made up of the areas in Fairhaven where this regulation would be a disturbance to home/land owners, especially those they have no idea. He said if it's not mandated from the state, he believes it perhaps should not be done.

Mr. Haworth stated in section 8 it offers a hardship if necessary available for homeowners.

Ms. McClees stated the regulation is not increasing the 100 buffer zone to the wetlands as that is the jurisdiction of the Conservation. She said they are not adding any buffer zone to those areas.

Mr. Darmofal asked about the variance that can be requested for hardship.

Ms. McClees stated it wasn't a variance to board of appeals. She said it would be within Conservation, as a part of the filing process. Mr. Haworth reiterated the same.

Resident, Robert Roderiques was on the zoom meeting via phone. He stated he had similar questions that were already asked. He said he didn't understand the resource area that has been defined which is most of our coastal area through West Island, Wilbur's Point as the seacoast is going to be affected by this. He said if people want to put in a swing set, patio or pool area they would be limited to their backyard which is already small as some of the lots are a non-conforming size. He asked if they would allow the 25' buffer zone or if it would be completely restricted.

Mr. Haworth stated they can apply for the variance procedure and that would allow the board to consider using activity within that zone.

Mr. Roderiques asked, and that is presented in this document.

Mr. Haworth said, yes, section 8, a variance allows the applicant to request that hardship.

Ms. DeSalvatore stated the reason why these regulations are being looked at is because of the scientific research that is out there that shows development within this range is likely to cause damage to the wetlands and that is the reason for the Wetlands Protection Act. She stated there are studies regarding development in the buffer zone area that is likely damaging buffer zones. Duty

to protect the resource area. She recommends reading of the MACC handbook/guidebook for work in the buffer zone.

Mr. Roderiques stated they are referring to a handbook formed by an association not by the state of Massachusetts for properties within Massachusetts.

Mr. Haworth stated that scientist as well as a slew of professionals from Massachusetts has certainly helped put the handbook together.

Mr. Roderiques asked what has gone wrong in Fairhaven that they have to start taking more away from its townspeople.

Mr. Haworth stated they are not taking away property away from people but they have to be cautious of all buffer zones and resource areas that are going to be destroyed and getting destroyed because of overdeveloping in Fairhaven. He said it was their responsibility to protect what is left in Fairhaven, as an all volunteered board.

Leah Isherwood stated she thought it was a good idea, as the whole idea of conservation commission is to preserve.

Mike Thomas, 1 Teal Circle stated that conservation has the discretion for the buffer up to 100' and even at 25' of a no disturb zone he said it sounds fine; as of recently some people want it as close as 5 or 10' and that's not right.

Mr. Haworth stated they are trying to quadify the regulations for people to put through a plan that is complete with the regulations presented.

Mr. Thomas agreed stating that he hears them saying that they need to be consistent.

Chelsea Isherwood, 3 Teal Circle stated she was very impressed with the commission and she took the time to read the MACC and in fact the state did work on this; surprising that people are coming out now to complain but were gung ho when turbines were put up as well.

No further comments.

Mr. Haworth closed the public hearing and opened the conversation to the board members for discussion.

Karen Isherwood agreed that the commission is basing the regulation from the MACC handbook. She stated this is just a small step for Fairhaven and they need to continue to move forward to protect the wetland as that's what they are tasked with.

Ms. DeSalvatore asked for a poll of the board that would support the 30' change.

Jake Galary stated he would like to stop the commission from saying 'what the board wants'. He said that this opens up to people being political and if not liked that they wouldn't get their project done. He felt the regulations are tough enough and is disappointed on what the commission puts people through. He said he is totally against 25 or 30'.

Mr. Haworth stated this was brought up prior to Mr. Galary being on the commission. Mr. Haworth also said that he's been the longest standing member, at this time on the commission and has never seen the commission members retaliate political for "liking or disliking" an applicant. He said that is not how this commission works and that every project is done with the most respect and every situation differs.

Gary Lavalette stated he felt it was just a simple regulation that lets people know when they're doing a project, to leave the first 25' alone, but also gives them an option for a hardship as needed.

Corey Pietreszak thinks that 25' is a good buffer versus 30', as it really is to protect resource area.

Dan Doyle had no further comments.

Mr. Haworth made a motion to close the public hearing on the proposed buffer zone and winter delineation and was seconded by Amy DeSalvatore. The motion passed (5-1) via roll call vote, with Jake Galaray in opposition.

