

Conservation Commission

July 12, 2021

Minutes

1. Chairman's Welcome and Media Notification

Chair, Geoff Haworth called the meeting to order at 6:30PM 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, 5 of 7 members

In Attendance: Geoff Haworth, Karen Isherwood, Amy DeSalvatore, Corey Pietraszek and Gary Lavalette and consultant Ronnie Medina

Absent: Jake Galary and Michael Kelly

Whitney McClees, Conservation Agent also in attendance

3. Request for Certificate of Compliance: SE 023-1239, CON 023-072: **Scotcut Neck Road/Overlook Lane, Map 29, Lots 1C, 1D & 1E**

Ms. McClees reviewed this was an Order of Conditions (OOC) issued August 1, 2016 and extended to August 1, 2022, extended by COVID State of Emergency to November 6, 2023. The work has been substantially completed and the applicant has submitted for a certificate of compliance.

The work was to cut overgrown vegetation for the purposes of performing land surveying, specifically to obtain topography and locate stone walls and pertinent site features. Said clearing will be performed with a track-brush cutting machine. No grubbing of the root systems was proposed. All cutting was to occur within upland areas with the exception of the access paths shown on the plans.

Clearing was done in preparation for the subdivision that has been permitted under another Order of Conditions. Despite the Order being issued before receiving a file number and comments from MassDEP, the work seems to have been done in substantial compliance with the issued OOC. There are no special conditions noted on the OOC. Recommendation is to issue a Certificate of Compliance for Complete Certification for Scotcut Neck Road/Overlook Lane, Assessors Map 29, Lots 1C, 1D, and 1E, SE 023-1239, CON 023-072

Mr. Dave Davignon has a conflict and did not ask about this specifically, he may be on later for other items.

Mr. Haworth asked if any member of the board wanted to weigh in on this, seeing and hearing none he opened to the public, raise hand, use chat feature or unmute and state first and last name. Seeing and hearing none confirmed by Ms. McClees.

Mr. Haworth made a motion to issue a Certificate of Compliance for Complete Certification for Scotcut Neck Road/Overlook Lane, Assessors Map 29, Lots 1C, 1D, and 1E, SE 023-1239, CON 023-072,

seconded by Ms. DeSalvatore, no discussion, roll call vote, 5-0 in favor, motion passes unanimously.

4. **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 August 2, 2021**
Notice of Intent filed after-the-fact by Patrick Carr, A1 Crane Company, Inc., for the paving of an existing pervious parking area with concrete at the property located at 86-88 Middle Street, Assessors Map 11, Lots 6D, 6E, & 7. Work to take place in Land Subject to Coastal Storm Flowage.

Mr. Haworth made a motion to continue SE 023-1324, CON 023-153: **86-88 Middle Street** to August 2, 2021 at applicant's request, seconded by Ms. DeSalvatore, no discussion, roll call vote, 5-0 in favor, motion passes unanimously.

If online for 86-88 Middle Street it will not be heard tonight, it will be heard August 2, 2021, you will not be re-notified.

- b) SE 023-1356, CON 023-229: **12-18 Rio Way – request for continuance to August 2, 2021**
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 SE 023-1356, CON 023-229: **12-18 Rio Way** to August 2, 2021 at applicant's request, seconded by Ms. DeSalvatore, no discussion, roll call vote, 5-0 in favor, motion passes unanimously.

If online for 12-18 Rio Way it will not be heard tonight, it will be heard August 2, 2021, you will not be re-notified.

- c) SE 023-1344, CON 023-207: **10 Nelson Avenue – request for continuance to August 2, 2021**
Notice of Intent filed after-the-fact by Gerald Delano for the repair and reconstruction of a concrete groin and splash pad along the shoreline, including adding a cap to the top of the concrete revetment and stabilizing the disturbed lawn area by loaming and seeding at the property located at 10 Nelson Avenue, Assessors Map 43, Lot 30. Work to take place on Coastal Bank, Rocky Intertidal Shore, Coastal Beach, and Land Subject to Coastal Storm Flowage.

Mr. Haworth made a motion to continue SE 023-1344, CON 023-207: **10 Nelson Avenue** to August 2, 2021 at applicant's request, seconded by Ms. DeSalvatore, no discussion, roll call vote, 5-0 in favor, motion passes unanimously.

