

Conservation Commission
June 28, 2021
Minutes

1. Chairman's Welcome and Media Notification

Chair, Geoff Haworth called the meeting to order at 6:33PM 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 Chapter 20 of the Acts of 2021. The legislation suspends the requirement of Open Meeting Law to have all meetings in a publicly accessible physical location.

For this meeting, the Conservation Commission convened by telephone and video conference via Zoom as posted on the Town's website identifying how the public may join. The meeting was recorded and televised live, and some attendees participated by phone and video conference

2. Quorum/Attendance

Mr. Haworth confirmed a quorum.

In Attendance: Geoff Haworth, Michael Kelly, Karen Isherwood, Amy DeSalvatore, Corey Pietraszek, Jake Galary and non-voting consultant: Ronnie Medina. Gary Lavalette joined at approximately 6:35PM Whitney McClees, Conservation Agent also in attendance

Mr. Haworth welcomed new member, Michael Kelly

3. **Minutes**

a) Approve the minutes of May 10, 2021

Mr. Haworth asked if there was any discussion on the minutes, seeing and hearing none, Mr.

Haworth made a motion to accept the minutes, seconded by Ms. DeSalvatore, no discussion, roll call vote, 6 in favor with 1 abstention (Mr. Lavalette), motion passes

b) Approve the minutes of May 24, 2021

Mr. Haworth made a motion to approve the minutes of May 24, 2021, seconded by Ms.

DeSalvatore, no discussion, roll call vote, 7-0 motion passes unanimously

4. Reorganization of the Commission and reappointments of non-voting members

Selectmen have made their reappointments and we have a full board. Customarily we reorganize the commission, looking for nominations for Chair, Vice-Chair and Clerk.

Start with nomination for Chair. Ms. DeSalvatore nominated Mr. Geoff Haworth, seconded by Mr. Galary. Anyone else want to be Chair. Seeing and hearing none, any discussion on the motion, seeing and hearing none, roll call vote, 7-0 unanimous, motion passes.

Vice-Chair. Ms. DeSalvatore nominated Ms. Karen Isherwood. Mr. Haworth asked if she was comfortable with that, if she knew the rules and regulations and would feel comfortable in that position. Ms. Isherwood said she was not sure, a lot to learn and not sure what is expected – it's what Mr. Haworth does which he confirmed, yes, in his absence. Ms. Isherwood said she was complimented by the nomination but would like a year under her belt before she would be comfortable.

Mr. Haworth asked if anyone else felt comfortable. Mr. Lavalette said if go to the next senior person, which would be Ms. DeSalvatore, she said she did not feel comfortable taking that on. Mr. Haworth said next senior person would be Mr. Lavalette, he said he would love to in the future and like Ms. Isherwood stated he would like more experience before taking that over, right now would like to pass.

Mr. Pietraszek was mentioned next, he said he would need to pass at this time, needs more time on the commission. Mr. Haworth mentioned Mr. Kelly and Mr. Galary as next and not sure if either would like. Mr. Galary asked if he had a choice. Ms. McClees said we could leave it vacant for the time being and can reach out to her and go over all the details on what being Vice-Chair entail and see if someone wanted to become more comfortable and leave until the next meeting.

Clerk, anyone interested, Clerk is not much work. Ms. McClees said she does all of the work that a Clerk would do for a board that doesn't have staff. Mr. Haworth said she does a lot of work the Chair does and he runs the meeting. Mr. Lavalette said he would like to try it and follow-up on a lot of jobs not completed and are chasing people. If that is what the position entails he would not mind doing that. Mr. Haworth nominated Mr. Lavalette for Clerk, seconded by Ms. DeSalvatore. Mr. Haworth asked for any other nominations before closing nominations and going to a vote. Seeing and hearing none, Mr. Haworth went to the vote, roll call vote, 7-0 unanimous, motion passes.

Mr. Haworth asked if anyone on the commission had a problem with him running the meeting using first names. No concerns raised.

5. Remote meetings

Mr. Haworth reviewed that he had said this meeting would be at Town Hall and the Governor has updated the ability to meet remotely until next April (2022). Can remain on zoom if want or go back to Town Hall. Task of Chair is to have meeting flow and properly administer. With half at home and half here it would be difficult and put pressure on to effectively run the meeting. He wants to hear from everyone and will go in seniority order to hear what everyone has to say.

Ms. DeSalvatore said she knows technical problems with going right back to in-person. Her concerns, on zoom better participation, essentially more democratic because easier for people to attend so more people do. Other thing is, because kids not being vaccinated yet some people attending might have kids at home they are worried about exposing so would prefer to stay on zoom until that matter is taken care of.

Mr. Lavalette said he was in favor of zoom at least until the end of fall season and see from there what the board wants to do. Have another discussion sometime in November or December and see where everything is.

Mr. Pietraszek said he was in favor of staying on zoom right now, works for him right now with his work schedule.

Mr. Galary said he was fine with zoom right now and that eventually we have to go back, feels that is important. Until everyone feels comfortable, he is totally fine with zoom.

Ms. Isherwood, zoom for now, because she and the person she lives with are in contact with young children all the time and until they get a chance to get vaccinated she is not comfortable chancing it.

Mr. Kelly said he was fine either way, the consensus works for him and when we are ready to go back he is eager to.

Mr. Haworth said he appreciates the board being at an easy consensus on zoom. Zoom does add a little time to the meeting than normally in public due to delays and glitches. Over the last year we have worked on those and smoothed out a lot. When we do go back there may be the possibility of the

public to go on zoom with us so there may be some hybrid work so he wants to see the other boards get those glitches worked out. Mr. Haworth said would make official and say until September 30 and after that point will revisit in the October meeting and see what we want to do. Revisit and if continue or make decision. Mr. Haworth made a motion that the Conservation Commission remain entirely remote until at least September 30, 2021 and revisit it after that point, seconded by Ms. DeSalvatore, discussion further or from the public. Seeing and hearing none, confirmed by Ms. McClees, roll call vote, 7-0, unanimous decision.

6. **Acceptance of gift of land:** Charlton Avenue, Sandringham Avenue, Boys Creek and Scott Street Ms. McClees advised is one parcel with different names. Allen Decker from Buzzard's Bay Coalition is here to address any questions the commission may have.

Allen Decker, Buzzard's Bay Coalition, opportunity to be with you much appreciated on zoom, can't wait for in-person as well. Ms. McClees shared screen to show the outlined parcels, it is multiple, in red. Last October the Town Meeting approved use of CPA funds to acquire for conservation these parcels outlined in red through the Buzzard's Bay Coalition. So we currently own them and Town Counsel we are ready to convey them to the Conservation Commission, was part of their approach with the Community Preservation Commission and in working with Ms. McClees in this. Town Counsel has required that he appear in front of this Commission and the Select Board seeking concurrence approvals. Town Meeting had approved the funding and conveyance to the Conservation Commission. Did meet with the Select Board on June 7, 2021, at that regularly scheduled meeting the Select Board did unanimously approve the conveyance into the Conservation Commission. Would have been on June 14, 2021 meeting had Town Meeting not gone over to that Monday so on the agenda this evening. Happy to answer questions, interested in working with the town on, it is a natural fit. As you can see on the map the dark green parcels are already in the care, custody and control of the Conservation Commission.

Seeking approval vote for conveyance from Buzzard's Bay Coalition to the Conservation Commission the 5.75 Acres of saltmarsh.

Mr. Haworth opened to the commission for questions or concerns.

Ms. DeSalvatore asked what responsibilities were involved with caring for this land. Mr. Decker said same as currently have for the abutting parcels, can't speak to how your care of them has gone. Mr. Decker asked Ms. McClees to re-share the map showing the parcels on the screen. He explained that the dark green parcels in and around the red total about 24 acres of saltmarsh or waterfront. Propose for after the vote to let you know that because CPA money was involved in the acquisition of the red parcels, conservation restriction does need to be done. The BBC (Buzzards Bay Coalition) is willing to hold the CR and confirm and cement ownership, care, custody and control to the Conservation Commission and they will monitor the future use of the property so it remains in public access if the public wants to get at it and the commission allows it. They will, in partnership with the town, carry forward public access of the spaces. When we get to that stage, have the BBC come back to the Conservation Commission and include the additional dark green parcels so that a CR would be on all, about 30 acres total. To answer the question, whatever the responsibilities of the other acres there and Ms. McClees can speak to that, same responsibilities for the parcels in red.

Ms. DeSalvatore asked if we have done periodic clean-ups of the marsh. Mr. Haworth said we have not been scheduling and can work on in the future. Other land outside of this and we can set up for the

future. If something in particular in mind, let him and Ms. McClees know.

Mr. Decker added that the BBC long-term is interested in working with the commission throughout town on ConCom owned land just to double protect and ensure protection of it into the future.

Mr. Haworth asked for any other board member comments, concerns or questions. He then opened to the public asking if on zoom to raise hand, indicate in the chat or if calling in unmute and speak first and last name. No chat or raised hands in zoom, confirmed by Ms. McClees. Mr. Haworth asked if consultant Mr. Medina had any questions, none.

Mr. Brian Lopes, 20 Yankee Lane had a question. Why is the Buzzards Bay Coalition buying lands? He continued that he grew up on a farm, we have been farming for at least 400 years, does not see the benefit of them buying this land. Do not see them cleaning anything. Mr. Decker said the parcels in question tonight are saltmarsh along Boys Creek and pre-acquired this with the intention of conveying it to the Conservation Commission, BBC acquired it from Eversource as part of the further protection of Fort Phoenix Reservation, this was an additional element of that closed project. Intention all along was to get this acreage into the Town's ownership not proposing anything else at this point.

Mr. Haworth asked if there were any other members of the public looking to speak on this, seeing and hearing none confirmed by Ms. McClees.

Mr. Haworth made a motion to accept the gift of land of Charlton Avenue, Sandringham Avenue, Boys Creek and Scott Street, seconded by Ms. Isherwood, no discussion, roll call vote 7-0 in favor, motion passes unanimously. Mr. Haworth asked Mr. Decker to come back later for the actual restrictions. He said he would work with Town Counsel to get deed recorded at the registry in New Bedford and late summer get CR drafted to Ms. McClees, set up so the commission can own and control and allow public access if they choose to do so.

7. Fee Waiver Request: Buzzards Bay Coalition

Ms. McClees reviewed, this was submitted by Sara Quintal, Restoration Ecologist and Project Manager at BBC (Buzzards Bay Coalition) for a forthcoming NOI that will be coming before the commission at upcoming meeting. Request because they are a non-profit, request was for waiver of fees per the clause in our By-Laws that allow for the commission to do this for non-profits and other entities so they submitted a formal request and want commission to confirm whether or not commission was amenable similar to the fee waiver request for the Buzzards Bay National Estuary project submitted in 2019.

Mr. Haworth said it has been a longstanding practice of this commission to waive for non-profits, see no issue with it and asked the board if they had any issues with this. No concerns raised by the board or the public.

Mr. Haworth made a motion to approve the fee waiver request from the Buzzards Bay Coalition, seconded by Ms. DeSalvatore, no discussion, roll call vote 7-0 in favor, motion passes unanimously.

8. Requests for Certificates of Compliance:

a) SE 023-1102: **27 Cove Street**

Ms. McClees shared screen of the plan documents and reviewed, Request for Certificate of Compliance and associated documents, Order of Conditions issued November 29, 2010 which has

since expired, they are looking to close out the permit. The work itself was done as modification of an earlier permit, which received a superseding order of conditions from DEP so they will need to go to DEP for Certificate of Compliance on earlier permit, they had requested an amendment of that permit at one point and DEP said no it had to be a separate filing. They came to the commission for a separate filing to do the driveway area (in yellow on plan on screen Ms. McClees shared on screen). The order of conditions was issued for an area to be filled with 5 inches of sand and 5 inches of quahog shells; a 2-foot-by-25-foot area to be excavated by 1 foot, sloped on each side by 6 inches and filled with finely crushed stone; and grading and leveling the driveway using no fill and replacing with quahog shells.