Ms. DeSalvatore stated she wanted to see the regulation passed tonight. Mr. Galary was in opposition stating that he would like to hear more when they go live versus on zoom.

Mr. Galary made a motion to continue the hearing until they were live versus zoom, if more residents wanted to speak about it. The motion failed as there was no second to the motion.

Ms. DeSalvatore moved to adopt the regulations as written, revised copy as included in the meeting packet for the April 26 meeting and was seconded by Gary Lavalette. Mr. Haworth stated he did feel torn as he does think they need the regulation and he said with any regulation they can be changed, so he feels better voting knowing that.

On the question, Mr. Lavalette stated he wasn't sure they said they would go from 0-25'. Ms. DeSalvatore motion was to adopt as written as 0-25'

The motion carried positively with a vote of 5-1, with Mr. Galary in opposition.

Mr. Haworth stated the regulation goes into effect immediately and thanked the public for their comment and advised that Ms. McClees is always available for comments and/or suggestions.

6. **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 023-1324, CON 023-153: **86-88 Middle Street – continued to May 24, 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.

- b) SE 023-1332, CON 023-173: **18 Bass Creek Road – continued 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.

- c) SE 023-1347, CON 023-210: **1 Boulder Court – continued to May 10, 2021**

Notice of Intent filed by Arthur and Helena Oliveira for the construction of a flood-zone compliant 32-foot by 40-foot single family dwelling with related grading and utilities at the property located at 1 Boulder Court, Assessors Map 2, Lot 6C. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Bordering Vegetated Wetland.

Requests for Determination

- d) CON 023-214: **37 Balsam Street**

Request for Determination of Applicability filed by Thomas and Donna Kirk to increase the size of the existing porch at the property located at 37 Balsam Street, Assessors Map 43C, Lot 105. Work to take place in Land Subject to Coastal Storm Flowage.

Mr. Haworth opened the public hearing.

Ms. McClees reviewed the project as a small deck expansion of 4' in the flood zone only. Her recommendation would be to close the public hearing and issue a negative 3 and negative 6 determination with two conditions as outlined in the staff report.

For the applicant, Matthew Brodo was present.

Ms. DeSalvatore asked how the deck would be supported. Mr. Brodo advised that there would be four additional sonatubes to extend the deck.

Mr. Haworth made a motion to close the hearing for CON 023-214, 37 Balsam Street approving as a negative three and a negative six with the two conditions outlined in the staff report dated April 23, 2021. The motion was seconded by Jake Galary and was approved via roll call vote (6-0).

e) **CON 023-216: 29 James Street**

Request for Determination of Applicability filed by Carrie Butler for the installation of a fence, removal of trees and briars, loam and seed, and planting of native vegetation at the property located at 29 James Street, Assessors Map 2, Lots 210-214. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Bordering Vegetated Wetland.

Mr. Haworth opened the public hearing for CON 023-216: 29 James Street.

Ms. McClees reviewed the project. She stated this was previously discussed as a violation. A site visit was done on April 22, 2021 where several items discussed, based on the site visit a more detail revised plan was submitted. She stated the street trees and trees on the property were discussed with the tree warden, who's also a consultant on the Conservation Commission. The applicant is looking to plant native shrubs and bushes and also install a fence. She stated the revised plans did meet all of the commission's concerns.

Applicants, Mike and Carrier Butler joined the meeting via zoom. They had no additional comments on the project.

Amy DeSalvatore asked about the shed in the buffer zone and asked if those plans were firmed up.

Mr. Butler stated they may move it forward a few feet away from the property boundary. He said it was on cinder blocks currently and they would just move those.

Ms. DeSalvatore asked about boulders lifting with potential rock garden.

Mrs. Butler said there were a lot of rocks placed near the shed, above ground already and if anything that would stay just applying other rocks around it for a potential rock garden.

Mr. Haworth asked for public comment, there were none.

Mr. Haworth made a motion to close the public hearing and issue a negative 3 and a negative 6 with the conditions as listed in the staff report dated April 23, 2021; and it was seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote.

f) **CON 023-217: 7 Mill Road**

Request for Determination filed by Holger Dippel for the construction of a deck at the property located at 7 Mill Road, Assessors Map 30, Lots 51 & 29A. Work to take place in Riverfront Area, Land Subject to Coastal Storm Flowage, and the 100-foot buffer zone to Bordering Vegetated Wetland.

Mr. Haworth opened the public hearing for CON023-217: 7 Mill Road.

