

Conservation Commission
May 24, 2021
Minutes

1. Chairman's Welcome and Media Notification

Chair, Geoff Haworth called the meeting to order at 6:35PM and asked Whitney McClees to read the Media Notification, the regulations for the Open Meeting Law and meeting ground rules.

It was 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 televised live, and some attendees participated by phone and video conference

2. Quorum/Attendance

Mr. Haworth confirmed a quorum.

In Attendance: Geoff Haworth, Amy DeSalvatore, Gary Lavalette, Corey Pietraszek, Jake Galary and non-voting consultants: Ronnie Medina and Karen Isherwood
Whitney McClees, Conservation Agent also in attendance

3. **Minutes**

a) Approve the minutes of March 8, 2021

Mr. Haworth asked if any questions or comments on the meeting minutes for March 8, 2021, seeing and hearing none, Mr. Haworth made a motion to accept the minutes, seconded by Mr. Lavalette, roll call vote, 4 in favor with 1 abstention (Ms. DeSalvatore), motion passes

b) Approve the minutes of March 22, 2021

Mr. Haworth asked if any questions or comments on the meeting minutes for March 22, 2021, seeing and hearing none, Mr. Haworth made a motion to accept the minutes, seconded by Mr. Lavalette, roll call vote, 4 in favor with 1 abstention (Ms. DeSalvatore), motion passes

4. **Certificate of Compliance**

a) SE 023-0717: **19 Sunrise Court**

Mr. Haworth advised nothing in the packet about this one. Ms. McClees explained a certificate of compliance was issued August 25, 2008, there is a copy of what was issued in 2008 in the file but it was never recorded at the registry of deeds. The property owner is looking to close on the house and needs to close out the file but the certificate of compliance was never recorded and it cannot be done with a copy. Need to newly signed certificate of compliance. This item is essentially to reissue a certificate of compliance that the board had issued August 25, 2008.

Mr. Haworth asked if the board had any questions or comments on this item, seeing and hearing none made a motion to issue a certificate of compliance for SE 023-0717: **19 Sunrise Court**, seconded by Ms. DeSalvatore, roll call vote 5-0 in favor, motion carries unanimously

5. Review and approve planting plan for SE 023-1321, CON 023-148: Frederick Avenue

Ms. McClees shared the plans on screen and reviewed this was a project the commission approved in 2020 with stipulation in the order of conditions that a planting plan be submitted to the commission for review and approval. The planting plan in the board's packet was added onto the approved plan, included planting area between where the proposed dwelling and wetland is. Includes all native species: inkberry, highbush blueberry and bearberry in an approximate 10-foot strip the edge of the property line around the wetland from where the erosion control is proposed to the upland side. There is a little bit of an extra buffer using the silt fence line as the wetland edge of the planting plan.

Mr. Haworth noted that at the Planning Board there was discussion on additional vegetation being added. Look at the top of the plan along the road there is shrubery added, low bushes so as not to block neighbors view to the water. So to note this was discussed and wanted at the Planning Board meeting. He opened to the board for comments or questions.

Ms. DeSalvatore, no comments at this time

Mr. Lavalette, no comments

Mr. Galary, no comments

Mr. Pietraszek, no comments

Mr. Haworth stated wanted to add in what the Planning Board had said, they wanted to see the surface of the street and may be still working that out.

Ms. McClees added this planting plan was added to the already approved plan. Also, add that the property owner wanted to add wildflower seed mix on upland side of proposed shrub area.

Ms. Isherwood, no questions

Mr. Medina, no questions

Mr. Haworth stated because this is a planting plan, do not allow public comment on them. Mr. Haworth recognized Mr. James Irving to speak on this item. Mr. James Irving, 294 Sconticut Neck Road, asked if these were all approved planting trees in the bylaw. Mr. Haworth advised we are approving tonight, this is motion to approve those plantings on the plan. Mr. Irving asked if this planting plan would need to be filed at the registry of deeds.

Ms. McClees said when the original order of conditions was issued this was a stipulation of that order of conditions that they submit a planting plan to the commission for review and approval. The overall plan that was approved by the commission, the location of the dwelling, the road, the storm water management that was proposed, none of that is able to be changed. This is simply satisfying one of the conditions of the order that was issued that the applicant submit a planting plan to provide additional buffer and mitigation for the removal of some of the vegetation on the lot in order to do the approved work.

Mr. Irving asked if that was a yes this plan will be filed at the registry of deeds or a no. Ms. McClees advised this plan, except for the plantings, has already been approved by the commission and the order of conditions has already been recorded at the registry. The plans are not required to be recorded at the registry under Conservation, that would be more on the Planning Board side. As far as the addition of the planting plan there is nothing additional that will be recorded at the registry because this is a stipulation of the order that was already recorded at the registry. Mr. Irving had nothing further.

Mr. Haworth stated unless other comments or questions, he would move on to a motion to approve the planting plan for **SE 023-1321, CON 023-148: Frederick Avenue**, seconded by Ms. DeSalvatore, seeing and hearing no other discussion, roll call vote 5-0 in favor, unanimous decision.

6. Closed Public Hearings – Issuance of Orders of Conditions

a) SE 023-1349, CON 023-213: Cherrystone Road/Fir Street

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 reviewed, closed the public hearing at the last meeting. Based on the revised plans the applicant had submitted the commission seemed satisfied with the additions and additional information. Recommend-issue order of conditions under both WPA and Fairhaven Wetlands Bylaw for this with the recommended conditions as outlined in the staff report dated May 21, 2021.

Mr. Haworth went to the board and consultants for comments or questions.

Ms. Isherwood asked if room to replace the 9 trees being removed. Ms. McClees said one of the recommended conditions is that prior to construction a planting plan that compensates one-to-one for the removal of vegetation necessary for the project should be submitted and for review and approval by the commission.

Mr. Haworth asked for other questions from the board or consultants, not asking from the public as the public hearing is closed. Seeing and hearing none he made a motion to issue an order of conditions under the WPA and Fairhaven Wetlands Bylaw for SE 023-1349, CON 023-213: **Cherrystone Road/Fir Street** plans dated April 26, 2021 following the 49 recommended conditions as outlined in the May 21, 2021 Staff Report. Seconded by Mr. Lavalette, no further discussion on the motion, seeing none this will be a roll call vote, 4 in favor, 1 abstention (Mr. Galary), motion carries.

b) 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 reviewed this is one of two filings for this location, this is for work not associated with the administrative consent order issued by DEP. The public hearing was closed at the last meeting. Included in the Staff Report the recommended conditions from the peer reviewer. The other thing discussed between Ms. McClees and the peer reviewer associated with this filing and the pending NOI and the two open orders of conditions on this property is that no certificates of compliance should be issued for any of these orders until all of the work is completed, proof submitted and information submitted addressing what wasn't done, why, what was done, as built, etc. Including "as built" of the wetlands replication that was done at BPW. As part of this slew of filings for this location, one of them was request for certificate of compliance and because the orders all seem to overlap each other and supersede each other, the recommendation is not to issue any certificates of compliance until we have all the work done and ready to be signed off on all at once since we do have overlapping orders. For this particular case, addressing the plantings and installation of the 80-foot meadow planting area, recommendation is to issue an order of conditions with the recommended conditions as provided by the peer reviewed in the Staff Report dated May 24, 2021.

Mr. Haworth asked if a motion was needed or just for the board to take under advisement. Ms. McClees said for the board to take under advisement.

Mr. Haworth asked the board for comments and questions. Reminder, this is a closed public hearing, so this is limited to board members only.

Ms. DeSalvatore was impressed by the list of recommended conditions that Ms. McClees put together. Ms. McClees said it was worked together by the peer reviewer and included in the staff report.

Mr. Lavalette asked if any work had started on this area in concern with the area with the shrubs and the lawn. Ms. McClees said it should not be because that is what this order would be permitting. No work, the only work allowed to occur was the removal of a section of seedwall that was deemed too long by DEP and that was the only work that was allowed to occur without any additional permits. Any other work that has or will occur needs permitting through this board.

Mr. Lavalette asked about deadline given to them (applicant). Is that still a possibility that this can be completed by the end of July? Ms. McClees said that was the other thing she talked with the peer reviewer about. Where it is May 24, the time needed to issue this by the end of the week and that it is out of time for Spring planting and also consider not having it bare through the Summer, peer reviewer and Ms. McClees discussed and it is in the recommended conditions, putting in a timeline that says the project shall begin no later than August 31, 2021 and must be completed by December 1, 2021. The project will be initiated with an inspection of the staked silt fence location. If the project is not initiated by August 31, 2021 the Commission may issue a new enforcement order with fines of up to \$300 per day. Then there is an additional recommended condition that says if a cease and desist needs to be issued at any point for non-compliance with these conditions it is an automatic fine of \$300 per day under Chapter 192, section 11, until such time as the reason the cease and desist was issued is rectified.

Mr. Haworth noted for the record that Ms. McClees pointed out special conditions 12 and 18. Ms. McClees said along with that, point out special condition 16 which says: a qualified wetland

specialist hired by the commission at the property owner's expense shall oversee all phases of the project to ensure compliance with the issued order. The wetland scientist will provide reports to the commission after the work is completed in 2021 and at the end of 2022 and 2023 growing season or until the project has achieved success.

Mr. Haworth asked if any other board members or consultants had questions, comments or concerns and indicated that Mr. Galary would be unable to vote on this item. Mr. Haworth reminded all that he will not be asking for public comments as this is a closed public hearing.

Mr. Haworth made a motion to issue an order of conditions under the WPA and the Fairhaven Wetlands Bylaw for SE 023-1340, CON 023-195: **1 Bella Vista Island**. Plan and record dated April 16, 2021 with the 29 special conditions as laid out in the May 24, 2021 Staff Report. Seconded by Ms. DeSalvatore. Hearing no further discussion, roll call vote 4 in favor with 1 abstention (Mr. Galary). Motion carries.

7. **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:

Requests for Determination

- a) CON 023-222: **48 Torrington Road – continued to May 24, 2021**

Request for Determination of Applicability filed by Lisa Lavalette for the installation of a stamped concrete patio, a 12-foot-by-20-foot concrete pad for a greenhouse and shed, and some associated fill and grading at the property located at 48 Torrington Road, Assessors Map 29B, Lot 171. Work to take place in the 100-foot buffer zone to Bordering Vegetated Wetland.