Based on site visit, there is a driveway there with quahog shells, appears the work was done in substantial compliance with the order of conditions, recommend issuing a Certificate of Compliance for Complete Certification for SE 023-1102, 27 Cove Street.

Ms. Rebecca Carey on for the applicant, she had no questions or comments to add.

Mr. Haworth opened to the board for comments or questions. Ms. DeSalvatore, no questions.

Mr. Lavalette asked why 11 years later? Is it due to us not following up on inspections, have not called it in when completed. See a lot of it and wondering how it gets so far out of track. Ms. McClees responded, every order of conditions issued has a standard condition per DEP included that says, "it is the applicants responsibility to request a certificate of compliance once the work is done." Sometimes that does not get communicated most effectively and gets caught years later when people go to sell the property and a title attorney finds the open order. What we should see is project finished and they immediately come in for Certificate of Compliance like we have seen with recent filings. Ms. McClees is starting to include a cover letter that requires the property owner to initial and sign that they have read and understand the Order of Conditions including that they will have to come in again for a Certificate of Compliance. Trying to better communicate that so we do not run into this 10 year from now, should be doing as they finish the project, most are holdovers from the past. Trying to catch up on and incorporating better practices for communication to avoid these in the future. Mr. Lavalette asked about a timeline. Ms. McClees advised 3-years to do the work and way worded in the permit is as soon as the work is done request for Certificate of Compliance should be submitted.

Ms. McClees suggested discussion about processes in general as separate agenda item and not prolong this request.

Mr. Pietraszek, Mr. Galary, Ms. Isherwood and Mr. Kelly had no questions or comments.

Mr. Haworth asked if any public comments, not a public hearing but if any comments, seeing and hearing none. Mr. Haworth made a motion to issue a Certificate of Compliance for Complete Certification for SE 023-1102, 27 Cove Street, seconded by Ms. DeSalvatore, no further discussion, roll call vote 7-0 in favor, motion passes unanimously. Ms. McClees will be in contact with applicant.

9. **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 Continuance

- a) SE 023-1324, CON 023-153: **86-88 Middle Street – request for continuance to July 12, 2021**

Notice of Intent filed after-the-fact by Patrick Carr, A1 Crane Company, Inc., for the paving of an existing pervious parking area with concrete at the property located at 86-88 Middle Street, Assessors Map 11, Lots 6D, 6E, & 7. Work to take place in Land Subject to Coastal Storm Flowage.

Mr. Haworth made a motion to continue 86-88 Middle Street to July 12, 2021 per applicant's request, seconded by Mr. Lavalette, no discussion, roll call vote 7-0 in favor, motion passes unanimously.

- b) SE 023-1356, CON 023-229: **12-18 Rio Way – request for continuance to first meeting in August**

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

Mr. Haworth made a motion to continue 12-18 Rio Way to July 12, 2021 at applicant's request, seconded by Mr. Pietraszek, no discussion, roll call vote 7-0 in favor, motion passes unanimously.

Requests for Determination

- c) CON 023-231: **685 Sconticut Neck Road**

Request for Determination of Applicability filed by Steven Koczera for the construction of a 38-foot-by-6-foot farmers porch and the addition of loam at the property located at 685 Sconticut Neck Road, Assessors Map 42, Lot 14B. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Bordering Vegetated Wetland.

Ms. McClees shared the plans on screen and reviewed, the farmer's porch is proposed on sonotubes and primarily falls within the footprint of existing concrete stairs/walkway and a small portion of the front lawn. The project initially included loam along the side of the dwelling, but a site visit revealed that the area is very likely to be a wetland, so the applicant agreed to remove that part of the project until a future time so he could move forward with the rest of the project.

The applicant estimated between the three areas to level out that approximately 60 yards of clean loam will be needed to grade the depressions in the front and rear of the yard so water will drain properly rather than pooling in the center of the front and rear lawns. The area in the rear appears to have settled over the years possibly due to septic leaching field and possibly due to the location of a garden in the area for many years. The rear of the property by the stone wall/by the marsh is a higher elevation than where the applicant would like to place the loam. The area in the front of the property is higher at the road and the house than in the middle where the applicant would like to place the loam. He would like to even the slope from the house to the road. It doesn't appear that the proposed work will have a negative impact on any of the resource areas on or near the property.

Ms. McClees recommend closing the public hearing for 685 Sconticut Neck Road, CON 023-231, and issuing a Negative 3 and Negative 6 Determination with the conditions outlined in the staff report.

Mr. Steven Koczera was on for the property, 685 Sconticut Neck Road. He did not want to add anything at this time. Mr. Haworth asked if any member of the board wanted to be heard.

Ms. Isherwood said she wanted to point out a reminder for future work on the side, would need an ANRAD or NOI because possible wetland.

M. DeSalvatore said she also wanted to stipulate in the conditions that there should be no fertilizers or chemicals used in any of this work around the property due to proximity to wetlands. Mr. Koczera said not determined to be wetlands yet and could be reevaluated. He asked about a garden, could he use fertilizer or manure for a garden. Ms. McClees advised clarification, in part, there are existing wetlands behind along the rear concern is drainage of additional fertilizer or pesticides into the wetland at the rear. Fertilizing a garden, a condition the commission has added to projects in the past relates to only organic fertilizers being able to be used and in moderation in areas that drain into existing resource areas. Mr. Koczera was in agreement with that.

Mr. Haworth confirmed no other board questions or concerns and opened to the public. Seeing and hearing none confirmed by Ms. McClees. Mr. Haworth made a motion to close the public hearing for 685 Sconticut Neck Road, CON 023-231, and issuing a Negative 3 and Negative 6 Determination with the conditions outlined in the staff report. Ms. McClees recommended adding to the conditions, CHM-1: Herbicide, pesticide and fertilizer use is discouraged on lawns within Conservation Commission jurisdiction. If fertilizer is used, only slow-release low-nitrogen low-phosphorus fertilizer shall be applied. Over-fertilizing shall be avoided. Mr. Haworth amended his motion to include the CHM-1 reference in conditions along with the conditions in the staff report. Seconded by Ms. Isherwood, no discussion, roll call vote, 7-0 in favor, motion passes unanimously. Ms. McClees will be in touch about next stage in permitting process.

d) **CON 023-233: 6 Bernese Street**

Request for Determination of Applicability filed by Joseph Costa for the construction of a 34-foot-by-10-foot deck on sonotubes at the property located at 6 Bernese Street, Assessors Map 29A, Lot 279. Work to take place in Land Subject to Coastal Storm Flowage.

Ms. McClees shared plans on the screen and reviewed. This is a flood zone only project; there are no other resource areas within 100-feet. The applicant is proposing to construct a deck approximately 34-feet by 10-feet on sonotubes, approximately because there is a circular portion to it. The work is occurring within the existing lawn. The number of sonotubes is limited as the profile is the deck is fairly low. The project does not appear to have a negative impact on flood control or storm damage prevention.

Ms. McClees recommends closing the public hearing for 6 Bernese Street, CON 023-233, and issuing a Negative 3 and Negative 6 Determination with the conditions outlined in the staff report.

Mr. Joseph Costa, 6 Bernese Street on for the property, nothing to add. Mr. Haworth turned to the board for comments, questions or concerns, seeing and hearing none asked the consultant and Mr. Medina had no comments. Mr. Haworth opened to the public for comments, questions or concerns, seeing and hearing none confirmed by Ms. McClees.

Mr. Haworth made a motion to close the public hearing for 6 Bernese Street, CON 023-233, issue a Negative 3 and Negative 6 Determination with the conditions outlined in the staff report. Seconded by Ms. DeSalvatore, no discussion, roll call vote, 7-0 in favor, motion passes

unanimously. Ms. McClees will be in contact for further steps.

Abbreviated Notices of Resource Area Delineation

e) SE 023-1332, CON 023-173: **18 Bass Creek Road**

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

Ms. McClees has not heard from the applicant on this, recommend continue. Mr. Haworth made a motion to continue 18 Bass Creek Road to July 12, 2021, seconded by Ms. DeSalvatore, no discussion, roll call vote 7-0 in favor, motion passes unanimously.

f) 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 plans dated June 29, 2021. Board had requested a peer review, report in packets, minor change needed to site plan to include a second area of isolated wetland and did note about fill on the site and did not express major concerns. Appeared to have occurred significantly before the WPA. If board wanted to include in any motion about resource area boundary for this they could add a caveat that says the potential historic fill may need to be addressed by a future filing. Ms. McClees recommends closing the public hearing for SE 023-1355, CON 023-227, 14 Plaza Way, and issuing an Order of Resource Area Delineation for the boundaries of Bordering Vegetated Wetland, Isolated Vegetated Wetland, Intermittent Stream, and Bank of Intermittent Stream, as modified and shown on the plans dated June 29, 2021.

Evan Watson, W. Engineering representing the applicant, no questions. Will mention did read Mr. Rockwell's letter and reviewed historic aerial photos and can share screen if would like. Mr. Haworth reminded whatever you share is recorded and everyone on can see everything including on channel 18. He pointed to USGS from 1961 and overlaid the site, moved to 1974 where the Plaza is under construction. Appears some type of road out leading to the hurricane barrier, don't know if this was put there used as staging area, do not know how the fill got there but somewhere between 1974 and 1961. In Mr. Rockwell's letter said do not need to be concerned about who put the fill, where and why before the WPA was in place. Would like to go forward with the line with this ANRAD.

Mr. Haworth said he did not feel at this time need to go into the fill, down the road if something is proposed for the site we may want to look into it further. So suggest add in for future filings may need to address the fill issue. Not a necessity to address the fill tonight.

Ms. DeSalvatore would like to include the caveat that Ms. McClees mentioned about the fill.

Ms. Isherwood agreed, was concerned with the fill areas for the future.

Mr. Haworth asked for other board comments, questions or concerns and opened to the public. Seeing and hearing none, confirmed by Ms. McClees.

Mr. Haworth made a motion to close the public hearing for SE 023-1355, CON 023-227, 14 Plaza Way and issue an Order of Resource Area Delineation for the boundaries of Bordering Vegetated Wetland, Isolated Vegetated Wetland, Intermittent Stream, and Bank of Intermittent Stream, as modified and shown on the plans dated June 29, 2021. Potential historic fill may need to be addressed at a future filing. Seconded by Ms. Isherwood and applicant has a question on the motion.

Mr. Watson asked a question to understand the area if get a resource area delineation, clarify if put a caveat about addressing historic fill that it would change the location of the resource areas. Don't think that is what you are looking to do, if there are fill areas on site that might be debris or something to look at but not revise the resource area delineation. Mr. Haworth said reason for saying this way and with the current flagging and accepting the current flagging, if something different were to be done with the site may have to determine if the fill areas may become an impact in the future. In other words, would not want you to put a building in the middle of a fill area on a wetland.

Mr. Watson said still a little unclear, if this is the resource area delineation if we have fill on the site, can understand if problems with the fill or debris in the fill, not certain how leaving open to interpretation down the road. We have shown was done before the act. Mr. Haworth pointed out have shown the fill potentially happened between 1961 and 1974 so if happened before 1963 you're OK but if it happened in 1964, 65, 66 might have an issue. We can walk back the motion and keep the public hearing open and go down and go through it and take the time and ask for proof it was not put there. Thinking save the time and money if not planning on doing something at that part of the property. Mr. Watson said he would prefer to move ahead. Mr. Haworth said he did not want to pressure a decision, wanted to make sure he was comfortable with the decision tonight if he wanted to discuss with the property owner. Mr. Watson said we could move ahead.

Mr. Haworth reminded, motion does include that potential historic fill may need to be addressed in a future filing and applicant agrees to that. Was seconded by Ms. Isherwood and asked if any other member of the board have questions, concerns or comments, roll call vote, 7-0 in favor, motion passes unanimously. Ms. McClees to be in contact about further information.