Ms. McClees stated this project was to construct an 8x10 deck. She stated the property was before the commission in 2006 and the deck was part of that but never constructed. She stated because the order of conditions was lapsed they needed to come back to the Conservation. She said the deck was proposed on sonatubes, and they are more than 50' from the river (40' from edge of wetlands) based on site visit and conditions it wouldn't have a negative impact on the resource areas. Her recommendation would be to close the public hearing and issue a Negative 3 and negative 6 with proposed conditions as outlined in the staff report.

Resident, Holger Dippel had no additional comments.

No additional comments from Board members. Mr. Haworth opened up for public comment and there were none.

Mr. Haworth made a motion to close the public hearing for CON 023-217: 7 Mill Road and issue a negative 3 and negative 6 determination with conditions outlined in the staff report dated April 23, 2021. The motion was seconded by Ms. DeSalvatore and passed unanimously via roll call vote (6-0).

g) **CON 023-219: 10 Littleneck Road**

Request for Determination of Applicability filed by Paul Federico to add a small addition and a deck to the existing house at the property located at 10 Littleneck Road, Assessors Map 43A, Lot 86. Work to take place in Land Subject to Coastal Storm Flowage.

Mr. Haworth opened up the public hearing for CON 023-219: 10 Littleneck Road.

Ms. McClees reviewed the project as half of the property is outside of the flood zone; the house is in the flood zone. She said they are looking at squaring off the house and constructing a deck/lean to on the rear of the house. She said there would be no negative impact. Her recommendation would be to close the public hearing and issue a negative three and negative six determination with the conditions as listed in the staff report.

Anne Stein, speaking on behalf of Paul Federico had no additional comments.

Mr. Lavalette asked if proposed addition would be lifted.

Architect, Peter Klein was also in attendance and stated the addition is on piers same as existing house and 18' off of grade. New piers would be designed by a structural engineer.

No additional comments.

Mr. Haworth made motion to close CON023-219, 10 Littleneck Road and issue a negative three and negative six determination with the conditions as outlined in the staff report dated April 23, 2021. The motion was seconded by Gary Lavalette and passed unanimously via roll call vote (6-0).

- h) CON 023-212: **12 Huttleston Avenue (Fairhaven High School) – *continued to April 26, 2021***
Request for Determination of Applicability filed under the Fairhaven Wetlands Bylaw only for the construction of a synthetic turf athletic field at the property located at 12 Huttleston Avenue, Assessors Map 12, Lot 236. Work to take place within the 100-foot buffer zone to Land Subject to Coastal Storm Flowage.

Mr. Haworth opened up the hearing for CON 023-212: 12 Huttleston Avenue.

Ms. McClees stated the plans have been updated since the previous meeting and are included in her staff report. There were comments also from the Planning Board as well as the DPW Superintendent, who stated he didn't have concerns about flooding. Ms. McClees stated that supplemental information was added to the packets.

Mr. Haworth opened it up to the board for comments.

Amy DeSalvatore stated the questions raised should go for peer review. She stated she wants to be aware of how the synthetic turf would perform under real flooding conditions in Fairhaven.

Gary Lavalette stated he has done some research since last meeting and is realizing the referenced 60" pipe is not really 60' as it is mostly underwater and he said that's where his concern is. He says he is very familiar with the flooding in that area, as he lives right around the corner. He stated he is not concerned with what is being proposed, he is concerned about the flooding and what it will do to the field in years to come. He is concerned about the Town's infrastructure and is not sure of the solution.

Mr. Galary stated he would like to hear from the engineers and then will speak when that is done.

Dan Doyle had no additional comments at this time. Mr. Pietreszek had nothing at this point.

Mr. Haworth stated he has concerns about the 60" pipe works as well. He said as Mr. Lavalette stated the pipe is under water and Mr. Haworth believes the calculations are not factoring in the high tide or the flooding in that area.

Mr. Haworth stated we need to stay on topic and what's under the Commission's purview and the bathroom facilities are not, so he would like to keep all comments under the Commission's purview.

Lance Hill, Pare Corporation was on the zoom call for the applicant. Arthur Eddy is the landscaper on the project.

Mr. Eddy gave an overview of who they are and the many people on the project. He stated he was from Traverse Landscape Architect Firm and in charge of parks/recreation and athletic fields. Justin Robertshaw is also on the call; along with Mr. Hill and Ms. Rioux, Civil Engineers. Mr. Eddy stated they have designed over \$75M athletic fields in less than a 30 mile radius with less than 1% change orders. Newport, Plymouth, etc. He explained why most people go to synthetic turf fields as more people can use the field creating more opportunities.