If online for 10 Nelson Avenue it will not be heard tonight, it will be heard August 2, 2021, you will not be re-notified.

- d) SE 023-1332, CON 023-173: **18 Bass Creek Road – request for continuance to August 2, 2021**
Abbreviated Notice of Resource Area Delineation filed by John Kalife requesting confirmation of a boundary delineation of a Bordering Vegetated Wetland at the property located at 18 Bass Creek

Road, Assessors Map 43C, Lots 296, 298, 300, 302, 304, 306, 309, 310, and 311.

Mr. Haworth made a motion to continue SE 023-1332, CON 023-173: **18 Bass Creek Road** to August 2, 2021 at applicant's request, seconded by Ms. DeSalvatore. Ms. McClees added that after the last meeting she was asked to get a status update from the applicant, the applicant asked for a continuance and she reached out for a status update and have not yet received one. As soon as she gets one she will pass along to the board. No further discussion, roll call vote, 5-0 in favor, motion passes unanimously.

If online for 18 Bass Creek Road it will not be heard tonight, it will be heard August 2, 2021, you will not be re-notified.

- e) SE 023-1345, CON 023-206: **2 Oxford Street – request for continuance to August 2, 2021**
Notice of Intent filed by Robert Weeks, 2 Oxford Street, LLC, for the construction of a fixed pier, gangway, and floating docks at the property located at 2 Oxford Street, Assessors Map 13, Lot 1. Work to take place in Land Under the Ocean, Land Containing Shellfish, Land Subject to Coastal Storm Flowage, and the 100-foot buffer zone to Coastal Beach.

Mr. Haworth made a motion to continue SE 023-1345, CON 023-206: **2 Oxford Street** to August 2, 2021 at applicant's request, seconded by Ms. DeSalvatore, no discussion, roll call vote, 5-0 in favor, motion passes unanimously.

If online for 2 Oxford Street, it will not be heard tonight, it will be heard August 2, 2021, you will not be re-notified.

Request for Determination

- f) CON 023-235: **19 James Street**

Request for Determination of Applicability filed by Dominic Caruso for the construction of a 12-foot-by-18-foot shed on sonotubes at the property located at 19 James Street, Assessors Map 2, Lot 142. Work to take place in Land Subject to Coastal Storm Flowage.

Ms. McClees shared screen and reviewed this is a flood zone project, it falls entirely in a velocity flood zone. The applicant is proposing to construct a 12-foot-by-18-foot shed on sonotubes in same location as the current shed.

The entire property falls within the velocity flood zone (VE-15). It is possible that the larger shed in the velocity flood zone may have additional flood zone requirements per FEMA that the applicant will need to address when he applies for a building permit. FEMA may require sheds over 100 square feet in the velocity flood zone to comply with elevation requirements, but the applicant will need to confirm with the Building Commissioner prior to construction. The project does not appear to have a negative impact on storm damage prevention or flood control as long as it complies with all applicable flood zone regulations.

Ms. McClees recommends closing the public hearing and issuing a Negative 3 and Negative 6 Determination with the two conditions outlined in the staff report, one related to getting all applicable permits and the other related to complying with all flood zone regulations.

Mr. Dominic Caruso, 19 James Street on for this property. He had no questions or comments,

sounds like just need to go for building permit and go from there. Mr. Haworth said yes that would be with the Building Department. Mr. Haworth has no issues with the project, pretty straightforward and appreciates his filing properly due to being in a flood zone.

To the board, any comments, concerns or questions.

Mr. Lavalette asked what is the minimal height he can build so it does not affect the flowage of water. Ms. McClees asked what he meant by height does he mean space under she shed. Mr. Lavalette said yes, space under the shed, what does the applicant have to maintain under the shed. Ms. McClees said she is not sure if FEMA has a specific distance requirement off the ground, typically sonotubes will elevate the structure slightly. FEMA's requirements are more to the size of the structure in a velocity flood zone more so than the space off the ground.

Mr. Haworth said under the FEMA requirements because it is not an actual inhabited space does not apply that way. Ms. McClees said unless over 100-feet but that would be enforceable by the Building Department.