Notices of Intent

g) SE 023-1357, CON 023-230: **78 Akin Street**

Notice of Intent filed by Peter Arruda for the construction of a new single-family home with connections to town water and sewer and associated site work at the property located at 78 Akin Street, Assessors Map 30B, Lot 15. Work to take place in the buffer zone to Bordering Vegetated Wetland.

Ms. McClees shared plans on screen and reviewed. The majority of this project is outside of the 100-foot buffer zone and Riverfront Area. The only work that occurs within the 50-100 foot buffer zone is a small portion of the house and the site grading associated with the rear of the house. The site is fairly flat, so the applicant has proposed straw wattle at the rear property line for erosion and sedimentation control. Some fill will be needed to grade the site to raise the house to ensure proper drainage. Based on a site visit, there are a few mature trees along the side of the property beyond where grading will occur. They are not depicted on the site plan but should be preserved so included a couple of conditions related to protection of mature trees. The work appears to comply with all applicable regulations. Recommendation is to close public hearing and issue an Order of

Conditions, plans dated May 14, 2021, with the conditions in the staff report.

Mr. Rick Charon from Charon Associates on for the property owner Peter Arruda. Mr. Arruda is purchasing this lot from current owner Daniel Pounds. Work is proposed by Peter Arruda who will be purchasing it and building a new house on the lot. There is a bit of fill around to raise and keep it dryer. Not an intense development of the lot, area on southerly side where the trees are there is nothing proposed so does not see an issue with preserving the trees.

Mr. Haworth said it appears to be an undersized lot and asked if he went to Building on this. Mr. Charon said it went through Board of Appeals, it is a shallow lot and did require a rear setback variance and special permit for lot size.

Ms. DeSalvatore asked about the fill that is there and how it would impact the mature trees. Mr. Charon said no fill at that part of the lot to impact.

Ms. Isherwood said she wanted to remind the applicant to protect those trees.

Ms. DeSalvatore said one issue with protecting trees is that with heavy equipment on a lot they tend to just roll over any plastic fencing, wondered if Ms. McClees had suggestions on effective markers to help with that. Ms. McClees explained the condition included for that. It says: all mature trees on site not permitted to be removed shall have a no disturb zone established and demarcated around them throughout the duration of construction. Similar to a construction fence so fairly apparent that it is a no disturb zone.

Ms. DeSalvatore said she has seen heavy equipment just roll over those fences. Ms. McClees said this would be a violation of the order of conditions. Ms. DeSalvatore asked if there would be any monitoring of that during construction. Ms. McClees said with no work proposed in that area feels should not be much of an issue.

Mr. Haworth asked any other board comments or concerns, seeing and hearing none he opened to the public. Seeing and hearing none, confirmed by Ms. McClees.

Mr. Haworth made a motion to close public hearing for SE 023-1357, CON 023-230: 78 Akin Street and issue an Order of Conditions, plans dated May 14, 2021, with the conditions in the staff report dated June 11, 2021. Seconded by Ms. Isherwood, no further discussion, roll call vote, 7-0 in favor, motion passes unanimously. Ms. McClees will be in touch.

h) 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-compliant 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 and reviewed. This is the second public hearing for this filing. The applicant revised plans to include a roof recharge system to address some of the commissions concerns about the paved driveway and lot coverage. Ms. McClees recommends closing 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 June 4, 2021, with the recommended conditions as outlined in the staff report.

Mr. Rick Charon, Charon Associates on for the applicant. He said pretty good discussion on this last time. Concern on recharge because of lot coverage. Lot coverage, total coverage is still below total Building allows in this residential area. Building allows for 30% and this is about 29 and a fraction total lot coverage including the driveway which is why they proposed a paved driveway. Adding in the recharge to compensate for that.

Mr. Haworth asked if board had questions, comments or concerns. Seeing and hearing none, opened to the public who wanted to be heard. Seeing and hearing none, confirmed by Ms. McClees.

Mr. Haworth made a motion 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 June 4, 2021, with the recommended conditions as outlined in the staff report dated June 11, 2021. Seconded by Ms. Isherwood, no discussion, roll call vote 6 in favor with Mr. Kelly recusing himself. Motion passes unanimously.

i) SE 023-1359, CON 023-232: **240 Alden Road**

Notice of Intent filed by Jeff White for the installation of utilities, access drive, and a cellar drain for a single family dwelling at the property located at 240 Alden Road, Assessors Map 23, Lots 175A & 175E. Work to take place in the buffer zone to Bordering Vegetated Wetland.

Ms. McClees shared screen and reviewed. ANRAD was on this property approximately a year to a year and a half ago. The applicant submitting this filing for the construction of a single-family dwelling. Majority of the work is outside of the buffer zone entirely. Pink line on plan is 100-foot buffer zone. Dwelling and majority of grading is outside of buffer zone. Small area in outer section and 15 to 30-feet that is proposed to be cleared, dark line is proposed clearing. Also proposed a gravel driveway within the 50-foot buffer zone, it changes to paved once cross the 50-foot buffer zone line with exception of apron in from Alden Road. No work proposed within the 0-25 foot buffer zone. They have complied with requesting minimal impervious structures within the 25-50 foot buffer zone. Given that the majority of the work is outside of the 100-foot buffer zone and what within the 100-foot buffer zone appears no negative impact. Recommendation is to close the public hearing for SE 023-1359, CON 023-232, 240 Alden Road, and issue an Order of Conditions, plans dated December 29, 2020, with the conditions outlined in the staff report. This addresses tree clearing discussed at site visit and tree protections as well as making sure mature vegetation is maintained as much as possible in installation of cellar drain.

Spencer Lynds, Prime Engineering representing the applicant was on. He added that tree clearing they show for the cellar drain may not have to occur in such a dramatic way and may be able to go through with little to no clearing at all. Mr. Haworth said that was one of his concerns and would like to see it pulled back from the 50-foot zone. Due to pitch it has to be that length to draw the water away from the building.

Mr. Lavalette said with a need to run the drain 24 x 7 to get the water away, would that affect any of the other wetlands around there or buffer zones. Ms. McClees said based on the plans and current site conditions the drain would be managing whatever is coming from the sump pump which is ground water and it would still have 50 more feet of sheet feeding before it gets to the wetland to re-infiltrate. Mr. Lavalette asked if it was a gravity line. Mr. Lynds said it is a gravity line. Mr. Lavalette said concern is that affecting an adjacent property, that type of drain and a lot of water as long as not affecting another piece of property. Ms. McClees said this property extends all

the way to Long Road. Not all the way to the pond though.

Mr. Haworth asked what is the ground water at that level. Mr. Lynds said he is not currently aware. Mr. Haworth asked if they had done test pits. Mr. Lynds said they have not done test pits at this site. Mr. Haworth asked if basing the need for gravity drain on the foundation elevation. Mr. Lynds said top foundation set at 39 so with the base at 31.50, so get 32-31 contour as it grades down so indicator ground water would be above basement slab and need for a drain. Mr. Lynds said they used the contour of the wetlands and the elevation in the wetlands to determine ground water. Mr. Lavalette said also his concern. Mr. Haworth said it is a walk out basement.

Ms. DeSalvatore said she is concerned about the pipe too, have seen sump pumps where the water coming out was just running at such force was interfering with salt marsh. The 40-foot area this has to disperse or is there a way to disperse along the way. Mr. Haworth asked if she meant a silted pipe, he said this might pick up water along the way. Mr. Lynds confirmed this might pick up ground water along the way and cause more of an issue than what solving for. Ms. DeSalvatore impressed with overall design. Will trust that it disperse enough before wetlands. Mr. Lynds said if look at the grade down at the site it does not head straight to the wetlands, stays in the buffer area and will sheet flow before it hits the actual wetland system. Mr. Haworth pointed out the grading, not a rapid run.

Mr. Haworth asked if any other board comments, questions or concerns. He then asked if public wanted to weigh in on this to unmute or raise hand in chat. Seeing and hearing none confirmed by Ms. McClees.

Mr. Haworth made a motion to close the public hearing for SE 023-1359, CON 023-232, 240 Alden Road, and issue an Order of Conditions, plans dated December 29, 2020, with the conditions outlined in the June 23, 2021 staff report. Seconded by Ms. DeSalvatore, no discussion, roll call vote, 7-0 in favor, motion passes unanimously.

j) SE 023-1358, CON 023-234: **249 Huttleston Avenue**

Notice of Intent filed after-the-fact by Jacob Galary for the replacement of a failing septic system at the property located at 249 Huttleston Avenue, Assessors Map 30A, Lot 108. Work to take place in Riverfront Area and Land Subject to Coastal Storm Flowage.

Mr. Galary recused himself as applicant for this filing. Ms. McClees shared screen and reviewed.

This is for a septic upgrade to Title 5 compliant system because the work is to upgrade existing it is exempt from riverfront requirements. No alternatives analysis is required. Upgrading the system to a Title 5-compliant system is an improvement for the area and is likely to decrease impacts on the Riverfront Area. The work also does not appear to have a negative impact on flood control and storm damage prevention.

Ms. McClees recommends closing the public hearing and issuing an Order of Conditions, plans dated June 3, 2021, with the recommended conditions outlined in the staff report.

Mr. George Ayoub representing applicant, nothing to add, only this is failing septic system had to replace, done inadvertently without filing with Conservation Commission. Minimum filling in the back over the septic system all work in house and behind garage.

Mr. Haworth asked of the board for any comments, questions or concerns. He opened to the public to weigh in on this, seeing and hearing none confirmed by Ms. McClees.

Mr. Haworth made a motion to close the public hearing for SE 023-1358, CON 023-234, 249 Huttleston Ave, and issue an Order of Conditions, plans dated June 3, 2021, with the recommended conditions outlined in the June 24, 2021 staff report. Seconded by Ms. Isherwood, no discussion, roll call vote, 6 in favor with Mr. Jake Galary recusing himself, motion passes unanimously.

Recess for 2 minutes, called back to order at 8:13PM, with Mr. Galary returned as a board member.

k) SE 023-1347, CON 023-210: **1 Boulder Court**

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.

Ms. McClees shared screen and reviewed. This has been on the agenda before but this is first public hearing on this. The activities proposed within 0-25 feet of the wetland include some grading, vegetation removal and installation of a portion of blue stone driveway. Based on estimates from the site plan the driveway is proposed to encompass an area approximately equal to or slightly larger than the proposed house. Site visits where the wetland scientist revised slightly the wetlands line which is the dark outline she showed on screen. The plans have been slightly revised from the original where the driveway is no longer paved it is now proposed as blue stone. They have included the flood zone on the plans and have adjusted the grading to meet FEMA requirements for a velocity flood zone. The lowest structural member is at the correct elevation.

They submitted information noting that the total area of vegetation estimated to be disturbed is 4,194 square feet and total area of 25-foot buffer zone on the property is 7,707 square feet and proposed disturbance area is 1,192 square feet or 15.94%. Closest area of disturbance to the wetlands is now pulled back by filling the two areas in red and mitigating further from the proposed work. This will pull the edge from 3-feet to 8-feet. Mitigation proposed 3 types of native shrub and wetland seed mix. The commission will need to determine if the proposed wetland fill and mitigation is sufficient or if additional mitigation like a permanent vegetated buffer along the wetland line should be included on the plans. Overall site plan does not show these mitigation areas. Commission will need to determine if having the mitigation plans as separate plans is sufficient or if everything should be shown on one plan.

In Ms. McClees opinion, given standard condition is site plans be included in all construction, would be good to have all on one plan so all that receive the plan will know exactly what is happening and where on the property. Recommendation if the commission is comfortable with the wetland fill and mitigation areas to increase the distance from the proposed work and the wetlands then ask applicant to revise the plans to show wetland fill and mitigation areas and ask the applicant to provide vegetated buffer for the wetland areas closest to the structure and grading since there is slope from the road to the rear of the property from the proposed dwelling to help control run off from the road and lawn area proposed.