Ms. McClees reviewed, this item continued from last meeting to address the extra grading and fill that was onsite or to submit a request for an amended order of conditions. The property owners addressed the excess fill in the back of the property, site visit was conducted last week by members of the board. Recommendation is to close the public hearing for 48 Torrington Road, CON 023-222, and issuing a Negative 3 and Negative 6 Determination with the following conditions: CAP-3, WAS-2 and Only minor amounts of fill/grading are permitted with this project. All grading shall closely approximate what was approved under SE 023-1289, CON 19-034.

Mr. Haworth asked the board for any questions, concerns or comments.

Ms. DeSalvatore asked what constituted "minor grading" in the 25-foot buffer zone. Applicants Mr. Edward Lavalette, 48 Torrington Road property owner was on. He stated it was part of the original application for a more flat back yard, which they have graded down to the original plan. Ms. DeSalvatore asked to clarify, have they removed the additional fill. Mr. Ed Lavalette said they graded to the original document that was approved approximately a year and a half ago. Ms. DeSalvatore asked how much grading was done in the 25-foot buffer zone, referring to the Staff Report that refers to 25-foot buffer zone.

Ms. McClees opened the site plan and stated she did not believe any work proposed in the 25-foot buffer zone. Possibly a typo however the line stating "...minor grading may occur within the 25-foot buffer zone" Ms. McClees explained that was a holdover from before the applicants addressed the fill in the back yard. Ms. DeSalvatore had nothing further.

Mr. Haworth asked if any other comments, questions or concerns from the board. Seeing and hearing none he went to the public and opened for anyone wishing to be heard on CON 023-222: **48 Torrington Road** by raising hand, indicate in chat feature or unmute and speak first and last name. Seeing and hearing none, confirmed by Ms. McClees. Mr. Haworth made a motion to close the public hearing on CON 023-222: **48 Torrington Road** and issue a Negative 3 and Negative 6 Determination with the following conditions: CAP-3, WAS-2 and only minor amounts of fill/grading are permitted with this project. All grading shall closely approximate what was approved under SE 023-1289, CON 19-034. Motion seconded by Ms. DeSalvatore, hearing no further discussion, roll call vote 4 in favor with 1 abstention (Mr. Galary). Motion carries. In his vote, Mr. Gary Lavalette wanted to stipulate that Mr. Ed Lavalette is no relation to him.

- b) CON 023-212: **12 Huttleston Avenue (Fairhaven High School) – continued to May 24, 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.

Ms. McClees stated that the board received a copy in their packets of both the peer review and applicants responses to the peer review. Peer reviewer noted some minor items that needed to be addressed but noted the stone reservoir should be able to retain and exfiltrate the 100-year store peak flow and volume. Unless the Commission has concerns related to the responses provided by the applicant to the peer review letter, recommendation is to close the public hearing and issue a Negative 6 Determination for 12 Huttleston Ave, CON 023-212 with the conditions as outlined in the Staff Report (dated April 23, 2021).

Mr. Haworth advised he did review all associated materials, was happy with the review on his end and felt ready to move forward. Opened to the board for comments, questions and concerns.

Ms. DeSalvatore asked about the infill material that would be less pollutant if they had some natural materials she felt should be part of the conditions.

Mr. Haworth asked who was on to represent the school on this. Mr. Lance Hill from Pare Corp identified himself and stated Justin and Art from Traverse could speak to the infill material. Deferred to Dr. Robert Baldwin who commented that reps from Pare and Traverse could address this and asked if this was an area regarding storm water that is part of the discussion or not.

Ms. DeSalvatore said it is because it is a question of pollution that might be going out through stormwater. Dr. Baldwin asked Mr. Hill to have whoever needs to address this continue. Mr. Arthur Eddy from Traverse Landscape Architecture continued on the question. He stated they are currently carrying crumb rubber and provided reports. They are also carrying an alternative infill as an alternate in the bid documents and are waiting to see pricing on those as part of the bid document. Mr. Haworth referred Ms. DeSalvatore to the documents listing five alternatives one of which is an alternate infill material.

Ms. DeSalvatore stated she felt need to stipulate as the Conservation Commission that it shall be a natural material not the synthetic that was originally proposed. Mr. Eddy questioned based

on what information because if we go back through the EPA Study, the Newton Study there are no indications coming out of that. Ms. DeSalvatore said there is plenty of documentation about plastics winding up in micro-particles in the ocean. She feels we should address this. Mr. Eddy stated he would argue that they are addressing it through the brock fill alternate.

Mr. Haworth felt the Commission should strongly encourage they take the alternate but do not want to tie their hands in his opinion, are a board and it is an overall decision. Ms. DeSalvatore said this was the responsibility as the Conservation Commission. Mr. Haworth opened to rest of the board.

Mr. Lavalette said he read the report and does not know enough about the plastic particles and would like to listen to more. Does seem like the field will have enough water retention so if they have a 100-year storm will be able to keep that water in check until it can be released so he was satisfied with that. Does not know about the plastic residues that could come off, would be interested to see more info as they go along tonight and explain and ways that could be avoided. He would standby and listen to more conversation.

Mr. Pietraszek said he felt the same as Mr. Lavalette, would like to hear more about the plastics.

Mr. Galary said he was very confused, thought at peer review just for drainage and good on everything. He said these fields are all over Massachusetts and in places that are close to the water. Why are we talking about anything that does not have to do with just the peer review here. Mr. Haworth pointed out the peer review did address it on page 5. Mr. Galary said they have spoken a number of times on the material of the field and this field use to get fertilized many times a year and that would be pollution. It is everywhere you go. He continued not sure why we were talking about it, the peer review did their job, made corrections and time to move forward. This field needs to get built starting now because we have to get these kids on the field the following year and this is where he is at with that. He hopes the rest of the board sees or hears what they need to get this vote through.

Mr. Haworth went to the consultants for comments, questions or concerns.

Ms. Isherwood said she would like to see if this new turf field will be around for an extremely long period of time so if there is a more natural fill, any type of material that could possibly be used it should be looked into and documented, not just a maybe we will look into it.

Mr. Medina said he had nothing at this time.

Mr. Haworth said his concerns were about the drainage and the field's ability to hold a large storm and be able to properly handle the water without damaging the field. Those concerns have been addressed and everything he read in this report seems to show him that there would be no issues happening on this field as it will be able to hold all the water it needs to hold and then it can release after or it will leech back into the ground water table. Overall that was his primary concern. Important to be environmentally conscious and always try to do what is best in the interests of the environment and hope that as part of the bid documents they do have an alternate for other types of materials and we hope that they can stress from us that we hope they use those materials. He does not think at this point the Commission has enough information about other types of materials or about the damage that might be caused to go

ahead and require it. In his opinion, we should highly recommend they look at other things but not require it; there is not enough of an issue to stop the progression of the project.

Ms. DeSalvatore said she does not want to stop the project; she is for setting a condition that will require them to use a less pollutant material for the infill. She continued that this was discussed and there is plenty of documentation about micro-particles from synthetics winding up in the ocean and doing pollution. The only reason the infill material wasn't proposed initially was because the more natural material is more expensive and the Town will not go with a more natural material unless we mandate it and she believes we should as our responsibility as the Conservation Commission. Ms. DeSalvatore said she wanted to hear from Ms. McClees on the matter.

Mr. Haworth said he would recognize Dr. Baldwin first then to Ms. McClees.

Dr. Baldwin said he echoes what the chair stated, there is a lot of fact, data and science out there and appreciates and respects people's opinions but the fact, data and the science are one thing. He pointed to what Ms. Isherwood stated, he concurs, this was put in the bid process so not something to investigate further. They brought infill within the bid process and the bid process will come through soon to absolutely require this and it is not an exorbitantly different cost so to restrict based on this isn't fair. He said what he heard the Chair say is correct, based on science brock fill was proactively put into this plan for this purpose and when things come through we will make the best decision possible. Recommendation is one thing, we have gone to different boards and they have recommended but a stern requirement on something that doesn't have all the science and facts to it respecting others' opinions is a whole other thing.

Ms. McClees stated the decision is up to the board.

Mr. Eddy asked to comment, felt we were crossing things where we were talking about micro-plastics and infill and those are two different things. When we talk about micro-plastics we are talking about the actual synthetic turf itself. What the European Athletic Union is doing around micro-plastics is containment. We have had this conversation so containment around that field is built, we have walls around that field, we are contained inside that field, bleachers on one side. We are doing everything that they are doing in Europe which is way ahead of us from a micro-plastic standpoint which has to do with synthetic turf fibers which is completely different than the infill so talking about two different things when talking about micro-plastics and infill. If we change to brock fill or change from crumb rubber, the studies are there, we gave them to you. The reports from Newton Study are there. If we are talking about micro-plastics we are talking about containment and that is something that this field has.

Mr. Haworth advised this is a public hearing and opening to the public who wanted to be heard on this to raise their hand, use the chat feature, if on the phone unmute and speak first and last name, he stated he heard someone unmute but not speaking their name. Seeing and hearing none, confirmed by Ms. McClees. Mr. Haworth asked for anyone from the board who wanted to be heard to speak before he makes a motion.

Mr. Lavalette asked if there is much difference in price to eliminate these plastics, not quite sure of the process and does not want to hold up this project just wondering if we can be diligent in materials used. Mr. Haworth said he would restate what Mr. Eddy had said and he can correct

him if needed, the plastics part is just the actual turf on the top, what you actually physically see. The plastics is not the crumb rubber which is the infill material which is what they were talking about so changing the infill it does not change the micro-plastics.

Ms. DeSalvatore said her understanding from the last meeting was that the rubber itself could break down and form micro-particles.

Mr. Haworth made a motion to close the public hearing and issue a Negative 6 Determination for CON 023-212: **12 Huttleston Avenue (Fairhaven High School)** with the following recommended conditions;

CAP-3, Best management practices shall be used to prevent pollution or contamination of storm water, the storm drain system, or any waters of the US., Prior to start of work, the following items shall be submitted to the Conservation Commission: 1- A copy of the SWPPP and 2- A copy of the Operation and Maintenance Plan. Seconded by Mr. Lavalette, no further discussion, roll call vote, 4 in favor with 1 abstention (Ms. DeSalvatore). Motion carries.