Mr. Hill reviewed the project, taking a natural turf field outside of resource area and redesigning and installing a synthetic turf with outstanding water controls. He stated there was a miscommunication on the staff report as to the existing stormwater, it currently flows out to Huttleston Avenue as of today - large storage capacity-12" stone, with 1" airdrain, 2" chipdrain- 15" total doesn't allow runoff water. Mr. Hill reviewed the water quality.

Mr. Hill reviewed the FEMA Floodplain regulations per the Town's website. He also spoke about the "Fairhaven MVP program summary of findings (section 4) which shows flooding pictures on Huttleston Avenue. He explained where the resource area is in the area. He also explained the Fairhaven bylaws stormwater calculations methodology.

Mr. Hill continued to discuss the peak flow and volume control.

Mr. Eddy gave an overview of synthetic turf system overall. He reviewed optional infill systems. He said they assess environmental, health, recreation and performance and cost.

Ms. DeSalvatore stated the presentation was quite impressive but she would like to see alternative backfill materials. She stated she is not an expert in synthetic turf fields so she would like to see a peer reviewer review it.

Ms. Karen Isherwood wondered if a peer reviewer would cover more information on toxins. She said she would agree to disagree, that although it may be small amounts it still exists. She prefers green versus artificial and has concerns if the hurricane barrier isn't working properly how would that effect the flood area. She said her top concern was the potential toxins to that are leaking into the stormwater.

In reference to the toxins, Ms. Isherwood described; Mr. Galary stated the field got fertilized and he's sure there are toxins from that. Ms. Isherwood stated there are more ways to take care of a lawn without fertilizer.

Ms. DeSalvatore stated she feels they need a peer reviewer's opinion.

Mr. Haworth first started with the explanation that he has received many phone calls and emails that the public perception is that the Conservation is "anti" this project. He said that there is absolutely no political agenda on this project and no means are they trying to taint the project or put a kibosh on it. He said he is trying to do his job as the chairperson for the jurisdiction this project falls under Chapter 194. He said he wants to make sure that the field has the best drainage possible for ten years or more.- public perception - 'anti' this project or he is directly being anti of the project.

Mr. Haworth stated that in all of years on the Commission he stated the magnitude of a project like this, residential or commercial would never just be approved without a peer review. He said that's what the commission does, they send out to peer review as they are not the experts, but volunteers on a board to carry out determinations. He said they are there to take the best route for the environment and that's their number one priority. He said Conservation needs to take the appropriate time to do their job right. Our town engineering company needs to review it, like we have them do on every project that comes before them of this magnitude. He said he feels strongly there is not a member on this board that is anti this project or wants to taint this project.

Mr. Haworth read a statement from board member, John Dallen, who wasn't in attendance and Mr. Dallen's statement will be part of the minutes. In short, Mr. Dallen wasn't sure a peer review was necessary and stated if it is that the commission try and get it done expedition ally.

Mr. Galary stated that this is the state of the art field and needs to be done for our community.

Mr. Haworth stated that he is giving public two minutes to speak on Conservation issues only.

Superintendent, Dr. Bob Baldwin attended via zoom and reviewed the project's timeline. He stated they received funding appropriation in October, 2020 and three days later looked for project managers. He stated by Thanksgiving they had hired Traverse and in December they were approved by the School Committee. He said they started test pits in January and the company reached out to the Building Commissioner in February. He said the project has not sat on anyone's shelf and had been actively pursued since they got approved at Town Meeting for funding. He said he was concerned that perhaps there has been a predetermined bias decision already made by the commission.

Mr. Haworth stated there is no predetermined anything and every single part of this project of this magnitude has been peer reviewed. He said it's not about the project or who is bringing the project forth, it is how they do things.

Chairman, Brian Monroe of the School Committee stated that he posted to social media to invite those that wanted to come and hear the project tonight or call in they could. He said he believes the School Department/Committee has hired the best corporation and they are the experts. He said even the town's superindent of public works stated he wasn't concerned of the flooding and drainage. He said as a citizen and chairperson of the School Committee, he asks that they move forward to get their kids on the field by September.

Mr. Haworth agreed that Pare Corpoaration gave an excellent presentation but again it was not about their presentation being great. He said it is up to the Commission's to do their due diligence in making sure it's done right and having a magnitude of this project requires a peer reviewer.