Michael J. Koska, Michael J. Koska & Associates, Inc. Bridgewater, MA representing the applicants. In developing the plan they spoke with structural engineer on slab set at 11 to limit any cut or fill in

flood zone to 2-feet as described in building code. Proposed straw waddles would be limit of activity associated with the house and driveway. Anything beyond that would be the mitigation proposed by Mr. Thompson, the Botanist working with them on this project. Planning to add onto the plan, front has water, sewer and gas, do not show the gas and will show that. Will show the mitigation areas to the plan so all on one plan. Mr. Koska asked the calculations to be reviewed and number seven, total area of 25-foot buffer zone is 7,437 square feet, proposed buffer zone disturbance is 1,887 square feet so added to any and all notes for any question or public comment.

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

Mr. Lavalette said there is a swale on this like a man-made drain and has it been talked about, looks like in pretty bad shape. Mr. Koska said this project was started in 1987 and consisted of a three lot subdivision. One lot was build and the other recently went through the commission, the swale that is there was proposed to prevent run off from the road and seems to be doing its job. If question is it vegetated he cannot say, does appear to be doing its job to nourish the wetlands to the south of it. Mr. Koska said the swale was approved through the Planning Board and believes the road was accepted by the town. The subdivision was accepted through the Planning Board and accepted at Town Meeting vote.

Mr. Haworth wanted to add, what Mr. Lavalette was bringing up is that the swale runs where you are looking to do filling and mitigation so might be a problem. Mr. Koska said the slope is gradual and around where it discharges from the street is around elevation 14 and if we go back to the other one we are down KT-15 which would be elevation 9 on the plan, so goes from 14 to 9 and if any water is coming through should not be impeded in that amount of distance. He has not watched it during a storm and is here with Mr. Oliveira and he lives to the south and perhaps he might comment. Ken Thompson is also on this evening and he and Ms. McClees looked closely at the area and maybe they can address Mr. Lavalette's question.

Mr. Lavalette said his personal opinion from doing a site visit there he does not think it has been maintained. He thinks it should be looked at again; it takes a lot of water and looks like it is in tough shape. Does not look like anyone has maintained it and adding more water to it, think it needs to be reevaluated.

Mr. Ken Thompson, botanist. Concerning where that stream hits the lowest slope, it turns down near tree #13 and during a high event can causing that disturbance near KT 14, intention was to direct the stream down to its natural course that it has cut and build that area up and keep that drainage in the right direction.

Mr. Haworth said that was the concern, if built as said in 1987, this has been a natural flowing this way and right to where you want to fill since 1987 worried that altering this by taking what is now wetlands and probably created because of that flow and fill it.

Mr. Thompson said it cuts to the two trees to the left side on the drawing of #13 when he witnessed it and seemed to have a more natural flow in that direction.

Mr. Lavalette said if witnessed during heavy rains the problem that comes in is that there are a lot of 90's in there and if could take the 90's out and start using 45's and get past those trees, problem

with too many bends so take a direct route would be opinion on best way. Mr. Thompson said could look at that and combine it and maybe do a restored channel with less bends and direct where needs to go. The team will work on it and get back to you.

Mr. Haworth would like all on one plan and opened again to the board if they wanted to weigh in.

Ms. Isherwood said in the comments it mentioned excessive pruning in certain areas and if there is a permanent vegetated buffer along the wetland area that might deter future excessive pruning someone might not realize they are doing. Would applicant know how it happened? Mr. Arthur Oliveira, Harborview Ave., spoke about this and said he is the applicant and said he did clear brush in order to clear downed trees and did do that, it has grown back, no root structure disturbed, no stones lifted and no trees felled, it is pretty much naturalized. Ms. Isherwood said it is a permanent, vegetated buffer to stop that from happening. Also, all on one plan so we can see it.

Mr. Haworth asked if any other member of the board wanted to be heard.

Ms. DeSalvatore said our Bylaw calls for 25-foot no touch zone and 50-foot no build zone so at the very least this will need to be proposed as a variance to the Bylaw. Also, problem with the driveway, which invades the 25-foot zone extensively and should be in front of the house, a short driveway at the front to avoid all that disturbance.

Mr. Koska responded, as stated earlier, this application has been around for a while, submitted before the 25-foot no touch rule went into effect. The plan originally the wetlands were delineated by an environmental consulting firm in 1987. Hoping and anticipating the commission provides some leverage. Taking the back area as a restoration replication area and trying to have a healthy balance between the environmental and people's investments. It was discussed, the slab is at elevation 11, lowest horizontal member is at 19.5. We can't go into the existing grade more than 2-feet in the front and rear. Minimum setback in this zone is 20-feet, we have at 21. Small retaining wall at elevation 13 on the plan. If someone is investing in a flood foundation of this magnitude, it makes sense to park a car or two below and have an entrance depending on how structural engineer designs. Proposed a blue stone driveway, which is pervious.

Ms. DeSalvatore asked what a blue stone driveway was. Mr. Koska said it is ¾ inch to inch stone, angular in nature and pervious so run off can take suspended solids and sediment get caught up in the zone and considered pervious by the definition in zoning bylaws of the Town of Fairhaven.

Ms. DeSalvatore asked about addressing putting the driveway in the front of the house to avoid such extensive disturbance. Mr. Koska said if have a flood foundation that has approximately 8 ½ feet then it lends itself to utilize in that space. A driveway in the front cannot enter underneath the house because have a two-foot high retaining wall to meet the requirements of the state building code for flood foundations. Ms. DeSalvatore asked if Ms. McClees could comment on this. Mr. Haworth said what they are saying is with the garage under the house they cannot access it from the front, can only access it from the side.

Ms. DeSalvatore said many houses in Fairhaven have no driveway, no garage. Need to do something about minimizing that driveway, possibly a 1-car driveway come in at the 11-foot contour. Mr. Koska said 1 or 2 car, once park still need to back it out/up the driveway so still need

area in which to back up and enter. Ms. DeSalvatore said her house have no room to turn around, have to back car out of the driveway, cannot see as a justification for that much disturbance in the no touch zone. Mr. Koska asked if that was a safety issue backing out into a traveled way. Ms. DeSalvatore said that is a very minimal trafficked area there, a cul-de-sac. Mr. Koska said there is always that one time they talk about a fire truck or an ambulance going by, police car making an emergency stop to a house next door. Ms. DeSalvatore said she is saying something needs to be done to get the driveway out of the no touch zone and out of the no build zone if possible. And, there needs to be a submission for a variance under the bylaw. Mr. Koska said as stated before, before the 25-foot buffer zone came into play the plans and the filing was submitted. Ms. DeSalvatore said there is no grandfathering for a bylaw.

Mr. Haworth asked Ms. McClees when this was originally filed. Ms. McClees said this is first time public hearing has been opened, checking on date of submission. Mr. Haworth said that Ms. De Salvatore is correct; there is no grandfathering on this. Ms. DeSalvatore added, she suspects the dimensions of the house are a little excessive for the site, consider a 25-foot width as opposed to a 32-foot width. Mr. Koska said as far as building, sheets of ply-wood come in 4x8 and know you can cut them and frame them to what it needs to be, however seems with cost of building materials, waste is not something that goes undetected in financials. Ms. DeSalvatore said that is not a consideration for the Conservation Commission. Ms. McClees said the filing date she has is March 19, 2021.

Mr. Galary said, didn't before the board passed that bylaw didn't we say that it wasn't going to affect any projects that were going on, in the process at that time. Mr. Haworth does not recall that and can look in the minutes. Ms. McClees said it wasn't part of the motion to approve. Mr. Galary asked if it was talked about. Ms. McClees said she could pull the minutes and see. Mr. Galary said he remembers talking about it and people trying to get this to pass through it was brought to our attention that it would not affect any projects that were already going on at the time. Mr. Haworth said that would probably be for those that already had a public hearing opened at the time not ones that had not had a public hearing opened on yet, in his opinion.

Mr. Galary said he does not have an issue with the driveway, the state is making them go up and this is a beautiful piece of property, don't want to say homeowner can only have one car and on the side. The restraints on them enough, no problem with that going on, if they are building don't see why they could not do that.

Mr. Haworth said there is cost associated with building, with complying with the regs and make sure the plans work. Being blue stone or crushed stone driveway and practicality; would rather see driveway underneath the house and access that way then that same space used for garage and build there where it would be closer to the wetlands. Mr. Haworth continued that he sees the give and take there. Putting the garage underneath, eliminating the footprint, wall, digging, etc. In turn putting a pervious driveway to get there.

Mr. Lavalette said he has no problems with driveway the way it is, the house has to be built the way it is drawn, no alternative. Addressing the water runoff from the driveway is critical, now there will be a lot of runoff and may have to open up that cul-de-sac a little more, the swale to accommodate the extra water draining into that same area. Concerns on the water, in favor of the driveway.

Ms. Isherwood agrees they should file formal variance because not grandfathered in. The driveway, again, a give and take, concerned about the water runoff as Mr. Lavalette said.

Mr. Koska said if look at the contouring, at the back of the house they are parallel to the house itself, means water flows at 90 degrees to the contour. Where the driveway is proposed from elevation 11 down to elevation 10 and falls more of a southwesterly track than southerly as the back. Only contribution seeing would be from the westerly side and can do something to capture and perhaps put some filtration for sediment to be directed to the overall drainage scheme for the subdivision. Demarcate a spot elevation do something small that directs it to the existing swale so there would be laminar flow as opposed to turbulent flow.

Mr. Lavalette asked if would consider a grate system at the base of the driveway to control the flow and direct the water. Sediment area also, like a trough drain. Mr. Koska said a softer more ecological approach with plantings and small stone and maybe up to 6-inch rip wrap to direct and give treatment.

Ms. McClees said this was, in part, why recommended a vegetated buffer along the edge of the wetlands and especially in the areas where it close to what they are proposing. It will help delineate and control water runoff and slow water coming off what are proposing to do. Given what the board has been saying about controlling some of the runoff having a vegetated buffer along the edge of the wetland line can go a long way to accomplish what the board is talking about.

Mr. Lavalette said where this is a large driveway and downstream, erosion control paramount in this situation. Something has to be used to slow the water down, eliminate problems in the future.

Ms. DeSalvatore asked if this issue of runoff needed to be peer reviewed. Mr. Haworth said would need to be a decision of a majority of the board. Mr. Lavalette added, if everything included in the next meeting, we can address then. A lot to correct now and come back with a more detailed plan may not need a peer review. If they come back with something all comfortable with then we may be all set, would like to see more detailed plan around what we talked about tonight.

Mr. Haworth said get all on one plan including replication work and what talked about tonight and then take another look next meeting. In his opinion, this is not ready to move forward tonight.

Ms. Isherwood agreed, see all on one plan. Hard to tell where that water runoff might affect the wetland mitigated area they are proposing.

Mr. Haworth asked if any other member of the board wanted to weigh in. It is a public hearing and want to give public an opportunity to weigh in, if want to be heard, raise hand, indicate in chat or unmute and speak first and last name. Seeing and hearing none confirmed by Ms. McClees. Mr. Haworth recapped for applicate what board would like to see and recommend continue to the next meeting and make revisions, once see can proceed to next step. Mr., Koska agreed.

Mr. Haworth made a motion to continue SE 023-1347, CON 023-210: **1 Boulder Court** to July 12, 2021 at applicant's request, seconded by Ms. DeSalvatore, no discussion, roll call vote, 7-0 in favor, motion passes. Mr. Haworth said he can contact Ms. McClees if any questions and if can get the plans the Monday before the meeting that would be preferred. Ms. McClees said deadline for July 12 meeting is July 6th.

- I) SE 023-1352, CON 023-225: **Sconticut Neck Road/Overlook Lane (Map 29, Lot 1E)**

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.

Mr. Haworth advised Michael Kelly not able to vote on this item.