Abbreviated Notice of Resource Area Delineation

c) SE 023-1355, CON 023-227: **14 Plaza Way**

Abbreviated Notice of Resource Area Delineation filed by Michael Cavounis, MCZ Realty, LLC, for the confirmation of Bordering Vegetated Wetland boundaries at the property located at 14 Plaza Way, Assessors Map 27, Lot 13. No work to take place under this filing.

Ms. McClees shared screen and reviewed. The submitted plan has BVW and intermittent stream and an associated bank of an intermittent stream. The applicant is seeking confirmation of resource area boundaries. The wetland line should be verified and in the past the Commission hired a third party peer reviewer to assess the line. If the Commission would like to move forward with that she has solicited estimates from a few different peer reviewers or if the Commission would like her to take a look at the line that is at their discretion.

Mr. Evan Watson from W Engineering was on representing the applicant. Mr. Haworth asked if he wanted to add anything or had questions. Mr. Watson did not, just looking for confirmation of the wetlands line at this time. Mr. Haworth asked to confirm exact location, appeared to be back of the old K-Mart which is now Tractor Supply and Staples. Mr. Watson said yes, if continue down Alden Road you would access the rail train, in-between that building and the rail trail.

Mr. Haworth clarified, only looking to clarify the line and an approval tonight would only be for 3 years. Mr. Watson said he understood. Mr. Haworth commented this is a big line. Ms. McClees said she is not recommending approving the line tonight, recommending a peer review given the length.

Mr. Haworth asked the board to use raise hand feature or just raise hand if wanted to weigh in. Mr. Lavalette asked why need a delineation line. Mr. Watson said the property owner wanted it to be delineated, no work proposed at this time. Mr. Haworth said that was why he called out the 3 year rule. Ms. McClees advised that when ANRAD comes, applicants ask for confirmation of wetland boundary it is to get an idea where and what resource areas are on the property so that in the future if someone is looking to be done with the property they have an idea of what

performance standards apply and any regulations associated with the bylaw. And what applies there and what area is there to work with in terms of things that may or may not be under the jurisdiction of the conservation committee. Sometimes that is done through a Notice of Intent process but with larger areas of wetlands that is typically done first under an ANRAD process and then a subsequent notice of intent comes later once the area that is not wetland is determined.

Mr. Lavalette said his opinion was peer reviewer for this area not Ms. McClees.

Ms. DeSalvatore said felt simplest thing to do would be to make a motion. Mr. Haworth said he wanted to give every board member a chance to be heard before a motion is made. Ms. McClees pointed out also a public hearing process.

Mr. Haworth asked if anyone else on the board wanted to be heard, no other board members had comments or questions. He then continued with his comments, this is a large line and one if this size should have peer review, it is commercial property and important to do things right, Ms. McClees has other work and for a commercial site of this size should be peer reviewed.

Mr. Haworth opened to the public that wanted to be heard on this to raise hand in chat feature, use the chat or if on the phone unmute and speak first and last name. Seeing and hearing none and confirmed by Ms. McClees. Mr. Watson asked to add he did speak with his client and had no issue with a peer review. He also said he believed a check was submitted to fund the 53 G account so if get proposals would be happy to work with Ms. McClees on that and coordinate if they want to have botanist obtain any wetland walk or move flags they can coordinate that too.

Mr. Haworth confirmed no public comment, asked any other comments from the board and then asked if Ms. DeSalvatore was ready to make a motion. Ms. DeSalvatore made a motion for SE 023-1355, CON 023-227: **14 Plaza Way** to allow the agents to hire peer reviewer and coordinate the process. Mr. Lavalette asked if public hearing needed to be closed. Mr. Haworth said we would continue the public hearing and could be in a separate motion. Ms. DeSalvatore amended her motion for peer review and to continue to June 28, 2021 on SE 023-1355, CON 023-227: **14 Plaza Way**. Seconded by Mr. Lavalette, no further discussion on the vote, roll call vote 5-0 in favor, motion carries unanimously.

Notices of Intent

d) SE 023-1347, CON 023-210: **1 Boulder Court – request for continuance to June 14, 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.

Mr. Haworth made a motion to continue SE 023-1347, CON 023-210: **1 Boulder Court** to June 14, 2021, seconded by Mr. Lavalette, no further discussion, roll call vote 5-0 in favor, motion carries unanimously.

e) 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.

Mr. Haworth made a motion to continue SE 023-1324, CON 023-153: **86-88 Middle Street** to June 14, 2021, no discussion, seconded by Mr. Lavalette, no further discussion, roll call vote 5-0 in favor, motion carries unanimously.

- f) SE 023-1332, CON 023-173: **18 Bass Creek Road – request for continuance to June 14, 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.

Mr. Haworth made motion to continue SE 023-1332, CON 023-173: **18 Bass Creek Road** to June 14, 2021, seconded by Ms. DeSalvatore, no further discussion, roll call vote 5-0 in favor, motion carries unanimously.

- g) SE 023-1354, CON 023-228: **33 Point Street**
Notice of Intent filed by Wade and Wanda Cabana for the demolition of the existing house and construction of a new flood zone-compliance single-family home at the property located at 33 Point Street, Assessors Map 28B, Lot 170. Work to take place in Land Subject to Coastal Storm Flowage.

Ms. McClees shared screen with site plan and it is slightly different than the one in the packets, got an updated site plan today from the engineer. Due to needing to relocate the sewer connection, the existing connection is across someone else's property so they had to relocate it so it was not crossing someone else's property. That appeared to be the only change and it was a site plan submitted dated today, May 24, 2021.

Ms. McClees said this is a flood zone project, there are no other resource areas, minor fill is proposed to level the area for the foundation. The property is very flat, this is an elevation 8 contour around the proposed slab, 7.8 in one area, 7.6 in another and another 7.8. Pretty flat site. The applicant's representative provided updated general notes for the plan indicating the following building and lot coverage information. The existing house that is on the lot is 620 sq. feet plus 218 sq. feet of concrete decks so the existing lot coverage with the house is 18.9%, proposed house 1009 sq. feet plus 282 sq. feet for paved driveway for 1291 sq. feet total lot coverage proposed or 29% so under the 30% building coverage limit by Zoning. The applicants representative offered that that should be taken into consideration if the total lot coverage is under the allowable building coverage, a paved driveway should be allowed. The folks are going to have over 70% of their lot be pervious. Does not appear the proposed project will have a negative impact on storm damage prevention or flood control.

Ms. McClees recommendation is to close the public hearing for **SE 023-1354, CON 023-228, 33 Point Street**, and issue an Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw, plans dated May 24, 2021, update on plans due to comments by BPW with the recommended conditions outlined in the Staff Report dated May 21, 2021.

Mr. Rick Charon, Charon Associate Engineers was on to represent Mr. and Mrs. Cabana. As mentioned, proposed total lot coverage here is below the allowable, 70% that will still be lawn and pervious area and understand concern from the board for additional paved area, especially in the velocity zones but here there is a minimal amount of lot being covered feel only fair to allow the applicants to have a paved driveway. They are getting to retirement age and looking for a full time home at what was a summer cottage for many, many years and gravel driveways are a maintenance issue when it comes to the winter and plowing. A lot of work involved, make this item more comfortable for retirees. This is one short driveway, one parking area, not a double wide parking area, rather modest. Pretty straightforward, V-Zone foundation house elevated on, house is odd shape trying to work within the confines of the setbacks.

Mr. Haworth asked to clarify if most of the work was in existing footprint. Mr. Charon said existing house is about 2-feet from the property line at the back corner and can see the existing sanitary connection going off the side of the house and most likely done when the sewer line was put in. We do not believe would be allowed to continue using that so the proposed plan shows a new connection to the street. Possible, if BPW says can continue to use and if can get an easement from the neighbor to continue to use that then they would do that to avoid digging up the street. Worst-case scenario is what is shown on the plan; go into the street with a sanitary sewer connection.

Mr. Haworth asked about a concrete pad, which is being removed from existing. Mr. Charon confirmed the concrete pad was being removed.

Mr. Lavalette asked, underneath the house is that a proposed slab. Mr. Charon said yes, a slab, with breakaway walls to give an enclosed parking area under the house due to the weather. Mr. Lavalette asked about the breakaway walls and a better system or potential alternate as was done at a different project that Mr. Charon had come before the board with previously. He said it was up at #18 up the street, concern there was the breakaway walls would not be constructed in the way they were designed and agreed there a condition to monitor the construction and certify to the board that they were indeed breakaway walls. Mr. Lavalette said he would like to see us keep with that same policy, no problems with this then.

Ms. DeSalvatore concerned with increasing the impervious footprint in a velocity flood zone and a paved driveway. Mr. Charon recognized the concern, here, have someone looking for modest amount of impervious area, if view down that neighborhood every neighbor has paved area far in excess of what the owners are asking for. Ms. DeSalvatore said we are trying to change that. Mr. Charon said what is there is not going to change and did not know how to roll that back and with this request keeping it reasonable. Cannot turn back the clocks on some of the other projects, people going forward want to be treated on a fair and equal basis.

Ms. DeSalvatore said a lot of people are trying to convert Summer properties to year round homes but there is the matter of being in a velocity flood zone near the ocean and proactively we should not be approving a paved driveway. Also where they are increasing the impervious space to do some planting with shrubs to absorb some of the floodwaters. Mr. Charon said the plan does show lawn and he is certain there will be some efforts to do some landscaping, certain there will be planting beds, shrubbery that is a normal process and not shown on there. If want it on paper for an idea of what the landscape is going to look like, we have 70% of pervious area,

can be lawn, mulch or anything else and will allow water to get into the ground.

Ms. McClees asked to make a couple of additional conditions in addition to what is outlined in the staff report for the board to consider. She referred to what Mr. Lavalette raised (about breakaway walls) the conditions there were two attached to the previous property - one that went into section D after construction that stated a certificate shall be issued by the foundation design engineer that the breakaway walls are installed correctly and will function appropriately. The other concern related to the breakaway walls is a perpetual condition that states the breakaway walls shall not be modified at any point so they are no longer breakaway. Regarding the planting to what Ms. DeSalvatore raised, one thing the board had discussed associated with a different filing is requiring the submission of a planting or landscape plan prior to site stabilization so not necessarily prior to the work actually starting because sometimes hard to know where things are going to go when there is no house there to figure out what the site looks like. So potential condition the Commission could consider is that a planting/landscape plan be submitted for the Commission's review and approval prior to final site stabilization.