Mr. Lavalette stated he was not in agreement with the BPW. He said flooding does happen in that area and it is going to happen, as he lives right around the corner. He said he had no problem with the presentation as he has previously stated, but a problem with the town infrastructure. He said a 60" pipe is most likely a 20 or 30". He too, wants to make sure it's done correctly and he wants to hear from a peer reviewer.

Resident, Walter Biadi was on the platform via zoom and stated he didn't realize initially there was a drainage problem in that area. He did say that he is weary of anything in place that would make it worse. He stated he wondered if a self contained system would be able to regulate how much water would be released. He said he's been coaching soccer and sports for over twenty years and if there were toxins being released he wouldn't be around. He said that he lives on Washington Street and when there are worse rain storms he has water that comes up through his basement. He said Fairhaven is a seaside community and there may be heavy rains that can back it up. He asked why the Town isn't fixing the infrastructure if they are aware of the problem.

Mike Pinette, 109 Cushman Street in Acushnet was on the platform via Zoom and stated he believes that the engineers and School Department has done their due diligence. He said he understands the Commission to do their own, and asked how long a peer review usually takes.

Mr. Haworth stated a peer review could take anywhere from a few weeks up to a month or so. He said they would usually authorize a peer review immediately and probably looking at GCG.

Mr. Pinette stated it was a great presentation from Pare and Traverse and he would like to see the best results for their children.

Resident, Robert Foster of 444 Dana Farms was present on the Zoom platform. Mr. Foster introduced himself as the President of the FHS Alumni. He stated along with fourteen trustees of the FHS Alumni Association, they have gone through the plans presented with the School Department and unanimously voted to endorse it. He said they are thrilled to see the facilities expanded at the high school and he learned more about the drainage in that area than he cared to. He said the build out with the field and that system would be better than what is their currently which is a win/win.

Chat Bourgeois, 5 Academy Avenue stated he never received anything about tonight's meeting via mail and that he was alerted to attend the meeting in another way. He said he has lived in the area since 1996 and has had water in his basement one time only. He too, wondered if there was such a problem with the infrastructure with the Town why it wouldn't have been looked at before now. Mr. Bourgeois asked for Ms. McClees recommendation as he sees that she makes recommendations on all other projects.

Mr. Haworth stated the pipe that is being referred to tonight is actually a state pipe, and not owned by the Town. In regards to the staff reports, Mr. Haworth stated that Ms. McClees truly goes above and beyond her duties to provide a history and staff report, with recommendations for the Commission at every meeting and this project is no exception.

Resident, Kaisa Holloway-Cripps also on the Zoom platform asked for a point of clarification. She stated she wanted to understand the Conservation process and if this was filed on March 12, 2021 why wasn't the peer review initiated as of yet.

Mr. Haworth stated the Commission has to listen to the presentation and make recommendations for the peer review after listening thoroughly. He said from this meeting they would be seeking a peer review right away, but of course they are at the mercy of the peer reviewer as well as the architect and engineer on the project.

Ms. McClees also clarified that projects cannot be initiated for peer review until the board initiates it.

School Committee member, Kyle Bueno, of 117 Pleasant Street stated he wanted to hear public concerns first before he spoke. He said that Dr. Baldwin and the administration has worked very hard over the last six months and now he understands more about drainage than he ever thought he would. He said that he understands everyone needs to do their due diligence and a phenomenal job has been done by the administration to get this to where it is currently. He said he would just like this to keep proceeding in a positive manner.

Jason Moura, of 29 Hathaway Street was on the platform Zoom and stated in his experience, he has reviewed proposals of engineer company's and he feels tonight's presentation is the best he's seen. Very articulate and thorough, and he has high confidence in what they are doing. He says he struggles to see what a peer reviewer will do that hasn't been thoroughly reviewed.

Business manager for the School department, Nicole Potter, lives in Westport but has love for the Town. She stated that she would like to see the peer reviewer get a very specific request.

Mr. Haworth stated the commission members will discuss tonight to understand what they are seeking more specifically from a peer review

Resident, Steven Mike Cadieux stated he is a purchasing at and has seen many peer reviews with experiences to RFP's. He asked how they go about finding a peer review that has experience with this type of stormwater and putting in turfs.

Mr. Haworth stated they would select someone that has drainage review.

Mr. Cadieux are you checking math or peer review stormwater regulations?