Ms. McClees shared screen and reviewed. This has been discussed previously. Applicant has submitted revised plans and the revised plans include elimination of the fire pit and patio. Proposed lawn area reduced and included a note stating it will be treated only with natural organic fertilizers. They have included a corridor of tupelo trees along the entire length of the driveway on the south side. There are four tupelo trees proposed throughout the site as well. Included a hydrangea shrub along the south side, the 34 highbush blueberry shrubs along the northerly side of the house to be planted between the proposed row of boulders. Shrub corridors are proposed to function as a filter strip and permanent barrier to protect the wetland. Two roof runoff recharge systems have been included to recharge groundwater. A water quality grass swale has been included along the southerly side of the driveway to the east of the house to treat stormwater runoff from the driveway and parking areas. The project complies with the Wetlands Protection Act and 310 CMR 10.00. Town Counsel confirmed that there is no grandfathering with bylaw regulations, so the Commission should consider whether the applicant needs to submit a formal variance request per section 8.0 of the buffer zone regulations. The Commission will need to determine whether or not the project complies with the Bylaw and regulations.

Mr. Haworth asked Ms. McClees if a public hearing had been opened on this prior to passing the bylaws. Ms. McClees said no.

Mr. Haworth said the applicant was on with Mr. Dave Davignon representing. He said Ms. McClees did summarize the changes from letter dated June 7, 2021, revised plans are also dated June 7, 2021. Grandfathering, he has one key question, was Town Counsel simply asked if the NOI filing which came in before the vote by the board for the buffer zone policy was grandfathered because it was filed prior to. If that was the question then he thinks Town Counsel is not aware that this is part of a definitive subdivision that was submitted and approved by the Planning Board in 2017 and under Mass General Law subdivisions have an 8 year protection against changes in Zoning Bylaws.

Mr. Haworth added that Conservation Commission is not Zoning. Zoning Board bylaws do not apply to Conservation Commission. Mr. Davignon asked if the Wetlands Bylaw was a bylaw. Mr. Haworth said it is not a Zoning Bylaw, not based on business or residential zone, the wetlands bylaw is based on the actual resource area. Mr. Davignon asked if under General Bylaws. Ms. McClees said it is one that is under General and Mr. Haworth said not a Zoning Bylaw, there is a difference between 192 and 198.

Mr. Davignon said Ms. Lauren Francis wants to read a letter into the record. Site has a very long history as to how it was created and why the wetlands system on each side, one being manmade by the town for lack of maintenance of the storm system that drained onto the property and a prior subdivision roadway that was undertaken, the middle wetlands section to the north that was excavated out. The fill was thrown to the north and south side and then they abandoned ship and once the drain pipe from the town broke and all the water bore down that open excavated area and created that wetland area. If you take that out of the equation we could push everything to that side of the lot and be more in compliance with the setbacks. Want to point out and stress this is a subdivision 4 years in the making, plan approved by the Planning Board 3 ½ years ago, the road

construction completed about a year and a half ago. Took a while with the market and now all three lots have purchase and sales agreements. The history on the site as far as permitting does go back further than that.

He noted Ms. Francis brought before the commission a wetland line approval, which was reviewed by John Rockwell, originally flagged by Mark Manganello. A solid line looked at by two of the best in regards to wetlands in the area. This is a site where it has been worked on and moving in that direction and little did we know there was a bylaw being discussed right along the lines of when we were going to file it. Hope the Commission will take that into consideration. Have done as much on the plans as possible, plantings as much as we can. Area proposing to develop is a narrow corridor. She has buyers that stated do not want a lot of lawn, they want to live in the woods and one of the reasons they stated they like this type of lot.

Additionally he said Ms. Francis has an approved crossing across the wetlands to get to the site approved three times by the Commission. Any type of denial of this latest version of the site plan where have done as much as we possibly can given the history of the site would lack common sense, she has a permit to build a driveway to it but cannot build a house.

Mr. Haworth advised Mr. Davignon to do the filing for the request. Mr. Davignon asked if it was a standard form for the variance or just a letter. Ms. McClees has not developed at this time so Mr. Haworth said state the argument for the request in a letter. He said with all the work done and adjustments to work with the commission, he would be a positive vote so follow the process. The rest of the board is not required to talk about the way they would vote but open to the board for discussion.

Mr. Lavalette said everything they were asked to do he would give a thumbs up, not something we would do again and something had it been started later would not be approved. A lot of time and effort and done everything, trees, plants and borders and he also has a positive vote.

Mr. Galary said he is OK with this, would like to see the minutes when the bylaw was passed about ongoing projects not held to this. Last time it was brought up he said Mr. Haworth's position was to "sell him on this, do the changes and come back to the board" and does not remember the bylaw being talked about at that time. Come in front of us tonight and now it is a bylaw. Mr. Haworth said it was discussed last time and wanted Town Counsel to weigh in. Ms. McClees said she was asked to reach out to Town Counsel about it. Mr. Galary asked what they said. Ms. McClees said no grandfathering applies for non-Zoning Board Bylaws.

Ms. Isherwood said she would like to see the variance filed.

Ms. DeSalvatore said she voted against the crossing, would have been happier with the crossing up above which avoided the proximity to the wetlands all along that driveway.

Mr. Haworth asked if Ms. Francis was on and if she still wanted to read her letter into the record. Ms. Lauren Francis, 6 Sippican Street read her letter into the record. We did our filing for this on April 19, 2021 before the bylaw was approved and wrote the letter on the 7th to go along with why they should not be subject to it. Won't read each order of conditions. **See letter in Attachment A.**

Ms. Francis asked Ms. McClees to bring up the picture she referred to from 1961 and also 1986 pictures. Mr. Haworth said while Ms. McClees is accessing that if they write up their variance no

need to go further this evening, based on what the board has discussed might be all set. Ms. Francis said no form so how do it. Mr. Haworth said formally submit it by the meeting deadline requesting the variance. He said start it with "this is a request for a variance" and if want that letter to be the request it needs to be submitted by July 6th 2021. Ms. Francis said she would redo and would like the pictures to be shown. Ms. McClees was looking to get them opened and share screen for. Ms. DeSalvatore said the pictures are in our files. Ms. Francis said would like the public to see this. Ms. Isherwood said it seems there will be enough votes if we could move this along. Mr. Haworth asked Mr. Davignon's help with this. Mr. Davignon asked Ms. Francis to pass on the photos and we can bring up at the next meeting if we have to and she said yes. Mr. Davignon asked for continuance to July 12, 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 July 12, 2021 at the applicant's request, seconded by Mr. Lavalette. Discussion on the motion.

Mr. Lavalette asked this is for just the variance request and no other changes to the revised plans, just variance to the buffer zones. Mr. Haworth said personally, as stated before, has his vote and she has done everything she can to make this work in the best possible way for this site and unique situation. No one will ever get his vote in a situation like this again, Mr. Lavalette agreed. Mr. Haworth continued that he felt Ms. Francis has done her due diligence and Mr. Davignon has done his due diligence and worked with the commission, put in additional plantings and done everything they can to make this site work in the best possible way they can, not something in greatest comfortable with. Based on the history of the site, history of the drainage and everything discussed, comfortable with doing request for variance and voting on the variance and then voting on the project. Mr. Lavalette wanted to confirm not talking anymore about trees or bushes, all in agreement gone as far as they can so just approving the variance and then voting accordingly. Mr. Haworth said unless another member of the board feels otherwise, don't see anything else they could do except not build. They put trees, taken out the fire pit, taken out the patio, adjusted the size of the house. They have done everything this commission has asked and for that reason he feels they deserve the variance, they have gone through every hardship they could to make it work.

Ms. Isherwood agreed, unless could do more plantings everything is squeezed in already and a lot of changes, best it can get.

No further discussion on the motion, roll call vote 7-0 in favor, motion passes. Ms. McClees will be in touch on next steps.

m) SE 023-1344, CON 023-207: **10 Nelson Avenue**

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 showed revised site plan and shared screen. Motion on the northern groin, applicant has submitted supplemental info which is in the packets. Applicant submitted photos of the groin from September 2017 and May 2020. One of the revisions to the plan is adding concrete fill and edging along the sides of the groin in response to soften up the sides of what was reconstructed. It does not comply with the performance standards of a Coastal Beach because concrete fill at the

base. Still some outstanding info, have not received information showing compliance with the Coastal Beach Performance Standards per the DEPs comments. There is repeated focus on this being a Chapter 91 licensed structure, which is irrelevant for this process. If commission is able to approve some of the things on the plan like the planting bed, the posts along the landing, the addition to the cap of the existing apron. Any plans the commission approves should not include any items the commission would not approve, has not approved or does not comply with the performance standards. There needs to be further information submitted that she and the commission has asked for.

Either the plans need to be revised so that they comply with the performance standards or only show the information that the applicant is looking to approve OR the applicant submits information showing how the items on the plan comply with the Coastal Beach standards. Otherwise the commission should consider denying it for not meeting the Coastal Beach performance standards.

Mr. Steve Gioiosa, Sitec Civil and Environmental Consultants, representing Mr. G. Delano. He said Ms. McClees reviewed where we have brought this project to at this point and missing pieces are tied to the discussion relative to reconstruction vs. new construction. Feels the photographs submitted after the last meeting, dated May 16, 2020 and 2017. They clearly show an extensive amount of concrete on the north side in place, particularly the May 2020 which was just before Mr. Delano initiated the reconstruction work. The concerns of the commission was that this was a groin that had disappeared and this was a new construction as opposed to a reconstruction or a repair. We are taking the position that this is a repair project, a groin that has existed over 40 or 50 years and would not be constructed the same way today. It did exist in 2020 and the applicant did, without proper permit, a reconstruction/repair and therefore we do not believe the standards for a new project would apply.

Mr. Gioiosa said the determination of the commission and we want to present this evidence and see if the commission is inclined to agree this is classified as a repair project and not new construction and the discussion on performance standards would not apply here. So this is the fundamental question. If the answer is it is still deemed to be new construction then would need to make a determination and argue that they are in compliance with the performance standards. If it is a repair of an existing, previously approved and it was approved and in place and a licensed structure then it sets the tone for the direction of the project.

Mr. Gioiosa said as Ms. McClees pointed out there are probably three to four other elements to the project, the capping, landscaping, the barrier would like to create with the post and chain for public safety. Then did agree we would saw cut the south groin to square it off and eliminate a portion of that south groin and under this application would not propose to rebuild it. In the interests of trying to soften the design did propose to put a 1-to-1 stone edging on either side of the existing concrete groin. Feel the area is stable and how reacted over the year of being in place. We know the applicant built longer so agree the end section does need to be removed and this would bring it into compliance. If the commission after tonight decides this is not a repair then they have a tough argument to make on the compliance to the performance standards; would probably have to remove a section of the from the plan for your consideration of a final plan. There did not seem to be strong opposition to other elements of the project that are still in place and just rethink the north groin.

First fundamental determination is if this is a repair or new construction. With the photographs would argue this is a repair and would defer to the commission on that.

Mr. Haworth was re-reading through the minutes on the last time this was discussed to help with how to proceed and asked Ms. DeSalvatore on her motion to deny the project. Ms. McClees clarified it was to deny the groin, not the whole project. Ms. DeSalvatore said it is demonstrably causing scour on the beach and equivalent to new construction and does not comply to the performance standards. Ms. McClees included the motion in her staff report.

Mr. Haworth was reading up to what led to the motion for context. Ms. DeSalvatore said what she thinks needs to happen is close the public hearing, it's been voted that this is not in compliance with performance standards and what they proposed Ms. McClees has said is not in compliance with the performance standards. What they need to do is separately submit the other items they are interested in. The groin has been determined not to be in compliance for that resource area.

Mr. Lavalette said he would second that, right now it is causing more harm than good. When got there about a year ago was a beach with a lot of sand and since that groin went in there is no sand, there is a scouring effect, all the sand is gone. Mr. Lavalette said it is frustrating that this has been discussed and this groin has been in disarray for 20 something years and just now picking up on it. There is no groin on the south side and why all of a sudden a push to have this groin back on the north side.