Mr. Haworth asked for any other concerns or questions from the board. Ms. DeSalvatore said she thought they needed to stop permitting paved driveways in the VE Zone.

Ms. McClees raised another potential recommended condition that could also potentially apply here. On a previous filing the Commission attached a perpetual condition that said no additional impervious surface shall be added to the property beyond what is permitted by this order.

Mr. Haworth asked for any other concerns or questions from the board or consultants. Ms. Isherwood understands Ms. DeSalvatore's concern and not sure on the history of the board as to how many of those driveways have been approved in those types of areas. It's not a large impervious area being proposed and do not want to set a precedent and there is a point where you have to start. Mr. Haworth also agreed and stated he has seen over his time on the Commission. Previously a lot of huge monstrosities of driveways and now seems like applicants have more reasonable requests that we might want to consider for them rather than a 5-6 car driveway in a flood zone.

Mr. Charon wanted to make a suggestion that they provide a recharge for roof runoff equal to an area of the proposed impervious driveway and recharge that amount through subsurface contactors. This takes the area that would have been impervious and gets recharged for that amount of storm water.

Mr. Lavalette commented agrees with Ms. DeSalvatore on driveways and this one is small. When have a flood and seaweed comes up, trying to clean a driveway with stone is almost impossible whereas if paved in this smaller section, if you have to clean it, it is a lot easier. There has to be give and take. Also, to Mr. Haworth's point, some driveways have been way oversized and that we can put conditions on that. In this case, his opinion is that it's small enough that it fits the property and would be a lot safer especially for an older couple. They are within the limits of what is allowed, both are right.

Mr. Haworth said a healthy balance that is good for the environment and the people using the property. A driveway that suits the property and we have 70% impervious surface on this plan compared to other plans. Instead of just looking at a driveway, look at the whole site and we're

getting 70/30 and at that it is extremely reasonable. Having plowed snow for 20+ years, understands the nightmare of a gravel driveway and piles of stone that result that need to be replaced. We do not want stone pushed into sensitive areas. This project seems to be a healthy balance.

Ms. McClees added that Mr. Charon's proposal to add recharge for the roof will help offsetting the area of the house and do more for groundwater recharge, a good addition to the plan. If the board wants to see that, ask the applicant to ask for a continuance to the next meeting to add those things to the plan.

Mr. Haworth suggested keep the asphalt driveway and the roof recharge is a fair compromise, adding that to the plan and close out at the next meeting. He asked for any other comments from the board. Seeing and hearing none he opened to the public who wanted to speak on this project, this would be the only time, indicate in chat, raise hand and if on phone with no zoom feature to unmute and speak first and last name. Seeing and hearing none, confirmed by Ms. McClees.

Mr. Haworth asked if Mr. Charon would be amenable to a continuance to the next meeting and updating plan. Ms. McClees will add in the conditions suggested on the breakaway walls, landscaping plan and total amount of impervious surface on the property.

Mr. Haworth made a motion to continue **SE 023-1354, CON 023-228, 33 Point Street** to June 14, 2021 at the applicant's request. Seconded by Mr. Lavalette, no discussion, roll call vote 5-0 in favor, motion carries unanimously.

h) **SE 023-1356, CON 023-229: 12-18 Rio Way**

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

Ms. McClees shared screen to show the plans. The applicant is proposing to construct a 60,000 square foot expansion of Building 3 to the east and southeast of the existing building. (indicated by pink box on the plan on screen). The building itself is entirely outside of Conservation Commission jurisdiction, not in a flood zone, outside the 200-foot riverfront area and outside 100-foot buffer to resource areas along the shoreline. In support of that expansion, the project proposes providing public access to and along the river to comply with Chapter 91 regulations, upgrades and improvements to the stormwater management system, and breaking up some of the asphalt parking area with landscaped areas and stormwater features.

NOI included a short alternatives analysis in the narrative in the NOI that addressed the different possibilities where the building is being constructed or not doing any work at all> Applicant is proposing the building where it is because it is outside of jurisdictional areas associated with the Commission. This project will need a Chapter 91 license from Mass DEP and NPDES permit from the EPA. The project will need to go before the Planning Board and has not yet been filed with Planning. The majority of the project is outside of the WPA and Fairhaven Wetlands Bylaw. The portions that fall within the 100-foot buffer zone to the resource area

and/or land subject to coastal storm flowage are Portions of landscaped stormwater areas in the parking lot, a portion of the proposed public access passage and relocation of a transformer.

Within the 200-foot riverfront area is more of the landscape stormwater area that is in the parking lot. Typically when a filing is before the Conservation Commission the Commission is also looking at compliance with Chapter 194 (storm water regulations) the work does have to comply with Mass. Stormwater standards even though only small portions of the project are within the jurisdiction of the Conservation Commission under WPA and Fairhaven Wetlands Bylaw. They have submitted a stormwater report associated with the filing. Typically with other projects coming before both the Conservation Commission that also need Planning Board review, the Commission prefers to hold hearing open to allow time for the Planning Board to weigh in as a courtesy to avoid any potential for needing to come back for an amended order of conditions. Ultimately the Commission needs to determine if stormwater peer review is needed to confirm compliance with Chapter 194 and Mass Stormwater standards or if, since a large portion of the project is outside the jurisdiction of the WPA and the Fairhaven Wetlands Bylaw, if the stormwater peer review can be addressed during the special permitting process with the Planning Board.

Mr. Haworth highly recommends this be continued and go to the Planning Board we continue further. He is sure there will be significant requests for changes to this plan at the Planning Board. As a member of the Planning Board he knows how those things go and would recommend this go to the Planning Board, let them do the stormwater review because it is a project they normally handle. Once it has gone through the Planning Board process we can give a continued date for 6-8-12-14 weeks out, whatever they want. Once it has gone through that process bring the final plan put together with the Planning Board back to Conservation Commission. Feels this is a waste of time, their time and the board's time to look at this plan now knowing that the Planning Board, in his experience, will probably want some pretty good changes to the plan which may modify some areas of the plan that would fall under this board's jurisdiction and could create confusion.

Applicant's representative John McAllister, Apex Co. on the hearing. He said they have consulted with Ms. McClees in pre-application meeting and also with Mr. Paul Foley. Fully planning to meet with them, wanted to get the plan in and are working on the special permit application. He does agree, the bulk of the project will happen under the special permit process. Mr. Haworth said his suggestion is to hold this hearing open with this Commission under a continuance, go through that process and once gone through that process (with the Planning Board). Better to do the Chapter 194 review with the Planning Board then come to this Commission with the results.

Mr. Haworth recommended continue out a month or two, when find out when going to the Planning Board and once knows that put in writing to Ms. McClees prior to the meeting it would be an automatic continuance to whatever date you request. He asked for comments, concerns or questions from the board. Mr. Lavalette agreed on this recommendation. No other comments, questions or concerns from the board.

Mr. Haworth opened to the public who wanted to be heard on **12-18 Rio Way** to indicate in the chat, raise hand in zoom feature, if on the phone unmute and state first and last name. Seeing and hearing none, confirmed by Ms. McClees. He asked if Ms. McClees had anything to add. She

agreed on the recommendation made to continue it and have stormwater peer review as part of the special permitting process.

Mr. Haworth made a motion to continue SE 023-1356, CON 023-229: **12-18 Rio Way** to June 28, 2021 at applicant's request. Seconded by Mr. Lavalette, no further discussion, roll call vote 5-0 in favor, motion carries unanimously.

i) SE 023-1353, CON 023-223: **Sconticut Neck Road/Overlook Lane (Map 29, Lot 1C) – continued to May 24, 2021**

Notice of Intent filed by Lauren Francis, Overlook Realty Trust, construct a single-family dwelling and associated site work at the property on Sconticut Neck Road/Overlook Lane, Assessors Map 29, Lot 1C. Work to take place in the 100-foot buffer zone to Bordering Vegetated Wetland.

Ms. McClees shared screen showing the revised plan submitted and associated with the plans the applicant submitted a memo summarizing the changes made which is included in the packets. In brief the change include move location of the basketball court and reducing it in size by about 40%, rotating the swimming pool and pool house and associated patio 90 degrees to create a larger separation from the wetland, converting to a walk out basement on the southern portion of the dwelling to minimize the proposed fill. Redesigning the driveway to remove the easterly portion from the 25-foot buffer zone and inclusion of plantings on the plan showing 4 Tupelo trees and wildflower seed mix and arborvitae along the property line on the inside of the proposed fence. The revision to the plan has removed nearly all work outside the 25-foot buffer zone. The items that remain in the 25-foot buffer zone is the wildflower planting area and a very small portion of grading associated with the house and a portion of the fence along the property line. The rest of the work is outside the 25-foot buffer zone and the Staff Report is updated to show what is proposed in each buffer zone, 0-25-foot, 25-50-foot and 50-100-foot.

Mr. Dave Davignon representing the property was on the hearing, he advised that the trustee Ms. Francis was in his office with him tonight. He did want to add that the pool discharge defined to be outside the buffer zone and it will drain into a grass swale as proposed along the property boundary with adequate separation before it gets to the wetland resource area. In summation, this is a significant reduction in the proposed work within the Conservation Commission jurisdiction, what was heard from Commission members to try and do. The owners were more than willing to try and do what was asked for. Looking to close the hearing and get approval on the project.

Mr. Haworth opened to the board who wanted to be heard.

Mr. Galary tried to watch the last meeting recording and was unable to get the meeting. He asked the reason for making the basketball court smaller. Mr. Haworth said was in resource area and it was flipped and moved outside of the resource area.

Mr. Lavalette said much better plan, unfortunate to lose the tree but they did what we asked for last time to change the driveway.

Ms. DeSalvatore said does not see the need for the tree to be removed, it is a pretty healthy, significant tree, discussed they were adding some trees simply to remediate the amount of the buffer zone that was being impacted. Would rather not see the tree removed.