Mr. Lavalette said he was just curious on minimum. Ms. McClees said less in size and more in anchored appropriately.

Mr. Haworth asked if other comments, questions or concerns on 19 James Street, seeing and hearing none he opened to the public, anyone wishing to be heard, raise hand in zoom feature, indicate in chat or unmute and speak first and last name. Seeing and hearing none confirmed by Ms. McClees.

Mr. Haworth made a motion to close the public hearing for CON 023-235, 19 James Street, and issuing a Negative 3 and Negative 6 Determination with the following conditions: CAP-3, FZ-1: All work shall comply with all local, state, and federal flood zone regulations, including, but not limited to, regulations regarding fill in the flood zone. Motion seconded by Mr. Lavalette, no discussion, roll call vote 5-0 in favor, motion passes unanimously. Ms. McClees will be in touch about next steps.

Notices of Intent

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

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

Ms. McClees shared screen and reviewed. Since filing first submitted the original filing was split. This NOI is a result of an Administrative Consent Order with Penalty (ACOP) with MassDEP that establishes corrective actions to bring the property into compliance. The applicant proposes to: repair the existing groins, dredge under the bridge to allow the bridge channel to be deep enough for small crafts to navigate and dispose of the dredge material offsite, repair the southeast end of the causeway side slope by placing large stones.

MA DMF has provided commentary on the ACOP project with regard to potential impacts to several marine fisheries resources and habitat. All items in peer reviewers comments have been addressed. Recommend closing the public hearing and issuing an Order of Conditions under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw with the recommended conditions outlined in the July 12, 2021 staff report, plans dated June 10, 2021. Ms. McClees wanted to note that this will need wet ink signatures because this is registered land.

Mr. Rich Rheume, Prime Engineering for the applicant on tonight, nothing to add.

Mr. Haworth asked if we have the funds to retain the peer review process to make sure the work is completed with each action the board has requested. Ms. McClees said we have the peer review deposit from the applicant and used to peer review this process as going through the filing. In one of the recommended conditions and in one of the conditions for the order the board has already issued it says it will be overseen by a consultant of the commissions choosing paid for by the applicant. For the other filing related to buffer zone mitigation and planting could opt to continue with that peer reviewer and for this project may be more appropriate to find a peer reviewer that has more experience with dredging and coastal engineering structures, that is up the commission's discretion. Does say third party consultant will oversee chosen by the commission at applicant's expense.

Mr. Haworth said wanted to have that discussion, and peer review process understood before voting. Mr. Haworth asked Mr. Rheume if his client was aware of and understands this process. Mr. Rheume said yes, and agrees more appropriate to have someone with an engineering background to oversee as opposed to the current peer reviewer who is very well suited for establishing the meadows for the other project. Mr. Haworth wants to make sure that happens and the process is seamless.

Mr. Rheume said this still needs to go through the waterways process so they have filed a waterways application with DEP to get this permitted. Still need town signatures from Planning and Building and then processing through DEP Division of waterways for the dredging and the seawall. The other order written is fully approved and does not need DEP approval and will proceed as soon as the proper season is ready.

Mr. Haworth asked Ms. McClees if this can be approved tonight and if she would be overseeing that process to make sure is seamless. Ms. McClees said she would be and the other order had a very specific timeline that was recommended to enforce to make sure it gets done this growing season. Did not include a condition in this project for a specific timeline because it is Chapter 91 and Army Corp. and potentially other permitted agencies that need to take a look at this that could prolong the timeline and did not want to box the applicant in to not being able to adhere to a timeline while waiting for other agencies. The applicant is required to provide copies of all other permits they are required to get to us so once she has them she can then start the next steps on oversight. Mr. Haworth said that is what he wanted to make sure of.

Ms. DeSalvatore said she assumes DEP and other agencies would contact us when they notify the client. Ms. McClees said not always. Mr. Haworth said this is why we like for them to tell us. Ms. McClees said we would get a copy of the Chapter 91 waterways license but for 401 water quality or Army Corp we may not get a copy so one of the standard conditions is that the applicant is required to provide a copy to us so we know they have done that other permitting.