Mr. Haworth said wants to figure where they are in the public hearing, needs to review with Mr. Gioiosa, Ms. McClees and Ms. DeSalvatore in this public setting. Ms. DeSalvatore said the groin needs to be dealt with separately under an enforcement order. Mr. Haworth said the clarification was just on the motion. Ms. DeSalvatore said once close public hearing, deal with the groin separately under the enforcement order and then they can still work with Ms. McClees around the other items of the plan and bring to the next meeting.

Mr. Haworth said from his research, it was not done in the proper order, because we did not close the public hearing first so it's not a proper motion. Ms. McClees said she reached out to the DEP Circuit Rider after the May 10 meeting where this motion was made and since this was just on a portion of the project there are still pieces of this project that are still being asked to be approved and in a large part compliant with performance standards. What they said was the commission should not be issuing any kind of order of conditions for plans that have a piece of the project they would not approve.

Ms. McClees said, if the commission would approve the remainder of this project, the one potential remedy is to remove the groin work from the filing so that the pieces the commission will approve can move forward. Then, either deal with the reconstruction of the northern groin without permits under the open enforcement order as a restoration plan, seems like that is what the commission said. Mr. Haworth added so restoring it back to the picture of May 2020. Ms. McClees agreed, correct, that seems to be what the commission was discussing. Or, provide information showing what is on the plan in relation to the concern the commission had as related to the northern groin is compliant with the performance standards. What the performance standards say has nothing to do with it, the performance standards do not say if it is repair or reconstruction, it says any project. So that is the other option, do what has been in the staff report for three months now and submit and what was on the comments from DEP. Submit information showing compliance with the Coastal Beach Performance Standards. If the commission denies the project for non-compliance to the performance standards then it is a possible enforcement issue from DEP.

Mr. Haworth asked about the 21+ days since the decision and have not issued an order of conditions or issued a formal written. Ms. McClees said the public hearing has not been closed. Mr. Lavalette added it would be impossible to split this project up because whatever they do on the wall to increase the height of it to put plants would all be destroyed with someone trying to fix the groin. Backwards, don't know how it would be physically possible. Ms. McClees said she does not disagree, she was explaining how. Mr. Lavalette added, logistics, would have to bring equipment down to the beach, if the groin eventually gets approved you have to put machinery back on there. How can you do if approve the front part of the project, would be destroying what trying to accomplish. Don't see how would be able to separate this project.

Mr. Gioiosa asked if from listening tonight, the commission is under the impression this is new construction. He disagrees, think if repair project it is handled completely different, repair of what is already there as opposed to ripping it up and turn it into today's standards. If beyond that discussion and commission is convinced it is new construction. At a point where north groin as it is, is not acceptable to the commission and that would have to be removed which means would need to modify the plan, show a restoration of that area to a condition that the commission would be comfortable with and it would still be a single project and we would include all the other elements the commission seems to have less of an issue with.

The plantings, he disagrees with Ms. McClees, those were volunteered by the applicant were not intended to be replication or restoration plantings. There is no regulation that would prohibit the type of plantings being proposed here under the WPA. As much as can work with the commission, none of the plantings are mandated by the other elements, they are intended to soften the lawn area, get it a little away from the shoreline, create a physical barrier along most of that area. If a list of plantings would like the applicant to consider as a means to get to a planting plan that everyone is comfortable with.

Mr. Gioiosa said if the commission is adamant that this is new construction then the north groin and restoration is the only option available and will agree with Mr. Lavalette and other commission members on that point. Does not make sense to split the projects up, address all activities and willing to make the changes and give a plan that can be approved.

Mr. Haworth's suggestion is to withdraw without prejudice, resubmit. Ms. McClees checked the regs to the previous question on 21+ days and said it states, within 21 days of a closed public hearing the commission shall make a determination, etc. Because public hearing has not been closed that 21 day clock has not started. If applicant is amenable and agrees to that and wants to continue we do that.

Mr. Gioiosa said the applicant will request a continuance and he will meet with his client and come up with a plan and submit that.

Mr. Haworth asked for the board to give a moment so that he could go to the public for anyone who wanted to weigh in on this to indicate int eh chat, raise hand or unmute and speak first and last name. Seeing and hearing none, confirmed by Ms. McClees he opened to the board for comments, questions or concerns on this.

Ms. DeSalvatore said if he works with Ms. McClees on this it can all be worked out.

Mr. Lavalette said his final thought on this is it could be settled very easy, client seems to want the

north groin and not his (Mr. Lavalette's) expertise but what he has seen is that it does nothing and actually has made it worse. You could get the project approved if remove the north groin and go with the plantings in front.

Ms. Isherwood wanted to add reconstruction vs. new construction or repair all still have to adhere to the Massachusetts Coastal Wetlands regulations and this groin does not comply. Can read from the performance standards directly. It says both new and reconstructed or modified groins, jetties, solid piers or any other solid fill structure should be minimum length and height demonstrated to be necessary to maintain beach form and volume and designed and constructed with rough as opposed to smooth bases to maximize energy dissipation and minimize reflected wave energy. No filling of spaces between the rocks with concrete or capping the top of the structure with concrete and immediately after construction all groins should be filled to entrapment capacity with sediment of grain size compatible with that of the adjacent beach.

Mr. Gioiosa said he would respectfully disagree with that interpretation of that regulation. Don't need to debate that issue any longer, will come back with a plan that deals with more restoration than reconstruction. See where the commission wants them to go and in agreement and will come back with a new plan.

Mr. Haworth made a motion to continue SE 023-1344, CON 023-207: **10 Nelson Avenue** at applicant's request, seconded by Ms. DeSalvatore, no discussion, roll call vote, 7-0 in favor, motion passes unanimously.

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

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

Ms. McClees said she received a request for a continuance on this today, they have asked for continuance to July 12, 2021 meeting. Recommend accept that.

Mr. Haworth made a motion to continue SE 023-1345, CON 023-206: **2 Oxford Street** to July 12, 2021 at applicant's request, seconded by Mr. Galary, no discussion, roll call vote, 7-0 in favor, motion passes unanimously. For the record, Mr. Kelly will be unable to vote in this at the next meeting.

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

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

Ms. McClees reviewed that everything from the peer reviewer's letter from February of 2020 has been addressed. DMF has submitted a letter this morning that all of their concerns have been

addressed and their only continuing recommendation is that a time of year restriction be incorporated into any order of conditions. At this point, unless the applicants representative has anything to add, at a point where given DMF comments this morning that she can work with the peer reviewer to draft an order of conditions on this project for the next meeting.

Mr. Rich Rheume, Prime Engineering on for the applicant had nothing to add. Mr. Haworth asked if board had anything, nothing at this time. Leave public hearing open until the next meeting and care for it all then. Mr. Rheume was in agreement. Mr. Haworth confirmed no member of the public had indicated wanted to weigh in on this and no member of the board wanted to add anything.

Mr. Haworth made a motion to continue SE 023-1309, CON 023-110: **1 Bella Vista Island** to July 12, 2021 at applicant's request, seconded by Ms. DeSalvatore, no discussion, roll call vote 7-0 in favor, motion passes unanimously. For the record, Mr. Kelly is ineligible to vote on this at the next meeting.

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

a) 20 Yankee Lane

Ms. McClees reviewed, the commission asked the property owner to appear in response to this enforcement order because no response had been received. There is someone on tonight.

Mr. Brian Lopes, 20 Yankee Lane, on for this item.

Mr. Haworth reviewed, it is our understanding there has been substantial wetland clearing on his property which is a violation of the Fairhaven Wetland Bylaw and the state DEP regulations. Therefore you were asked to come before the commission to address those clearings on your property.

Mr. Lopes asked to share screen, Mr. Haworth reminded him that everything you share is seen by every member on this zoom and also on Channel 18 and at times on Facebook. Mr. Lopes shared his screen with an aerial satellite image date 3/1995, Mr. Haworth asked where it was dated and Mr. Lopes indicated up in the left corner. Mr. Haworth could not see it. Mr. Lopes said this is our property the contour (he used his cursor to follow the area outlined in red on the screen he shared). It has been a farm since then, purchased the land in 1975 before the Conservation Commission existed. Trying to understand what part they are violating here under the farm rule, he believes this is a community, right to farm. According to other members that belong to the town say when it comes to farm we don't have to have rules apply to us. There is no violation here.

Mr. Haworth stated, rules apply to everybody, there is nobody in this world exempt from rules. Mr. Lopes said OK.

Mr. Lopes continued, and showed an aerial photo and said this is the land now and asked what did he do wrong here, he is actually farming the land. Mr. Haworth asked about the land between 1995 and now, what about the aerial photos showing it, for example show an aerial from 2010. Mr. Lopes said the one up was 2016, then went to 2015, then went to 2014, then went to 2013, then went to 2012, then went to 2010. He hovered over an area in the upper right side of the outline and said it was not trees, it was brush. He said everything overgrew and the people they were

renting the farm to didn't use the whole land so everything overgrew.

Mr. Haworth pointed out there is where you have the violation. Mr. Lopes asked how is it a violation if it is clearing the land that was already open. Mr. Haworth said if it grows back in. Mr. Lopes said it is brush and it is for agricultural purposes. Mr. Haworth continued, trying to give the explanation, because it grew back in once it is left grown in whether it is for agricultural purposes or building houses, whether putting windmills there or putting solar panels there you have to then once it grows in and is no longer being used for the farm purposes because it grew in and is not being farmed; you now have to come before us to clear that back out.

Mr. Lopes said he does not see that as a violation if he is clearing the land to produce for good. Does not get your point here. It is for agricultural purposes here.

Mr. Haworth said it does not matter and trying to explain, no matter for what purposes. Mr. Lopes said to hold and he pulled up an aerial view and said see this area here and pointed to a lower portion then up and across and said that was a stream that comes into this farm and comes across to the neighbor's property. In 2010 there was already starting of movement of filling in with land and along the years going by and it is all fill from the town that hauled into this property and everything that was screened (indicating an area along the bottom of the outlined property area and outside of what he indicated was his property area). He said he lived down in that area of the property and everything was screened and filled into this wetland. Trying to get some clarification how all of this can be done then.

Mr. Haworth said we are covering and reminded on Mass open meeting law if chairman is speaking you stop and he will have all the respect from the him and the board and ask for it in return. Mr. Haworth continued that we are discussing Mr. Lopes' property and to keep the conversation to his property. Mr. Lopes said the problem is he has had water issues because of that for the past 10 years. Mr. Haworth said your property and we are talking about the clearing and digging on his property. Mr. Lopes said before he did it, what was mentioned here is he needs a permit to come into these woods to clear the wetlands here (he indicated on the aerial photo the middle upper portion of the outlined property). Everything that has been farmland can be open and what we have here (indicating the upper right corner of the outlined property) is brush. The permission he got from the Conservation Commission was allowed to cut these trees here (indicating the central upper portion on the aerial photo on the screen). The only thing he is not allowed to that he is going to need to apply for a license or permit to be able to touch these wetlands was in here and not here (he moved from the central upper portion to the right side on the aerial photo on screen). He said that was his understanding and that was why he went ahead and cleared it with his lawyer to make sure everything was OK and according to his lawyer everything was fine according to the conservation everything was fine. That is why he is concerned, why is this coming up now when everything was approved for the solar for the community solar and now being punished for doing agricultural purposes.

Mr. Haworth said what was approved by the solar was properly permitted and approved, you did work outside of that area. Mr. Lopes said that was correct, everything he did was to correct issues that were applied from the people that cleared this farm before us. We had a problem right here and will show it. Mr. Haworth said if previously got permission from the commission to clear something other than what was done with the solar we will need those permit numbers, you have a SE number and a CON number and he needs those. Mr. Lopes asked what numbers he needs, Mr. Haworth said the SE is the filing number and the CON number. Mr. Lopes said we did not file

anything to clear that, like he mentioned before, he confirmed with the Conservation Commission of what he was doing. Mr. Haworth said you can't confirm anything with the Conservation Commission without actually doing a filing, other than confirming unless you are outside of the buffer zone. You are obviously within wetland and buffer zone here. You would have to have a filing with the commission at that point to do clearing.