Mr. Haworth stated that he believes, GCG is qualified; and they will be reviewing the amount of volume that goes into the pipe. It is not about the field going in.

Mr. Haworth asked if anyone wanted to speak that was calling in they could speak now.

Chelsea Isherwood, of 3 Teal Circle stated she works with government contracting and when spending tax dollars they absolutely need to go through proper protocol. She said they have to follow the path and rules that taxpayer's money is spent well. She agreed that peer review is necessary.

Resident, Robert Roderigues stated he has been involved and worked on these fields and there are a lot of old school type of techniques. He stated there are serious drainage issues because of our thinking process. He says the School Department has a company that has done more than fifty fields, if the commission was so interested, they could call all those schools and check if they have drainage issues. He said he would like to see the project moving forward. He said he isn't sure it's going to happen in a month, never mind two weeks.

Mr. Haworth stated whatever the directive is they give the peer reviewer is what they will do.

Mr. Roderigues asked if there is a warranty on the field.

Mr. Haworth stated that's not in their jurisdiction.

Dr. Baldwin had one last final comment to the board itself and he stated it's not going to take two weeks unless they move on it. He respectfully asks for a short time frame and streamlined specifically.

Mr. Haworth closed public comment and referred to commission members only.

Mr. Galary stated it is clear what taxpayers have spoken tonight and he asked, when does this board in town trust in their faith in companies that have done over fifty fields. Mr. Galary stated that it's in our hands right now, and he feels that the board needs to be a little more compassion.

Mr. Haworth agreed that he wants the kids to be on the field but the Commission has to base their decision on their on due diligence regarding the stormwater which is their purview. He said emotions are not into play here; this is what this Commission is responsible for in the Town of Fairhaven.

Corey Pietraszek agreed that they should take it to a peer review. He said the benefit long term would out run the short term; and this they've only just been to them once two weeks ago.

Ms. DeSalvatore stated they absolutely need to do a peer review. She said it was a great presentation however they may need to tweak it a bit better.

Dan Doyle had no comments at this time.

Mr. Lavalette stated factually he knows what happens in his neighborhood. He said he has a lot of confidence in the engineer and the presentation but also believes each field is unique and each field different. Mr. Lavalette stated that most don't have the flooding issues they have in Fairhaven and he needs an expert opinion, who's not related to the school, as it is too big of a project and one not easily solved. He wants to be sure they get it right the first time.

Karen Isherwood stated she's still thinking about every large project has had a peer review and it would only make sense with the history of the board and no exception should be made.

Ron Medina had no questions at this time.

Mr. Haworth stated that it's not any slight on the engineer that was hired. Again, it's a large project and should be reviewed.

Mr. Haworth explained the appeal process if they approve tonight and someone appeals it would be a hold up elsewhere. Mr. Galary asked if one person could appeal and Mr. Haworth said yes, that's all it takes.

Mr. Hill stated it's not subject to WPA in the chat room. Ms. McClees stated the bylaw has an appeals process.

Mr. Haworth made a motion to send this project out for peer review and it was seconded by Amy DeSalvatore. On the question, Jacob Galary asked if a limit can be added. Mr. Haworth stated he will formulate a second motion for that request.

Mr. Haworth reviewed the specifications for the peer review. He said drainage calculations; especially for the fact primary and backup systems that go into that same pipe (he wants to ensure the holding capacity in that field without it ruining the field.)

Ms. DeSalvatore stated she was looking for recommended conditions to reduce pollutants.

Mr. Lavalette asked that the peer reviewer to look at it logically with a 4-5" rainstorm at low tide. He said he'd be looking at what kind of recommendation that looks like.

Ms. DeSalvatore would like to see a comparison of the drainage without synthetic turf.

Mr. Haworth stated we need to be more specific, limiting to turf field and how it flows into the drainage. He said it has to be very specific.

Mr. Haworth removed his first motion.

Mr. Haworth made a motion to send to peer review with the scope of the listed items specifically as discussed with a thirty day limit and was seconded by Amy DeSalvatore. The motion passed 4-1 by roll call vote with Mr. Galary opposed and Mr. Doyle abstaining as Mr. Doyle had not filed a Mullin, therefore could not vote.

Mr. Haworth asked the applicant to request a two week or four week continuance.

Mr. Hill asked for a two week continuance.

Mr. Haworth made a motion to continue for two weeks per the applicant's request to May 10, 2021 and was seconded by Amy DeSalvatore. The motion passed 6-0 by roll call vote.