Mr. Haworth said looks like the grading for the basketball court and pool would require that and they have added two more trees that were not in the last plan (in area where basketball court was originally proposed) and also some trees up in the North-east corner.

Ms. DeSalvatore said if it is inevitable for grading. Also, asked if the basketball court size was reduced. Ms. McClees said significantly. Mr. Haworth pointed out the amount of impervious surface was reduced. He continued that he was happy to see the reconfiguration of the driveway, gotten that further from the resource area and made it work well. From a house perspective loves walk out basements, excellent change, the way to go. Overall, only concern he has is the neighbor who had a concern about the basketball court being close to their property. Ms. DeSalvatore said that is addressed with the arborvitae there. Mr. Haworth said overall from what they are tasked to do as a Conservation Commission is to try and get everything as far out from the resource area as we can and protect the environment as best we can. As said on the last project, find a healthy balance and from the original proposal to this we have a healthy balance.

Ms. Isherwood does like this plan better, shares concern about the neighbors and that can be addressed later. Losing that tree is a trade off especially if they will plant a couple more trees. This is much better than what saw last time.

Mr. Haworth opened to the public for **Sconticut Neck Road/Overlook Lane (Map 29, Lot 1C)** only at this time, if want to be heard, indicate in chat or raise hand with zoom feature, if calling in unmute and state first and last name only at this time. Mr. Haworth recognized one hand raised at this time.

Mr. Rick Lieberman, 63 Jerusalem Road was recognized for 2 minutes. He is an abutter. Mr. Lieberman said one of the vehement concerns raised was the idea of healthy balance, they agree in terms of the changes made to the amount of other issues the board had, one of the most significant concerns was the placement of the basketball court and the removal of that tree which would impact the noise. This plan goes in direct conflict with those concerns that both the Souza's and Lieberman's raised. He thinks having the basketball court in its original position along with the other changes does meet the healthy balance that you all are seeking as well as accommodating the neighbors who will be impacted in perpetuity. The saturation and the use is pretty significant and we would strongly ask the board to reconsider the placement of that reduced basketball court and the removal of that tree and have it resituated where it initially as part of the healthy balance.

Mr. Haworth asked Ms. McClees if any other members of the public that wanted to be heard. She confirmed only Mr. Lieberman. Ms. McClees advised the Souza's also now wished to comment. Mr. Patrick Souza, 69 Jerusalem Road, said he agrees with the Lieberman's, the noise factor is a big concern, all else A-OK, feel the basketball court should be put back where it originally was.

Mr. Haworth acknowledged the valid concerns of the neighbors and on the Conservation Commission noise is not usually something that affects decisions. What affects decisions is the ability to protect the environment and moving the basketball court to where it is now is much better for the environment as far as runoff and associated functions of the basketball court

compared to where it was. Addressing both the Souza's and the Lieberman's, looking at the plans they have shielded the entire basketball court along the property line with a row of giant arborvitae and either 570-feet of vinyl or stockade fence. Ms. McClees clarified it is both fence and arborvitae to absorb the noise.

Mr. Haworth asked for further comment from the board. If all set, ready for a motion. Mr. Haworth made a motion to close the public hearing on SE 023-1353, CON 023-223: **Sconticut Neck Road/Overlook Lane (Map 29, Lot 1C)** plans dated May 17, 2021, with 53 recommended conditions as outlined in the May 21, 2021 Staff Report. Seconded by Mr. Lavalette, no discussion, roll call vote 4 in favor, 1 abstention (Mr. Galary), motion carries.

j) SE 023-1351, CON 023-224: **Sconticut Neck Road/Overlook Lane (Map 29, Lot 1D) – *continued to May 24, 2021***

Notice of Intent filed by Lauren Francis, Overlook Realty Trust, construct a single-family dwelling and associated site work at the property on Sconticut Neck Road/Overlook Lane, Assessors Map 29, Lot 1D. Work to take place in the 100-foot buffer zone to Bordering Vegetated Wetland.

Ms. McClees shared plans on screen and summarized the changes, included in packets. The revised plans submitted included changes: permanent vegetated buffer between the wetland increased to 25-feet between flags 120 and 129, all along the rear of the property where the buffer zone comes across. The barn was relocated closer to the main driveway to shorten the gravel drive coming off the driveway. The driveway has been changed from impervious to gravel with a small section remaining as paved. The wildflower seed mix has been proposed all along the side of the driveway between where the driveway is proposed and the wetland. There has been inclusion on the plan and notation related to the presence of Japanese knotweed that it will be excavated out and disposed of properly. The house and pool were rotated slightly to reduce the amount of fill and increase the distance from the bordering vegetated wetland. The addition of arborvitae along the north bordering property line.

The Staff Report is updated listing what work is occurring in the 0-25-foot, 25-50-foot and 50-100-foot buffer. The majority of the project does now fall outside the 25-foot buffer zone with the exception of the gravel driveway that does come back, there is no other way for the gravel driveway to be able to be relocated, it is the only location to be able to access the property. There is a small amount of grading associated with removing the different fill piles that falls within the 25-foot buffer. The majority of the work does fall outside of that 25-foot buffer.

Mr. Dave Davignon representing Ms. Francis who is present in his office this evening. Ms. McClees summarized the changes and he does not have anything to add, will answer any questions.

Mr. Lavalette said this is another great change, no questions, in his opinion this is a lot better than what was first proposed. Mr. Haworth opened to other members of the board who wished to be heard on this. No other comments or questions from the board. Mr. Haworth opened to consultants who wished to be heard.

Ms. Isherwood said she liked this much better as well.

Mr. Haworth opened to the public who wanted to be heard on **Sconticut Neck Road/Overlook**

Lane (Map 29, Lot 1D) to indicate by raising hand with zoom feature or indicate in the chat or unmute and state first and last name. Mr. LieBerman was recognized to speak on this project for 2 minutes.

Mr. Rick LieBerman, 63 Jerusalem Road, he said they have no conflict with the site plans as changes, their concern or question would be after this meeting and permitting approved can they get some indication as to when site work will commence on the property. Mr. Davignon said he cannot give a certain timeline, once approval is issued from the Conservation Commission the buyer of the lot will then apply for a building permit and then would anticipate he would close on the property but from there don't have any knowledge of when that would occur. His guess would be after the summer.

Mr. Haworth asked if any other members of the public wished to be heard on this to indicate. Seeing and hearing none, he asked the board if anyone wished to be heard. Mr. Haworth is happy with the changes on this one, unique sites, the board and applicant worked together to make this a do-able project for the site, he is in support of this. Seeing and hearing no other requests to be heard.

Mr. Haworth made a motion to close the public hearing and issue an Order of conditions on SE 023-1351, CON 023-224: **Sconticut Neck Road/Overlook Lane (Map 29, Lot 1D)** plans dated May 17, 2021 with the following recommended conditions, 54 recommended conditions as outlined in the May 21, 2021 Staff Report, seconded by Ms. Lavalette, no discussion, roll call vote 4 in favor, 1 abstention (Mr. Galary), motion carries.

k) SE 023-1352, CON 023-225: **Sconticut Neck Road/Overlook Lane (Map 29, Lot 1E) – continued to May 24, 2021**

Notice of Intent filed by Lauren Francis, Overlook Realty Trust, construct a single-family dwelling and associated site work at the property on Sconticut Neck Road/Overlook Lane, Assessors Map 29, Lot 1E. Work to take place in the 100-foot buffer zone to Bordering Vegetated Wetland.

Ms. McClees shared screen to show revised plan, summary memo in packets. In brief, the changes made, the driveway proposed gravel instead of paved, the permanent vegetated buffer along the south side increased from 10 to 15-feet. The proposed buffer along the north side has been increased from 5-feet to 8-feet and in some cases 10-feet but at its closest point it's 8-feet. The garage width has been reduced from 26 to 24-feet. The ground level porches omitted. The water side yard area reduced in size and the proposed fire pit and patio has been moved closer to the home. There is a 34 highbush blueberry shrubs proposed between the boulders along the north side of the property to help define the vegetated buffer zone. Eight Tupelo trees are proposed both in the area near the house and the area at the top of the driveway to mitigate for the potential loss of 1-3 mature trees on the property associated with the proposed work.

Mr. Dave Davignon, representing the applicant on the hearing to answer any questions.

Ms. DeSalvatore the driveway that is practically touching the wetland line would like to see an allee of Tupelo trees along there, would be the most effective. Mr. Haworth indicated there would be a problem with the utilities, gas, water, electric and sewer lines. Those tree root systems would quickly interfere. Ms. DeSalvatore asked if could be on the other side of the driveway. Mr. Haworth pointed out that is in the wetlands. Ms. McClees showed on the site

plans the electric and sewer are running on the south side of the driveway and the gas and water are running along the north side of the driveway. The wetland line is 10-feet plus off the edge of the wetland, there is also silt fence. The plan does show some trees along the line/curve going east on the plans. Ms. DeSalvatore said seems it could be continued all along even up to the wetland line. Tree roots are the most effective for protecting the resource area.

Mr. Haworth does not disagree with putting trees; concern is don't want to see them interfere with gas, water, sewer and electric, that would be a bigger problem and cause excavation and more work in the future. Ms. DeSalvatore asked if any place to put them. Mr. Haworth pointed out, put between silt fence and wetland line as his recommendation. Mr. Haworth asked what Mr. Davignon and his client felt about that. Mr. Davignon said they would not be opposed to a condition for additional Tupelos to be strategically placed in the field perhaps with Ms. McClees and future property owner's consultant is, along the wetland boundary, flags 222 heading east to flags 219. They have a view easement to consider as pointed out by Ms. Francis. So between 222 and 221 would be the beginning point so along that corridor from where the plan shows 4 of them they could offer another 4 or 5 running back to the halfway point between flags 221 and 222. There is a view easement line looking below that spot that goes with the property owner at Sconticut Neck Road so they cannot do anything in that space as far as putting up something that might hinder the easement that he has on paper.

Mr. Haworth said he has not heard of a view easement in his time on the board and questioned how much of a view. Ms. DeSalvatore also suggesting talking with them since it is a view of the driveway. Mr. Davignon said would not see much as it is a heavy tree area between them now. It is something on paper they have to recognize. The importance of what the board is trying to accomplish, so where he said flags 222 it is that immediate area, halfway up to 221 can strategically wherever it allows in the field to put in Tupelos wherever they can. Ms. DeSalvatore asked about the other side too. Mr. Davignon said he did not think so, from walking the path it is pretty dense and no sunlight, where they are clearing for the driveway and proposing that is the sun corridor. Ms. DeSalvatore said she was thinking aesthetics of a tree lined street.