Mr. Lopes asked even if owned this farm since 1975 and it has been farming since. Mr. Haworth said no, there was an area of time where it went unused as you stated yourself on this public hearing in the public record that you rented the farm out to somebody and didn't use that area and it grew back in with brush. Mr. Lopes said correct. Mr. Haworth continued, it grew back in and therefore it is no longer considered farm, you cannot just cut it back out and turn it back to farm, you have to come before the commission and get proper permits to do that. If you had been continuously farming that same area from 1975 to today then yes, there would be no issue. You have not been continuously farming that area, you rented it out to someone as you stated earlier in this public hearing earlier on and they let it grow back in because they were not using that section. Therefore, you lost the ability to farm that section without getting the proper permits from the commission.

Mr. Lopes said, as he mentioned before he has been here for the past 11 years and no issues. Now all these issues are arising. Mr. Haworth said you brought in solar and then in order to properly permit, your site has been looked at now and we are seeing the issues. Mr. Lopes said from his understanding for agricultural purposes and for irrigational purposes he does not see a problem with what they are doing here and do not see a violation because we are producing and to farm. One of the farms still active in Fairhaven.

Mr. Haworth said it is not you that would see the violation it is the Conservation Commission that sees the violation. We are telling you that you have a violation. Just because you don't think you do does not mean you don't. We are the ones that tell you that you have a violation and we are telling you that you have a violation and does not know how much clearer to explain it.

Mr. Lopes said he is trying to see which laws and figure out where he stands here, you are trying to kill the farmer but you want local grown. Mr. Haworth said we are not trying to in his words "kill the farmer." Mr. Lopes said you are putting a violation on us because we are going to farm.

Mr. Haworth said we do not put a violation on you, you create a violation and then we are responsible to work to rectify the violation. Mr. Lopes asked how did he violate if he is doing for agricultural purposes. Mr. Haworth said he would do it one more time and said, you left a section of your land unused for many years because you rented out your farm to someone. Mr. Lopes said it was not unused for many years. Mr. Haworth said your own testimony in this public meeting in this public hearing, under this enforcement issue minutes ago you said you rented the farm out and showed a section that they didn't use, brush grew into the section they didn't use. Brush does not grow in within a year and then when you took back over your farm you started clearing it out and that is the violation. You don't see what I am saying, it doesn't matter what the reason you cleared it out for whether it be agricultural or building a house or anything, the fact is you cleared out the brush without proper permit from the Conservation Commission, that is the violation.

Mr. Lopes said, according to his understanding, if it is not full grown trees you are cleared to clear the brush. Mr. Haworth said Mr. Lopes' understanding is incorrect. Mr. Lopes added, don't know how you farm or make land to farm then. Mr. Haworth said there are millions of acres of farmland

in the US. Mr. Lopes said he paid for this land to farm, not for decoration. Mr. Haworth said he understands that and when you destroy wetlands this is why we are here.

Mr. Lopes said you mentioned we were approved for the solar panels, now because of solar there is a 2 megawatt going in here and a 4 megawatt going in here (indicated areas within the outlined property on the aerial photo on the screen in the central and lower portion of the property). He asked did you put into consideration where the deer are going to go now from taking all that area away, he said they will go to Route 195 and more and more accidents will happen on Route 195.

Mr. Haworth said this was completely off subject and Mr. Lopes said he was pointing out concerns. Mr. Haworth said those concerns should have been raised in the public hearing for the solar not in an enforcement hearing for you clearing out wetlands illegally. Mr. Lopes said he is not clearing lands illegally.

Mr. Haworth thanked Mr. Lopes and said he would be going to the board. He first asked Mr. Lopes if he was going to follow the enforcement order and restore this area. Mr. Lopes said it depends on what you are requesting. Mr. Haworth asked Ms. McClees to speak. Ms. McClees said the enforcement order states that a restoration plan shall be filed with the issuing authority on or before August 4, 2021 for an assessment of the site and a submission of a restoration plan by qualified, licensed professional by August 4, 2021. An assessment of trees, shrubs and other vegetation that were damaged and/or removed including indications of which were native and which were not. Beginning the restoration and revegetation of the disturbed area to the original extent of the resource area no later than November 15, 2021 as laid out by the Fairhaven Conservation Commission in response to the submitted restoration plan. It goes on to talk about assessments and requirements for restoration.

Mr. Lopes said telling us you want to take our land away from us. Mr. Haworth said that is not it, Ms. McClees just read the enforcement order and asked if Mr. Lopes understood what she just read or would he like it explained. Mr. Lopes said isn't it saying that we have to put a plan in to put all those trees back. Mr. Haworth said to fix what you destroyed by a licensed professional, you have until August 4, 2021 to go ahead and submit a plan that shows how you are going to restore the area that you destroyed. Mr. Lopes said he will find his rights first because he believes in his point of view and the point of view of other farmers this is ridiculous what you are trying to do.

Mr. Haworth said Mr. Lopes is in violation of the Fairhaven Wetlands Bylaw and he is subject to a \$300 a day fine until such time as you restore it back to what it was. Mr. Lopes asked how and Mr. Haworth said by the laws of the town of Fairhaven. So, you have until August 4, 2021 to have a licensed professional submit a restoration plan. Mr. Lopes said it could not be done. Mr. Haworth said he would then be in further violation which means at that point it would force the commission to contact state agencies and federal agencies to help us bring you into compliance. Mr. Lopes said correct and if he has records of emails saying everything is OK from the Conservation Commission. Mr. Haworth said he can submit anything he feels furthers his point to the commission. You have until August 4, 2021 to have a licensed professional submit a restoration plan, that is what we are here to tell you tonight.

Mr. Lavalette said he has hoped Mr. Lopes has stopped any activities in this vegetated area right now. He said Mr. Lopes has made it clear what he is trying to accomplish in that property and it is possible you can but there are rules and regulations you have to follow. Mr. Lopes said the plan is to put greenhouses and other things in there for an educational site for children to teach them how

to farm. He is trying to do the best things in there, there are things in there that benefit the Eastern bluebird. Mr. Lopes said he is trying to improve the site to make it nice, to produce full organic produce and you are trying to put a violation on him when he puts a petition in with over 240 signatures to get Yankee Lane approved for public so people can go directly and buy stuff from the farmer.

Mr. Haworth said he wanted to go back to Mr. Lopes on this, we are not trying to do anything. We are tasked with following the law and enforcing the regulations of the Fairhaven Wetlands Bylaw and the DEPs regulations. Mr. Lopes has violated those regulations, whatever you may want to do with the property you may fully be able to do but in order to do it you have to properly submit permits and plans to this commission. Just like you wanted Yankee Lane paved and you got signatures, you were doing it the right way. Right now you are clearing the property not the right way, we are trying to get you on the right track and do it the right way, seems to be a problem trying to figure out what the right way is and we are trying to direct you down the right path so you get it done properly. The proper way of doing it is submitting a plan of what is going on with this property, a restoration plan of how you are going to restore or why you should not have to restore but you have to get a professional to do that for you and you have to submit it by August 4, 2021.

Mr. Lopes said he doesn't understand what the point to owning a farm is if you can't produce in it. Mr. Haworth said part of his farm is in an ecologically sensitive area, a lot of farms are in upland areas that are not so ecologically sensitive. Mr. Lopes said he does not see the water issues they see. Mr. Haworth said he does not have to see them, unfortunately they are there. Mr. Haworth said he will not go back and forth, this is wetland and professionals have said this is wetland. It is all within the regulations and what we are telling him is if he wants to do something with the property we are not saying he can't what we are saying is that he has to do it properly.

Mr. Lopes said he went to the Conservation Commission and asked about this stuff and what was mentioned to him was to go on the west side to clear the rest of the land would need a permit and he said OK and for that he would apply for the permit, other than that it is open space and that is what he was trying to clarify. Mr. Haworth said cutting brush is not open space, if it is green pasture that gets hayed every year that is open space, if it is brush that is not open space and it takes time to grow. For what you want to do on the farm over there put it on a plan and submit to the commission by August 4, 2021. Hire a professional, out together a plan and submit it by the 4th. You do not want this to escalate to the state and federal level.

Mr. Lopes said he wants to find his rights, he has the proof of emails between the Conservation Commission and his lawyer. Mr. Haworth said Mr. Lopes has until August 4, 2021, after August 4, this commission will then make a decision on how we move forward.

Mr. Galary asked if Mr. Haworth would be making a motion. Mr. Haworth said he wanted to ensure Mr. Lopes understood. Mr. Galary said he does not think anything will be cleared up tonight and going back and forth. Make the motion and Mr. Lopes will have the time he needs and whatever he decides to do, we are letting him know what the Conservation Commission wants.

Mr. Haworth said no motion is needed, he was sent an enforcement letter a while back that was ratified by this board.

Ms. DeSalvatore added she wanted Mr. Lopes to know that it would be to his advantage to work with the Conservation Agent Ms. McClees. Mr. Lopes said he did and that is why he is raising all

these concerns. Lawyer was concerned and said why is this happening when all this was cleared.

Mr. Haworth said if Mr. Lopes wanted to he could be on the next agenda with his lawyer and Mr. Haworth could tell him that, he is more than welcome to have his lawyer with him at the next meeting if he would like.

Mr. Lavalette asked if this warrants a site visit because unfamiliar with this property, might be more clear of what he is trying to do. Mr. Haworth said once we have his submission we can work with him on what he plans to do, does not think that Mr. Lopes understands what we are trying to explain to him which is why he suggested that if he wants his lawyer to be here then maybe he can explain it better in a way that he would understand better.

Mr. Haworth said if Mr. Lopes wants to be on the next agenda with his attorney and we can explain it to him or he can just have his submission to us by August 4, 2021. Have from now until August 4, over a month to figure out what he wants to do, the board is expecting a submission by August 4. If we do not get one the board will then discuss other options to take for this violation. Any further violations are subject to a \$300 per day fine until the time they are restored which is the Town Bylaw which is very enforceable, lawyer will explain that to you. Do not clear anything else out without getting a proper permit first. Mr. Lopes said he has not touched the farm in almost a year due to all this stuff that is going on.

Mr. Haworth said put on paper what he wants to do, each thing he has to submit, put it together with how going to restore that area. Once again, submit a plan to us by August 4, 2021 and the board will decide, this is a seven member board. Mr. Lopes said he is going to finish the grading, clear the land, take all rocks out then set up for the greenhouses. Mr. Haworth said cannot do any of that right now without getting another violation. Mr. Lopes said not doing it right now, just saying it takes those steps. Mr. Haworth said one of those steps to get there is to submit to this board a plan of what you are doing, that is part of the steps, part of the process and to file by August 4, 2021 with this board.

Mr. Haworth said will conclude this agenda item with him for tonight and move to next item on the agenda. Look forward to hearing from him by August 4, 2021.

b) 1 and 3 Bayside Street

Ms. McClees said this was an issue with fencing and filling. Mr. Haworth said they extended the fence into the roadway, part of the roadway is their property and approximately 4-5 yards of fill. From what he understands now that pile has been put into what was the roadway. Mr. Lavalette said he was there today. Mr. Haworth asked if the dirt in the center of the pile was now put around the pole in the roadway. Mr. Lavalette said no, the fence is completely done, from the property line to the stake that appeared to be in the middle of the road, the last time we went there the property owner decided to put the fence another 3 ½ to 4 feet so the last fencepost is on the grass. She does own more property but it was decided not to fight it anymore, so the fence is about 3 ½ feet from her property line that was staked. The only thing that is left there right now is a pile of dirt inside the fence, not sure what the fill was for and there is about 2-3 yards that are just mounded in the yard. It was filed under 1 and 3 (property owner and her mother).

Mr. Haworth said the concern is what she will do with the fill in a flood zone. The fence is resolved. Is she keeping the fill or taking away.