Notices of Intent

i) SE 023-1350, CON 023-218: **33 Whisper Lane**

Notice of Intent filed by Scott and Patricia Nickerson to upgrade the failed septic system to a Title V-compliant system at the property located at 33 Whisper Lane, Assessors Map 42A, Lot 196. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Bordering Vegetated Wetland.

Ms. McClees reviewed the project for an upgrade to Title V system as they currently have a failed system. She stated there was a site visit and they are asking the Board of Health for one variance due to the water table. She said there was a minimal portion within outer 10' of the 100' buffer zone and it is in the velocity zone. Ms. McClees recommended closing the public hearing and issuing an order of conditions as stated in the staff report.

Nyles Zager of Zenith Engineers was present via Zoom and advised they were requesting a variance from board of health due to the piping.

Mr. Galary asked if there were no sewer and they were just fixing why Ms. McClees couldn't just handle as an administration filing.

Ms. McClees administratively referring to septic, she could just handle the perk tests; she stated once digging starts it has to come before the commission.

Mr. Lavalette stated as a plumber he hated slabs but he had no problem of what's being proposed.

Mr. Haworth made a motion to close the public hearing for SE 023-1350, CON 023-218, 33 Whisper Lane and issue an order of conditions with the forty-three conditions listed in the staff report dated April 23, 2021. Mr. Galary second the motion and the motion passed unanimously via roll call vote 6-0.

j) SE 023-1344, CON 023-207: **10 Nelson Avenue – continued to April 26, 2021**

Notice of Intent filed after-the-fact by Gerald Delano for the repair and reconstruction of a concrete groin and splash pad along the shoreline, including adding a cap to the top of the concrete revetment and stabilizing the disturbed lawn area by loaming and seeding at the property located at 10 Nelson Avenue, Assessors Map 43, Lot 30. Work to take place on Coastal Bank, Rocky Intertidal Shore, Coastal Beach, and Land Subject to Coastal Storm Flowage.

Mr. Haworth opened the public hearing for 10 Nelson Avenue.

Ms. McClees stated this was a continuation and a revised plan has been submitted. She stated that some of the comments outlined were addressed through the revised plan with a cover letter, dated April 19, 2021. She stated there were comments from a neighbor in packets that they hadn't observed any additional work after the cease and desist was issued last summer. At this point, she stated the board had not elected to issue a fine at this time. Ms. McClees continued to review her staff report.

Engineer, Steven Gioiosa was present on behalf of the applicants. He stated there were revised plans submitted and there were cross sections completed. He explained the project with the northern groin and they created steps down to lower the profile. He said they added 5' more than what was originally licensed.

Mr. Haworth opened it up to the board members.

Ms. DeSalvatore stated she wanted to see the pictures that Mr. Lavalette showed a few weeks ago. She stated the beach had eroded during reconstruction and had concerns that they still continued the work.

Mr. Gioiosa stated there is no erosion on either side of the groin. He said you see rocks and sand. The concrete had been there for 50 years.

Mr. Haworth stated the sand isn't there.

Mr. Gioiosa stated the stand is underneath the rocks and grit that is presently over it. He does not believe it is erosion. He said you don't want to alter the natural movement of the stone and materials that comes in from the shoreline.

Mr. Lavalette felt that the applicant made it worse by building on the groin. He said he was of the opinion that north groin needs to come out and leave it as it is. He has been more harm than damage. He said he has pictures showing after the fact continued work was done.

Mr. Gioiosa stated he believed he didn't see scouring or erosion in that area.

Ms. DeSalvatore asked if there were pictures done prior the work.

Mr. Doyle had no further comments.

Ms. Isherwood asked if there was no permitting wouldn't they have to put it back to what it was.

Mr. Gioiosa stated DEP did license this structure as a groin in this area, which was appropriate license to grant. He did make it 5' longer than what was licensed.

Ms. McClees shared some pictures that Mr. Lavalette had taken. Mr. Lavalette stated there was an intent to keep going down there and he stated he was very frustrated with that.

Mr. Galary stated there was a permit for him to rebuild that.

Mr. Haworth stated the permit was from 1991 and was a maintenance permit only.

Mr. Haworth stated work was done after the cease and desist and it was deliberately continued and that's defiant. Mr. Haworth stated they have the ability fine up to \$300/a day.

Ms. DeSalvatore suggested a \$300 fine and an additional \$300 for the work after the cease and desist.