Mr. Davignon and Ms. Francis discussed internally where on the plan was being recommended for tree planting for understanding. Mr. Haworth said important that all understand so we are clear. Mr. Haworth added that he has a hard time with this project, it is too much that doesn't fit. If we can find something that helps here it might be the decision for him between a 'yes' or a 'no' he was at a fifty/fifty on which way voting. Ms. DeSalvatore added it does not fit. Mr. Haworth felt the new regulations apply because even if filed the public hearing had not been opened yet, that was his thought and it can be argued both ways. If we can find something as environmentally conscious as possible and get it to work he may vote for it.

Ms. DeSalvatore proposed the trees where she felt the board was heading to approval. She also has a really hard time with this project.

Mr. Lavalette asked going back to the Town's drainage and the issues on this property, was this piece of property compromised by anything that was done putting in the drain from Sconticut Neck Road down to the property. Mr. Davignon said that was a terrific question and it is the crux of approving this lot. The wetland that you see on the north side of this lot, the finger-like projection would not have been a wetland if it was not for the Town's dumping of water onto this property. The water comes off Sconticut Neck Road a significant length of roadway, dumps

on the property. Yes the town has an easement, but they did not maintain the pipes and the pipe broke at the point where the water discharged at the path of easiest resistance which was down this excavated area. It was excavated for the construction of a roadway 35-40 years ago and the fill piles are on both sides so the evidence is there if you venture out in the woods. When the pipe was not fixed, for a long time all the water from Sconticut Neck Road kept draining right down the center of this area that was excavated and it created the wetland. If the Town had maintained the pipe, there was not enough overland flow to create the wetland that you see. The north side of this is a man-made wetland and if you look at it as if from I just told you, that is what is hurting us, if you take that out everything could have been shifted 25-feet off of the wetland to the south and we could straddle that north property boundary and this wouldn't be the issue we are discussing.

Mr. Davignon asked that this be taken into consideration when looking at this.

Mr. Lavalette said he knows a wetland is a wetland regardless if it was historically there or created by an accident or however you want to deem this. Agree that this is pushing the limits of conservation. Not sure how far we go, adding more trees or adding more buffer. It is certainly better than it was a couple of weeks ago. He asked the question about how that lot was created, do not know.

Ms. McClees was recognized from her hand raised, she said Mr. Lavalette covered what she was going to say in terms of WPA and Fairhaven Wetlands Bylaw that it doesn't make a distinction on how the wetlands got there just that it is now there and in jurisdiction.

Mr. Galary was recognized from his hand raised. Would the board be OK with pushing this item to the next meeting, he would like to watch the meeting (May 10, 2021), tried to watch and it still wasn't up yet. Not sure if this is a rush but would the rest of the board be OK with pushing this off so he could take a look at this? Mr. Haworth said would be with applicant asking for a continuance, we could do a continuance and the applicant could object or the applicant could voluntarily ask for a continuance.

Mr. Davignon was asked for his thoughts, he said Ms. Francis would like to read the letter she submitted into the record. Not opposed to a continuance for positive votes but if we have folks with their minds made up then do not know why we would continue. Mr. Haworth added for the record, for himself his mind is not made up either way. So, a little change that is better for the environment or something he feels is better on a conservation perspective could be that one thing that sways his vote. Right now Mr. Galary is saying he is ineligible to vote but if he files a mullen and watches the last meeting he becomes eligible to vote so whether he is a 'yes' or 'no' for you it is either one more 'yes' or one more 'no.'

Mr. Davignon said they are very open to ideas like Ms. DeSalvatore's to make this work. He thinks do have to strongly look at the fact and if you check with Town Counsel, you will find that once a project is submitted and filed it is protected by law. Applying the new buffer zone rules is unfair for this property owner for this particular lot. This property was approved by the Planning Board and the Conservation and furthermore, you have already approved the crossing of a wetland to get to that lot. The hardest part of developing this lot is that it is already approved and that can be built. He implores the Commission to take this into consideration and at this time, they will take the continuance and Ms. Francis wants to read her letter into the record.

Mr. Haworth asked before we get to that, he is not asking to take the continuance quite yet he was following along Mr. Galary's thing; what he thinks is better and best for all is if we go through everything, all the board's and the public's comments first. Then at the end do the continuance that way we have all the possible plan changes and every idea is thrown out there. Then, we put together something good for the next meeting so hopefully will not need any more continuances.

Ms. Isherwood asked about the fire pit, thought they had talked about getting rid of that, is it still in that somewhat 25-foot buffer area, looks like it is extremely close. Second, if the second driveway hadn't been approved and you went with one access road, lot 6 would not be such a disturbance to this entire area. People's votes may not be as swayed one way or the other, it would be more apt to vote to allow lot 6 to be there in the shrunk version it is now. Unfortunately you have two access roads that is a much larger disturbance and can't go back in time and say 'no, you should only have one' and much easier for you to slide lot 6 through, but, it is too much. The second access road and lot 6, everything is squeezed in there and do not think it should be disturbed any more than it is. A wetland is a wetland. If I had something leak or happen in my backyard over years of time and it became a wetland she would then have to adhere to conservation regulations. The fire pit-did not think that was supposed to be there.

Mr. Haworth asked Mr. Davignon about the fire pit. He said it was located initially in that westerly direction and he squared up the lawn, yard area. It is smaller in nature now and shifted it over, a fire pit has no pollutants coming out of it. It is flagstone, it is pervious and sees no harm in a small pervious patio that close to the wetland, does not see what pollutants would results. There are boulders around the perimeter of the yard to define what they have to use and just trying to make an effort here for someone a use to have in that small yard. Mr. Haworth asked if may have a fire department regulation issue, is it within 30-feet of the deck? Mr. Davignon said yes it was. Mr. Haworth said need to be 30-feet from a structure and may want to check with the fire department on those regulations. Mr. Davignon said he would.

Ms. DeSalvatore wanted to say that for as many wetlands the town has created, many more have been plowed under and paved over. It is our duty to protect whatever wetlands exist. About the Bylaw, what we stated in the Bylaw is a reiteration of what the science recommends and we should be making our decisions based on the science. The Bylaw merely clarifies that for people. She does not see that as an issue, she cannot see the state permitting this. Mr. Haworth said it would only go to the state if we deny it. Ms. DeSalvatore said she does not see them override us. Ms. McClees said because the WPA doesn't have performance standards associated with the buffer zone typically projects that occur primarily in the buffer zone only, if, for example, a project is denied for non-compliance with performance standards and it is a buffer zone only project and no other storm water standards at issue the state would have to overturn that because there are no performance standards for the buffer zone. It would depend on how it was denied because WPA doesn't have performance standards for a buffer zone.

Ms. DeSalvatore asked if we site actual scientific data that says that this would affect the buffer zone, the resource area, all the studies we can site. We have a duty. Ms. McClees does now know how DEP would approach that because of the lack of performance standards for the buffer zone, not sure how they would approach that. Mr. Haworth had an idea, he said based on discussions with Ms. McClees in the past, he asked Mr. Davignon, putting the onus back on him as the representative, show us how this project does not have a negative impact on the

wetland. He asked if he was following what he was saying. Mr. Davignon said yes and no.

Mr. Haworth asked Ms. McClees to comment further on his idea. Ms. McClees said similar to how a project would be outlined in terms of compliance to different performance standards if it was a coastal beach. What she thinks Mr. Haworth is trying to get at is provide a narrative explaining how this minimizes the potential impacts to the resource area and what is being proposed is not likely to have long term negative impacts on the resource area. This is what she said she thinks Mr. Haworth is asking her to explain. He said, one way for him to understand this better is to show him that what they are doing here isn't going to destroy the wetland area even though you are so close to it. Show him how we make sure we are not washing fertilizer (which he understands is a simple provision as an order of conditions) but show him how what is going on here is not going to destroy the wetland. Just like the claim that the wetland was artificially created by man, now that it exists let's make sure that by putting this here we don't destroy it by man. The onus is show us how this project will work without destroying the wetland. If he can do that he would have his vote.

Mr. Davignon said yes. Mr. Haworth asked if Ms. DeSalvatore understood what he was getting at, like by putting the extra trees as you said tree roots do an amazing thing for filtering for a wetland and not only that it keeps shading. Ms. DeSalvatore said it stabilizes soils. Mr. Haworth said so trees stabilize soils, provide shading to prevent drying out of wetlands, the roots do filtering. Things like that is what he is thinking. Needs something that shows that this project isn't going to destroy the wetlands because as you know there are many other projects in town that have been filed over the years about putting something 10-feet off the wetland and it isn't going to destroy it, but one of the mistakes is not saying to prove it, prove how it will not destroy the wetlands.

Mr. Lavalette wanted to ask, we approved the driveway-Ms. McClees clarified just the crossing, not the driveway. Mr. Lavalette asked if that was further discussion about the driveway. Mr. Haworth said anything after the crossing, just the crossing to get to the property has been approved, the driveway itself is still under discussion. Is there nothing else they can do that would make this more of an approvable project? He is trying to figure out what we like and what we don't like. As the roadway stands now there are probably no objections from the board? Mr. Haworth said in his opinion does not seem like for the roadway/driveway that there is any change they can make to make it any different than it is. You need a certain width to get a car up and down it, you need the length to get from point 'A' to point 'B' so they are as dead center as they can be. They need to pull the water, sewer, electric and gas lines up.

Mr. Lavalette said a second point is the house, it doesn't look like they can shrink the house any more than what they have, garage is already shrunk down. He is trying to come up with some idea of what they are now trying to accomplish. If they could throw more plants in, trees absolutely but doesn't seem like can do much with the driveway, the house. Where do we go from here, looking for advice. Mr. Haworth said as part of this discussion, yes would like to see as many additional trees as possible, understand and respect the fact of the easement and understand the limitations because of that. Just want to show that we are doing everything we can to be environmentally conscious here, hate to deny projects, someone has a piece of land here and they want to use it. Do not want something that would do damage to a wetland either. Looking at the setbacks and always trying previously to stay 15-feet at minimum, the house is at 20, new regulations would not allow; with the exception of the driveway they are pretty close.