Ms. McClees said she can reach out to her and ask the intention on the fill. If the intention is to move it offsite then it should be done soon. Mr. Haworth said if she plans to grade out with it then a submission to us. It is directly in a flood zone, no question it's fill in a flood zone. Ms. McClees said if she wants to grade it out and spread it then it needs to be a filing, or remove it.

Mr. Haworth asked if the board had anything else on this. Mr. Lavalette said there is a reflector on each post since it is still close to the road, good for safety.

Mr. Haworth wanted to go back to another portion of the meeting. Under item 4 reappointment of non-voting members.

Mr. Haworth made a motion to re-appoint Ronnie Medina as a non-voting member as a consultant to the Conservation Commission, seconded by Mr. Galary, Mr. Medina said he does want to be re-appointed, no further discussion, roll call vote 7-0 in favor, motion passes unanimously.

Mr. Haworth asked if any other requests for appointments, Ms. McClees said no. Mr. Haworth said everyone received a letter in their packets from Don Collasius, Tree Warden, saying he is withdrawing from his non-voting seat, he is too over-extended in his job as Tree Warden at this time. Mr. Haworth appreciates his time and at least giving it an effort.

11. Correspondence

a) Concerns from Jane and Chris Brayton

Mr. Haworth summed up, concerned on mosquito spraying causing butterflies and birds not to be in the area. Ms. McClees shared screen and read the letter. For the past two or three years the bird population has decreased and also the monarch butterfly population at Wilbur Point. We believe that private and town mosquito spraying is the cause. It does not distinguish which insect is which and also concerned with the air quality when the insecticide is sprayed and there is always wind at Wilbur Point. Also there may be some spill over into the ocean and the pond. We would like to have the town cause all companies that spray insecticides in Fairhaven be registered with the town and that a permit be required to spray. The trench on Cushman Street has not been cleaned out for many years and as a result it has been sprayed to stop the mosquitos. If the trench was re-dug it would take care of itself. There is a spring on the adjacent lot. There is a reference to an article in the Boston Globe from the beginning of June and their concern is wanting to make sure the pollinators return and the only way to have that occur is to reduce the amount of spraying and better control it.

Mr. Haworth said this is outside of our jurisdiction here, can we talk to the BPW, send this letter over and they can look at that drainage and if it needs attention to stop it from being a mosquito habitat. Explained to them from his perspective it is outside of the boards purview, if want to create a town spraying regulation that is something that can be done through town meeting. Do not think that the Conservation Commission has that authority. Understand their concern and the most we can do is ask the BPW to see if they can get that trench cleaned for them.

Ms. McClees will reach out to Vinnie Furtado at BPW about that. Other towns have approached this by having a bylaw through town meeting requiring anyone who is spraying insecticides or pesticides have an applicators license. Mr. Haworth said that is a state regulation as well, have to have an

applicator's license to spray anything.

Ms. DeSalvatore said she thinks can send a letter of support to the Commissioners, the Select Board and the BPW and suggest to the authors of this that they take it to town meeting. She is used to seeing monarch butterflies in her yard and they have not been there no matter what she plants.

Mr. Haworth said immediate help would be to ask the BPW to address the drainage and suggest they go to Town Meeting with an article and let us know and at that time we can take it up. Anyone else on the board want to weigh in?

Ms. DeSalvatore said also a matter of public education is the best defense against mosquitos is to avoid standing water even the smallest dish in your yard, refill bird baths daily and remove anything else that might accumulate water.

12. Ongoing Projects

no updates from Ms. McClees

Mr. Lavalette said he was at 9 Goulart Memorial today and they are almost done. He will send Ms. McClees photos, they did a beautiful job.

13. Upcoming Projects

Ms. McClees said there will be a few on the July 12 meeting

14. General Business

a) Bills

Ms. McClees is working to put them together for end of fiscal year will have a better update at next meeting on bills from last fiscal month of the year.

b) Review and approve revised 2021 meeting schedule

Mr. Haworth asked if all reviewed and if anyone has concerns. He is on vacation August 2, will make himself available to call into the meeting remotely, not the best reception will only be on his cellphone no video. Any other conflicts from anyone?

Ms. DeSalvatore said tough to say at this time

Mr. Lavalette said he had a conflict October 4

Mr. Haworth said his concern is losing 3-4 members and losing a quorum.

Ms. DeSalvatore might have time in August, not sure yet

Mr. Galary said can we do it every two months and see

Ms. McClees said based on the filing deadlines are well enough in advance so engineers and applicants have to know when the filing deadlines are for meetings so they can plan their submissions.

Mr. Haworth wants to make sure that 2 people and 3 people max cannot make it on a date.

Mr. Haworth made a motion to approve the revised 2021 meeting schedule, seconded by Ms. DeSalvatore, no discussion, roll call vote, 7-0 in favor, motion passes unanimously.

c) Site visit scheduling

Ms. McClees still needs consensus from all, on a day and preferably a weekend. Please send to Ms. McClees as soon as possible.

Mr. Haworth asked all board members to come to the next meeting prepared to discuss. Looking for 4 or more able to make a certain day, could be every other and may not be all depending on the projects. He will wait to see and make himself available for what everyone can do

d) Next Meeting: July 12, 2021

Welcome Michael Kelly once again.

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

Mr. Haworth made a motion to adjourn the meeting at 10:42PM, seconded by Ms. DeSalvatore, no discussion, roll call vote, 7-0 in favor, motion passes unanimously.

Respectfully submitted,
Amy Almeida
Recording Secretary

**Lauren L. Francis, Trustee
OVERLOOK REALTY TRUST
P.O. Box 649
Fairhaven, MA 02719
508-993-1219**

Town of Fairhaven
Conservation Commission
40 Center Street
Fairhaven, MA 02719
Attention: Whitney McClees, Agent

**Re: DEP File No. SE 23-1239
DEP File No. SE 23-1258
NOI – Single Family Dwelling Lot 4
NOI – Single Family Dwelling Lot 5
NOI – Single Family Dwelling Lot 6
Now Assessors Map 29, Lots 1C, 1D, 1E**

Dear Mr. Chairman & Commission Members,

Overlook Realty Trust filed the above cited requests prior to the Boards approval of their new buffer zone regulations, so the new regulations would not apply. Since there are many newer members of the Commission that are not familiar with the long history of this site, a brief synopsis the the events with respect to the Town of Fairhaven Drainage Easement is necessary.

Prior to 1970, this 15 acre site on the west side of Sconticut Neck Road was a horse farm known as “Little Bay Ranch”, with the farmhouse, barn and much cleared pasture land. There was an open drainage ditch belonging to the Town of Fairhaven on the southern portion of the land. The property was purchased by developers in 1971, and subdivided into 26 lots and called “Smugglers Beach” and shown on Plan Book 87, Page 8. In 1978, there was a resubdivision into 15 lots shown in Plan Book 106, Page 116. Preliminary roadwork was performed to create Smugglers Beach Drive, with a road cut from Sconticut Neck Road all the way to the shore as shown on the plans. This is evidenced by the dirt piles and boulder rock piles along both sides of the road cut. This old road way, Smugglers Beach Drive, is the same location as the current wetlands located in the middle of the site between lots 5 and 6 on the current Plan 177, Page 71.

The Town's Drainage Easement piping was allowed to fall into substantial disrepair when broken pipes were not replaced when needed. For many years this caused extensive flooding down into the site following the Old Smugglers Beach Drive, through the middle of the property, instead of flowing into the the Town's open ditch on the south side of the property where it was authorized to flow. Old Smugglers Beach Drive is in the same location that has become the wetland area between Lots 5 and 6 of this filing.

The Town of Fairhaven is encumbered by a recorded easement from the 1955 Layout of Sconticut Neck Road with its associated drainage system that flows onto the Overlook Realty Trust property. The easement obligates the Town for, “construction, maintenance, repair, replacement and inspection of a 12 inch re-inforced pipe, manhole, and endwall for drainage purposes”. These structures consist of no less than 10 manhole drainage structures on Sconticut Neck Road and a farm drain on the east side of Sconticut Neck Road, at Widemarsh Beach Way. Because of the disrepair of the Town Drainage Easement, flooding began to occur, and flowed to the location of Old Smugglers Beach Drive, down the middle of the site, instead of the Town Drainage Ditch. This flooding location has become the wetland area between Lots 5 and 6 of this filing. It is well settled that flooding was caused by the neglect of the Town.

In 1996, I purchased the property. I wanted to build only one house, so the Town required me to make a plan showing only one lot. Plan 144, Book 89, showing lot 14.6 acres was drawn 1/26/2000, including the Town Drainage Structures and Pipe were located on the Plan. During this process it became abundantly clear that there was an ongoing flooding problem onto Old Smugglers Beach Drive. It was determined that the Town's Drainage pipes had failed and drainage water was flowing down the road cut instead of into the recorded drainage easement structure and ditch that was required. Old Smugglers Beach Drive, is this same road cut area that has become the now wetland area between now lots 5 and 6.

Beginning in May of 2013, we began to develop a 4.46 acre parcel of land. The Con Com then members, with their agent John Rockwell, and I walked the town drainage areas. In July of 2013, there was a tremendous deluge storm issue and Sconticut Neck Road was flooded out because the town drainage system was not working properly. In April of 2014, LEC Environmental flagged the wetland area of the Town's easement. The Town, with their Order of Conditions SE-1188, finally repaired some of the broken pipes in August. In 2014, a form A lot was created, Lot 3 in Plan Book 172, Page 18, of 4.46 acres.

In spring of 2015 LEC flagged the wetland line for the area of the proposed site subdivision. John Rockwell, Louise Barteau, and I walked the line, and the RDA line was approved. In June 2016, Planning Board gave a Preliminary Approval of a 3 lot subdivision, which was the resubdivision of Lot 3 on Plan Book 172, Page 18, into Lots 4, 5, and 6. In August an Order of Conditions SE 1239, was approved as it was necessary to clear the jungle like vegetation in the upland areas near to the flags, so that the commission could actually see the flags and walk the site.

After many meetings in 2016 and 2017, with both the Planning Board and the Conservation Commission, the subdivision was approved for Lots 4, 5, and 6 on Plan 177, Page 71, entitled “Overlook Acres” on Overlook Lane.

An Order of Conditions, SE -1258 was issued for the subdivision, with the required replication areas and a gravel surface. However that Order was Amended in December for a paved Overlook Lane roadway as requested by the Planning Board. There was also recorded a DEP Restrictive Covenant regarding the subdivision and the replication areas. The Planning Board signed the final plans 12/12/2017, along with a Homeowners Roadway Agreement, and a Form D Covenant for the roadway.

In 2019, the construction of the subdivision by Overlook Realty Trust began first with the replacement of the Town's distressed piping and associated structures to stop the still continuing flooding issues. Then the replication areas were completed. Followed by the installation of the water, sewer, gas, and electric all underground, then the actual paved roadway. The Board of Public Works has provided an approved As-Built by GCG associates dated November 18, 2019. All of the replication areas grew in very well and no plantings were lost, and have thrived since then. The Town's drainage water now flows into the open Town ditch appropriately. All of these requirements have been accomplished with great expenditure of funds by Overlook Realty Trust. In 2020 not much happened with the project due to Covid-19.

Now in 2021, we are before the Commission for the last step, the NOI site plans for the individual single family dwellings on Lots 4, 5, and 6. Dave Davignon of Schneider, Davignon and Leone, Inc., has prepared all of the appropriate documentation throughout this entire subdivision process for the Planning Board, Board of Public Works, and Conservation Commission. He will make the presentations to the Board on May 10th.

I have written this letter to be read into the record to be sure that all members of the Commission take into consideration, and are aware of all of the unusual issues and circumstances with this site regarding the previously neglected Town's drainage, the Town's easement, and it's disrepair, flooding, and site disturbances associated with same on this site.

Thank you for your consideration.

Sincerely,

Lauren L. Francis, Trustee
Overlook Realty Trust

Enclosure:
1961 aerial photo