Mr. Haworth stated he would like to have the homeowner come in and explain why he continued to do the work after the cease and desist. Ms. DeSalvatore stated they go late enough and she doesn't need to hear his story. Mr. Lavalette stated if he would remove the groin and put the plants in, he would be satisfied. Mr. Lavalette stated he wouldn't be in favor of a fine at this time.

Mr. Galary stated he'd rather see the money go toward the project, and would like him to plead his case at next hearing. Mr. Pietraszek stated he would like to see him at next meeting versus just give him a fine.

Ms. Isherwood stated it's very upsetting to hear that he continued the work after the fact. She said it was blatant disrespect and thinks it should be a fine that is issued.

Mr. Haworth asked Mr. Gioiosa that the applicant be present at the next meeting. He said he would like to hear from the applicant.

Mr. Haworth made a motion to continue, SE 023-1344, CON 023-207, 10 Nelson Avenue to May 10, 2021 and was seconded Jacob Galary. Mr. Haworth held the motion as he forgot to open to the public, doing so no one from public was there to comment; however he did read a letter in for the record from 12 Nelson Avenue. The motion passed unanimously via roll call vote, 4-0-1; Mr. Doyle was not responsive at the meeting at this time.

- k) SE 023-1349, CON 023-213: **Cherrystone Road/Fir Street – *continued to April 26, 2021***
Notice of Intent filed by Michael Ristuccia for the construction of a 28-foot by 60-foot single family dwelling and associated septic system and site grading at the property located at Cherrystone Road and Fir Street, Assessors Map 43B, Lots 313-315. Work to take place within Land Subject to Coastal Storm Flowage.

Ms. McClees stated there was nothing brought forward from the applicant by the deadline date.

Mr. Ristuccia, the applicant was on the phone zoom meeting and stated he had just submitted the paperwork today.

Mr. Haworth made a motion to continue SE 023-1349, CON 023-213, Cherrystone Road/Fir Street be continued to May 10, 2021 and was seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote, 4-0.

l) SE 023-1309, CON 023-110: **1 Bella Vista Island – *continued to April 26, 2021***

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.

Mr. Haworth stated this was a continuance to May 10, 2021.

Mr. Haworth made a motion to continue SE 023-1309, CON 023-110, 1 Bella Vista Island to May 10, 2021 at the applicant's request and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (6-0).

m) SE 023-1340, CON 023-195: **1 Bella Vista Island – *continued to April 26, 2021***

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.

Mr. Haworth made a motion to continue SE 023-1340, CON 023-195, 1 Bella Vista Island at the applicant's request to May 10, 2021 and was seconded by Ms. DeSalvatore. On the question, Mr. Lavalette stated there should be a stipulation that he's going to get this done or he will be fined. The motion passed unanimously via roll call vote 6-0.

7. **Violations/Enforcement Orders/Cease and Desist Notices:** None.

8. **Correspondence:** Ms. McClees stated that 279 Mill Road solar farm is wanting to update chapter 61a with improvements and it was on the agenda for the Selectboard meeting for first right of refusal.

Mr. Haworth stated that information via email was sent to all members for reappointment.

9. **Ongoing Projects** - None.

10. **Upcoming Projects**

Ms. McClees stated there were three Notices of Intent, a few Request for Determinations and Overlook Lane set parcels as well.

11. **General Business**

- a) Bills - None.
- b) Next Meeting: May 10, 2021

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

Mr. Galary asked if they could move it back to live public meetings versus Zoom. Ms. DeSalvatore believes they've had better attendance with the public on Zoom Meetings.

Mr. Haworth stated they can't force live public meetings and if people want to go to town hall, he as chairman will go to town hall; but he doesn't mind. He said how they would need a plan to attend the public to attend.

Mr. Lavalette stated tonight's meeting would've been a difficult meeting to attend. He said that Covid is still pretty active and he isn't comfortable attending publicly in Town Hall.

Mr. Haworth also stated they are on the same schedule right now as the Board of Selectmen. He said he'd prefer they all go back or they all go on zoom, as it was difficult to do both for audio.

Corey Pietraszek stated he would like to stay on zoom.

The Commission members decided to stay on Zoom Platform at this time.

Mr. Haworth made a motion to adjourn and was seconded by Ms. DeSalvatore. The motion passed unanimously at 11:45p.m.

Respectfully,

Patricia A. Pacella

Recording Secretary