Mr. Lavalette asked if the garage area goes under the house. Mr. Haworth said it does, discussed last meeting and probably going up will be close to the 35-foot regulation for residential structures. Mr. Lavalette asked how much of a setback would it be to not include that area. Mr. Haworth said would lose the associated living space above it and square footage of house becomes a little shack. It goes back to the happy balance.

Mr. Lavalette said his last question, is it really coming down to vegetation now? Mr. Haworth said for him comes down to vegetation and showing him that you are not doing damage to the wetland. Might have an approvable project, need to see it. Comes to the happy balance and as a Commission, we are here and have a very set purpose to find that happy balance. People are going to build house and people are going to do stuff close to resource areas, we are supposed to mitigate that to the point we are protecting the resource areas best we can while allowing that to happen, tough balance.

Mr. Haworth said as Ms. McClees commented earlier, under state provisions it's an approvable project, under our Bylaws it is clearly a deniable project, it is all in how you interpret the Bylaw. He said Ms. DeSalvatore started with a great suggestion of a tree lined driveway best possible to protect the wetland along the driveway because that driveway is closest to the wetlands and adding as much planting and lower plantings because of the sight lines but more plantings, more roots, more filtration, more soil stabilization, less pollutants getting into the wetland.

Mr. Lavalette said not ready for a vote tonight. Mr. Haworth said he is not ready to vote 'yes' tonight, if forced to a vote he would be a 'no.' Mr. Lavalette said he is undecided and would like to see client come back with phase three and go from there. Ms. DeSalvatore said she would like to see an opinion from Crotty on the issues she raised and Mr. Haworth raised. Mr. Haworth asked if this was on whether the regulation applied? Yes. He said we could ask for that and asked Ms. McClees to ask for that.

Mr. Haworth asked if anything else from the board before giving the public an opportunity to be heard on this. He said at this time opening to the public, on **Sconticut Neck Road/Overlook Lane (Map 29, Lot 1E)** if want to be heard, raise hand, indicate in chat feature on zoom, if calling in unmute and speak first and last name only. Mr. Haworth said not seeing anything, Ms. McClees confirmed not seeing anything.

Mr. Davignon said at this point, ask for the continuance to June 14, 2021.

Mr. Haworth made a motion on SE 023-1352, CON 023-225: **Sconticut Neck Road/Overlook Lane (Map 29, Lot 1E)** to continue to June 14, 2021 at applicant's request, seconded by Ms. DeSalvatore, no further discussion, roll call vote, 5-0 in favor, motion carries unanimously.

- I) SE 023-1344, CON 023-207: **10 Nelson Avenue – continued to May 24, 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.

Ms. McClees said in chat a request came from Mr. Steve Gioiosa to continue to June 14, 2021 due to a family emergency he had to leave the hearing.

Mr. Haworth made a motion to continue to June 14, 2021 for SE 023-1344, CON 023-207: **10 Nelson Avenue** seconded by Mr. Lavalette, no further discussion, roll call vote, 5-0 in favor, motion carries unanimously.

m) SE 023-1345, CON 023-206: **2 Oxford Street – continued to May 24, 2021**

Notice of Intent filed by Robert Weeks, 2 Oxford Street, LLC, for the construction of a fixed pier, gangway, and floating docks at the property located at 2 Oxford Street, Assessors Map 13, Lot 1. Work to take place in Land Under the Ocean, Land Containing Shellfish, Land Subject to Coastal Storm Flowage, and the 100-foot buffer zone to Coastal Beach.

Ms. McClees last left off on this, based on the length of the dock it needed to go to Zoning for a special permit. She has not received any updates on where they are in that process.

Mr. Haworth asked if had representative for this project on this evening. Mr. Rich Rheume was on, he does have to go to the Zoning Board of Appeals on this, needs continuance beyond June 14, 2021 to June 28, 2021. If take no discussion then do not need to open the public hearing, not taking testimony. Missing two board members and may have a board change.

Mr. Haworth made a motion to continue E 023-1345, CON 023-206: **2 Oxford Street** to June 28, 2021 at applicant's request without taking any testimony tonight, seconded by Mr. Lavalette, no discussion on the motion, roll call vote, 5-0 in favor, motion carries unanimously.

n) SE 023-1309, CON 023-110: **1 Bella Vista Island – continued to May 24, 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.

Ms. McClees has no updates on this. No revised plans have been submitted, the additional information the Commission has been requesting since February 2020 has not been submitted in regards to division of marine fisheries. No updates.

Mr. Rich Rheume, Prime Engineering representing the applicant was on the hearing. He stated what was read in the description was what was originally filed for. Ms. McClees confirmed that. He said now predominantly down to the seawall and dredging the bridge channel, the soil gradation of the sand did not match so going to have to haul the dredging offsite. The path to the beach was eliminated. The after the fact electric gate is still on, it is just there, the posts are still there. The memo from Marine Fisheries was when they had a pier and floats and they were concerned with the eel grass. Ms. McClees said that was for the other filing. Mr. Rheume said this one was filling in depressions but also with the other filing.

Ms. McClees asked to clarify for the board. She said the description Mr. Rheume just read was how this was originally filed. Since it was originally filed this has been split into two NOIs. Order of Conditions issued earlier tonight for this property specifically addresses the planting plan associated with those filled depressions and all of that and removal of the planting beds from the buffer zone. That was all permitted earlier this evening based on the site planting plan submitted and dated April 16, 2021. That all addresses after the fact, non-permitted work not associated with the Administrative Consent order. What this has now been pared down to are strictly the items that are required by the Administrative Consent order from DEP. The Division of Marine Fisheries comments related to this particular filing, in terms of the construction of the seawall, the dredging and all of that, they had a few different comments to prohibit silt producing activities or dredging from January 15 through May 31, of any year. That is typically handled as a condition of any order of conditions issued. Mr. Rheume addressed some of the second comment which is the plan does not indicate where the beach fill will be deposited, disposal of beach fill in the intertidal area should be consistent with DEPs beach nourishment guide and be of equal grain size and appropriate slope to avoid premature loss from the beach and impacts to the near shore bottom habitat. So if the dredge material is being disposed of offsite because the grain analysis did not match that addresses that comment. The only other piece where that comment may still be relevant is if you are planning to now also do beach nourishment in addition to the dredging. Mr. Rheume indicated no to that comment.

Ms. McClees said the last two comments, the proposed relocated seawall shall not be constructed below the mean high water line within the intertidal area. The final comment is the plan does not depict the groin work. Mass DMF recommends the groin repairs remain within the existing footprint, the groin shall be constructed with interstitial spaces to support marine fisheries habitat for macro algae. Mr. Rheume said we do that, stayed within the footprint. The one groin reducing footprint, the other we are staying within the footprint so comply with all of those conditions. The groin was just staying within that existing footprint and reducing the other one so it is smaller groin.

Mr. Haworth added in, wanted to make a suggestion here. He asked Mr. Rheume to work with Ms. McClees over the next three weeks, get it sorted out, get it correctly laid out. The board does not have enough time to prepare if they do not have something in writing with an explanation as to where we are in the process. Work with Ms. McClees to put together an update of exactly where you are, what has been done, what needs to be done, what has changed from the filing. Then we will come together on June 14, 2021 and actually be able to really talk about this. Right now we are all over the place with nothing to look at in front of them as board members. Mr. Rheume agreed and will contact Ms. McClees. Mr. Haworth asked if anyone on the board had any concerns with that on how to handle.

Mr. Haworth made a motion to continue SE 023-1309, CON 023-110: **1 Bella Vista Island** to June 14, 2021 at applicant's request, seconded by Ms. DeSalvatore, no further discussion, roll call vote, 5-0 in favor, motion carries unanimously.

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

- a) 20 Yankee Lane

Ms. McClees said due to the late hour at the last meeting this was not discussed, the board did ratify the enforcement order and she has not heard anything from the property owner directly. She did receive an email from the Assistant to the Town Administrator letting her know that the property owner had called her to say that Ms. McClees should contact his lawyer but did not leave any contact information or any other information associated with that. So, issued enforcement order, the cease and desist. It is several acres of impact to BVW, several acres of impact to riverfront area, exceeds the threshold of what would have needed permits from the EPA and the enforcement order stipulated that it needed to be restored. The agricultural exemption in the WPA does not blanket exempt the land if it is under Chapter 61a. The only agricultural exemption extends to maintenance of existing agricultural use, any expansion needs permitting through the board. So what has occurred is impact in an expansion of what was agricultural use, needs to be addressed.

Mr. Haworth's suggestion is have we reached out to the state? Ms. McClees said the state was cc'd on enforcement order, it was sent to the state, the EPA and she had a brief conversation with state DEP that if there is no movement by the property owner to begin the process and work with the Commission to rectify and respond to the enforcement order. That, if given time like a month, to see if any forward movement occurs and if the Commission can have Ms. McClees reach out to the state to say there has been no movement and could we have some assistance please.

Mr. Haworth asked date order sent out, Ms. McClees said ratified at the May 10, 2021 meeting, issued week prior so we are at about three weeks at this point. She can attempt to send a follow-up letter; his presence was requested at the May 10, 2021 meeting, which he did not attend. Whether it was due to the length of the meeting and late hour, also not present tonight. Can send another letter requesting his presence at the June 14, 2021 meeting if they want to wait that long. Mr. Haworth said likes the state, the state will issue fines and send back to the Commission.

Mr. Lavalette said seems we are the only board he does not like; he has been to the BPW office three or four times already, going to be a tough one.

Mr. Haworth said this board gets calls and complaints and then are the bad guys, what is not realized is they are the ones who did something wrong. If they do not want to work with the Commission and at least come in and address the issues. DEP said give him a month, so, give him a solid month, Ms. McClees has permission after it reaches over a month, we will be long past a month when next meeting rolls around. Issue another letter with Mr. Haworth's signature on it this week, one that says the board needs to hear from you by whatever the month date is from the last letter, if we do not hear from you we will be referring this to Department of Environmental Protection and the Federal Environmental Protection Agency while we still pursue it. His presence is definitely requested at the June 14, 2021 meeting. Anyone else want to weigh in on this?