Mr. Haworth asked if any other member of the board had comments, questions or concerns, seeing and hearing none asked if any member of the public was on and wanted to be heard on 1 Bella Vista Island this is the one opportunity. Raise hand, indicate in the chat or unmute and speak first and last name, seeing and hearing none, confirmed by Ms. McClees.

Ms. DeSalvatore had her hand up. She said seems might need to be a necessity that within a certain timeframe after all permits are received that they will initiate beginning the work. Ms. McClees said if the board feels more comfortable saying as soon as all other permits are issued to the applicant the applicant is required to contact the commission to initiate next phases of work. The harbormaster wants to be on-site for all dredging and there is other constraints on DMF for time of year so if the other permits issued in December the DMF says no silt producing activities can occur between January 1 and May 31. There are a couple of overlapping timelines that we want to be respectful of. Ms. DeSalvatore said at least say within a year after receiving all permits the work will begin.

Mr. Haworth said they are only good for three years after today or they would have to come back to us anyway. Ms. DeSalvatore said the dredging was due 10 years ago. Ms. McClees said the dredging cannot be done until the other permits are received.

Mr. Rheume added the consent decree from DEP has severe penalties for not performing on a timely basis. Ms. DeSalvatore said then we don't need one.

Mr. Haworth confirmed no public comments and to the board for any other comments. Mr. Haworth made a motion to close the public hearing for SE 023-1309, CON 023-110, 1 Bella Vista Island, and issuing an Order of Conditions under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw with the recommended conditions and approve plans dated June 10, 2021, 47 conditions outlined in staff report dated July 9, 2021. Seconded by Ms. DeSalvatore, no discussion, roll call vote. Concern came up with the two abstentions of Corey Pietraszek and Karen Isherwood leaving only 3 eligible board members to vote. Mr. Haworth said no quorum. Ms. McClees said this has come up before and there is an affidavit that the applicant can sign that will satisfy for purposes of quorum because of how long it has taken. Ms. McClees can work it out with Mr. Rheume after confirming with the state. Mr. Haworth said worst case scenario, withdraw without prejudice and refile and get the approval.

Ms. McClees will confirm with the state and coordinate with Mr. Rheume on the affidavit. Mr. Haworth advised no quorum to vote on previous motion.

Mr. Haworth made a motion to continue motion to continue the public hearing for SE 023-1309, CON 023-110, 1 Bella Vista Island to August 2, 2021 at the applicant's request, seconded by Ms. DeSalvatore, no discussion, roll call vote, 5-0 in favor, motion passes unanimously.

h) 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, applicant revised plans after the last meeting. The

revised plans dated June 30 incorporate several changes discussed at the previous meeting. Inclusion of the wetland mitigation areas and areas of wetland fill on the overall site plan. Inclusion of a stone check dam in the existing drainage channel. Inclusion of a riprap apron and rain garden to address water flow from the driveway. Inclusion of a small section of split rail fence with Virginia rose, marked with a protected wetlands marker. The applicant also submitted a variance request under the buffer zone regulations related to the zoning restrictions for the property.

If the Commission is satisfied with the changes the applicant has made and the submitted variance request, recommend closing the public hearing and issuing an Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the recommended conditions in the July 8, 2021 staff report. If the commission is not satisfied with the changes, recommends asking applicant to request a continuance.

Mr. Michael Koska on for the applicants. As Ms. McClees explained to get some storm water management they have a 5-foot wide and deep rip wrap apron at the corner of the driveway, the corner is at 10.5, check dam is at 10. From there it would spill into the rain garden, which would be planted with switch grass that was the choice of botanist, Ken Thomson. Felt that a split rail fence and Mr. Thomson suggested Virginia rose along it. Did submit to Ms. McClees what some other towns have used for signage. They will put as many signs as the commission would like, they are about a 4-5" diameter and mote in sync with the wetlands and can be put on the split rail fence so that everyone knows it is a sensitive area. Proposed a stone check dam before redirecting the swale and hopefully have satisfied the commission and agent.

Mr. Haworth said in previous projects have had applicants made up signs for split rail fence and are used in some areas of town and Harbormist Condominiums, there is a template from the one they did. Mr. Koska said he bought one in East Bridgewater, it is used in East and West Bridgewater and gave it to Ms. McClees as a sample and if they are something the Conservation Commission would entertain will get them made, they were \$3 each, metal and can be screwed on. Mr. Haworth said last request from what he remembered was to have it on every other post.