Mr. Lavalette will call Ms. McClees outside of this meeting to discuss further.

Mr. Haworth made a motion to issue another letter, request his appearance at the June 14, 2021 meeting and if we do not hear from him by the 30th day from the previous letter we will go forward and contact the state and federal agencies with this issue. Motion seconded by Mr.

Lavalette, no further discussion on the motion, roll call vote 5-0 in favor, motion passes unanimously.

b) 4 Windward Way

Mr. Haworth issued this one. Ms. McClees shared the site plan on screen. She was not on site for this and asked Mr. Haworth to review; Mr. Haworth issued the cease and desist. He said last week he received an anonymous call stating there was dirt being spread in the backyard of this property, 4 Windward Way. He was asked to check it out. He took a ride by and clearly from the street he could see there was action going on. He observed a gentleman grading a freshly delivered pile of loam from a dump truck. He was operating a skid steer grading it out. Mr. Haworth explained he was in resource area and in order to do that he needed to file with the Conservation Commission. At that time he issued a cease and desist and the gentleman immediately stopped operating the skid steer and put it at the top of the driveway. When writing it up spoke with the property owner's wife then the property owner came home. They had a pleasant conversation, explained why there was an issue here, explained to him that it would be in his best interest to submit what he is doing to the board and asked him to come on tonight. They did do a really good job, graded it out, it is like golf course smooth. Told him it is still something have to file with us, don't want to see it sit there as bare dirt getting weeds in it. Come before the board tonight, present your plan and board will then be able to discuss it with you because he wants to hydroseed and he was advised not to until he spoke with the board.

Mr. Michael DeCosta was on for the property, he did not want to add anything. Ms. DeSalvatore asked to clarify where grading. Mr. Haworth said in the green area on the plan that was shared on screen. They removed existing lawn, brought it up the street and dropped it at the top of Melton Way, the same gentleman owns that property at Melton Way. They brought in an equal amount of material removed to replace it, they had a loam that was rocky and not very suitable for planting grass, grass was not growing well, replaced it. Ms. DeSalvatore clarified, it was existing lawn. Mr. Haworth said it was from what he could see, replaced with clean, quality loam. He did look at the loam while there and it did not appear to have any environmental issues. Did not test, looked at it and it looked good and clean to him.

Ms. DeSalvatore asked if it would be fertilized. Mr. DeCosta said what was there before was a very rocky and clay loam. Could not grow grass there very well so instead of using fertilizer to bring it to life, he took it out and replaced it with a screened loam. Intention is not to be using great amounts of weed killers and fertilizers. Ms. DeSalvatore said that answered her question.

Mr. Haworth said seems pretty accurate one for one, does not seem like it is a great change here other than the fact that if you fill, dredge, alter, dig, etc. need to file so they know what is going on. Mr. DeCosta said correct, it was explained to him and he understands what needs to happen next. Mr. Haworth said his opinion is to allow him to hydroseed this with understanding that before he does anything on his property to contact Ms. McClees and makes sure what is doing is allowed so no further infractions and if so would be different conversation.

Mr. DeCosta asked about a garden for tomatoes, small vegetables would that need to be proposed. Ms. McClees said if proposing something within existing landscaped lawn, converting lawn to garden does not need filing. Rule of thumb, when want to do something call and ask, it's free. Mr. Haworth asked if any questions from the board. Ms. DeSalvatore said as long as he

understands he cannot fertilize the lawn, it is adjacent to a salt marsh. Mr. DeCosta said he understands and they are not fans of fertilizers, all natural type of family and reason for ripping out what was there was because could not grow anything naturally.

Mr. Haworth asked if all left was to hydroseed the area. Mr. DeCosta said that was correct.

Mr. Haworth made a motion to left the cease and desist and allow Mr. DeCosta at 4 Windward Way to hydroseed the area with understanding that in the future he will contact Ms. McClees before doing this type of work on the property. Seconded by Mr. Lavalette, no discussion on the motion, roll call vote 5-0 in favor, motion carries unanimously.

Ms. DeSalvatore left the meeting at this point approximately 9:40PM

9. Correspondence

None

10. Ongoing Projects

Ms. McClees said fence for North Street marsh has been appealed by the neighbors under the Bylaw so the Commission should be receiving something soon in the mail at their homes.

11. Upcoming Projects

Ms. McClees said one NOI that is outside of their jurisdiction with the exception of some outer buffer zone work. A couple of Certificated of Compliance for the next meeting.

Mr. Haworth said he would like to develop and work with the Planning Board to do so. Work with a regulation requirement that if your project requires both Planning Board and Conservation Commission that you have to file at the same time. Do not like the "game" where some people file first and work through the Conservation Commission then go to Planning. Member of Planning raises the issue at times and it is not this board, it is the applicant.

Ms. McClees has spoken with Mr. Paul Foley on this. Using a recent project example of 46 Sconticut Neck Road; it came to Conservation first, well before it went to Planning and she had mentioned to the applicant numerous times over a year before submitted to Planning that it needed to be submitted with the Planning Board. We cannot control the applicant. Within the WPA there are certain requirements that projects have to receive all other potential permits before they come before the Commission and that does not apply to the Planning Board. It specifically says, not applicable to the Planning Board in the WPA. It does apply to Zoning, BOH, etc. they do say Planning Board is one of the exceptions. So now, especially with the Storm Water Bylaw that says if a project is before either the Commission or the Planning Board those boards are responsible for enforcing Chapter 194. Maybe under that since it is the commonality that we figure out something that more streamlines the process or a regulation associated with that. For the purposes of Chapter 194 if the project is going before both boards (Conservation and Planning) it has to be filed simultaneously.

Mr. Haworth was thinking Bylaw only and if applicant says they want to file for state, we can say you

something about our Bylaw approvals will not approve it or something like that.

Ms. McClees said she can get together a policy under the Bylaw on that.

12. General Business

a) Bills

\$165 to MACC for the Annual Environmental Conference registration for Ms. DeSalvatore and handbook subscription for Ms. Isherwood

\$300 to Fairhaven Neighborhood News for 2 different sets of legal adds

\$317.13 Staples for office supplies (printer ink)

\$120 for renewal of docu-sign subscription (getting charged to Cares Act funding budget)

\$2,875 to GCG for final stormwater peer review for 46 Sconticut Neck Road

Mr. Haworth called out on bills, approaching the end of the fiscal year so get them in, Ms. McClees will reach out on a few outstanding invoices from Neighborhood News to ensure in for end of fiscal year

b) Review and approve revised 2021 meeting schedule

Ms. McClees included copy in meeting packet, this is in part to get off the same schedule as the Selectmen and also try to address the upcoming events that are a conflict with our meetings. What put together for proposed schedule, does get off same night as Selectmen, helpful as likely getting back to in-person meetings probably by second June meeting. Use of banquet room vs. East Room spread out, display use and essentially reduces number of meetings a little but mostly in fall and winter months when tend to see downtrend in number of applications. Also does remove second July meeting as it is same day as special election.

Mr. Haworth sees some date conflicts with his vacation.

Ms. McClees asked the board to let her know what days in conflict and any set days will not be around on a Monday so she can work around.

Mr. Haworth asked are we off from 12/13/21 to 1/24/22? Ms. McClees said part of the problem is advertising, Neighborhood News takes a break for the last two weeks in December and so if do a meeting in early January has to be advertised 6 weeks ahead of time or they would have to use the Standard Times. The Advocate got subsumed into the Standard Times. She said it is something to figure out and also where Christmas and New Year's fall on Saturdays. While Mr. Haworth likes the time break there, if someone files the 21 day rule doesn't work there.

Ms. McClees asked the board to consider an every 3-week schedule, a lot of towns do it, aligns with the filing, automatically the meeting is 3 weeks later. Does work out to slightly fewer meetings but for the board's policy related to project review with the agent prior to submittal, allows for a little more time between meetings so that we are not running into the problem with

having only a week to revise plans.

Mr. Haworth does like that suggestion, next meeting June 14, 2021 will be last zoom meeting. Then we will be in person and have brainstormed ways to have 4-5 people at the table and set up, spreading out. For planning purposes, June 28, 2021 will be at Town Hall unless we hear different from the legislature.

c) Site visit scheduling

Ms. McClees and Mr. Haworth had a brief discussion on. One thing that will go a long way at streamlining the meetings is having times for site visits where more of the board is attending the site visits. The more attending site visits ahead of time a lot of the things that come up at the meetings can potentially be addressed at the site visit. Previously the board had a window of time Saturday mornings and a list of which ones they would do. That is a possibility and find ways to have more at the site visits to help streamline meetings.

Mr. Haworth asked the board to mull over the meeting dates and think this over for the next meeting to discuss when works best for the majority so more can do the site visits.

d) Next Meeting: June 14, 2021

Ms. McClees said meetings are set for June 14, June 28, July 12 and July 26 – those are locked in, do have advertising timelines to consider for changing future meetings.

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

Mr. Lavalette said he had a question, did not mention the address, it was a driveway that was in a velocity zone that was stamped as well as the walkway as well as the back of the house. What was agreed upon was to put two small corner gardens in which was not what we wanted. The whole north side of the property was supposed to be vegetation. Mr. Lavalette happened to be out that way and nothing has been done and that is going on a year. Ms. McClees said she would follow-up on that. He also mentioned a couple of other places like on Sconticut Neck Road near the container we were promised a lot of plants. Ms. McClees will do her best and reminded that all members of the board can address violations, she can do her best to get letters out but is one person. Ms. McClees mentioned she has a list of enforcement orders and violations she will be checking in on.

Mr. Galary regarding future meetings, if someone is away do they have the ability to jump on zoom to get on the meeting. Mr. Haworth said that is not an option at this time, maybe future but not now. Hybrid is tough with half in room and half on zoom, talking randomly, voting process. Please look over the schedule to bring to the next meeting to review potential to move to an odd day if works for all.

Any other business to discuss, seeing and hearing none.

Mr. Haworth made a motion to adjourn the meeting at 10:02PM, seconded by Mr. Galary, no discussion on the motion, roll call vote 4-0 in favor, motion carries unanimously.

Respectfully submitted,
Amy Almeida, Recording Secretary