Mr. Haworth said project is not exactly what the commission would like to see, does meet the regulations from what can see on the plan. The driveway seems a bit extensive and understand the need to put the garage underneath the home and in order to access it going to need the driveway, would like to see something a little less than that size. It's an approvable project, meets the regulations as he sees it. Open to the board for comments, questions, concerns.

Ms. McClees added, to the point on the regulations, technically with the way the lot is situated before where the wetlands are, without the variance, would have a very hard time situating the house outside of the 50-foot buffer zone, would put it off the lot so that was the reason for the variance request. To conform with zoning setbacks it does put the structure within the 25-50-foot buffer zone. Mr. Haworth said when he said regulations he meant DEP, when it comes to the buffer zone variance, that is available on the website, don't have an issue with it, does understand the need to meet the Town Zoning setbacks, those are a requirement. Prefer all newly constructed homes meet the setback.

Ms. DeSalvatore said this is a lot which should never has been approved and shows how with a subdivision we need to have careful approval of lots not just the subdivision as a whole. Personally have an issue with the driveway still; think it doesn't need a turnaround but do see added some protections for drainage. Mr. Haworth added the gravel driveway vs. asphalt. Ms. DeSalvatore said

yes, the blue stone is a good choice for a flood zone. She said those are her comments; do not think the lot should have been approved. Should be approving lots and not just roadways and same for the last subdivision.

Mr. Lavalette said have no problem with what is drawn, client has come back and done all we asked. The question he has is he went down and reviewed this, there has been no maintenance on this subdivision since it has been brought to bear here. Wondering in the future who will maintain all of this, understand what the client is trying to do here and this is a bigger problem now that this is the last house going on this subdivision. There has been no maintenance whatsoever and thought when this subdivision went in initially there was some type of maintenance plan. Mr. Haworth pointed to the conditions Ms. McClees outlines and perpetual conditions 57 through 62 covers just that, who will be maintaining the rain gardens, rip wrap, check dams, it is in the Order of Conditions. Mr. Lavalette said he understands on this property but what about the subdivision as a whole. There should be something for the whole, what water is coming off this house is actually the last one on the subdivision so there should be some Order of Conditions so the rest of the houses all go together or maintained because this house will take the brunt of not being maintained.

Mr. Haworth said we are limited based on the filing to this particular lot, cannot require anything outside of this lot even if the water is directed to we can only handle it when it hits this map and lot which is what we have in the perpetual conditions and Ms. McClees can look the others up.

Ms. McClees said it has no bearing on this filing but can take a look in the files to see if any continuing conditions associated with the subdivision. Subdivisions that are four lots or fewer are not required to comply with Mass DEP stormwater standards so while all of it is the best interest to maintain in good working order. It would not necessarily have to comply with Mass DEP stormwater standards, would have to comply with Planning Board stormwater standards. Would be under the Planning Board and can touch base with Mr. Paul Foley to review historical record from when the subdivision was done and can look in Conservation records. For this filing we cannot address that with this filing.

Mr. Lavalette understands and thought there might be something that covered the whole subdivision. This is the last piece of property and if anything happens and not maintained well this client will get the brunt of something that hasn't been maintained since its creation. No problem with today's submission.

Ms. Isherwood said for more protection of the 25-foot buffer zone, would like to see the Virginia rose added to the recommended condition A-13, to help increase the protection to the buffer zone. Ms. McClees said it could be a simple addition to A-13, reading "the split rail fence and Virginia rose shall be extended...etc." to address this. Mr. Koska said he is there with his client and he has no issue with that.

Ms. DeSalvatore asked if there was enough sun over in that area for roses. Mr. Koska said client is paying for them and they can get more. Ms. DeSalvatore said he would think so, there is some shadowing from some trees, in that area there are no mature tall trees. Ms. DeSalvatore said she would recommend rose or clethras to leave it flexible. Mr. Koska said that would be OK as well. Ms. McClees said to take both Ms. Isherwood and Ms. DeSalvatore's comments into account it would state in condition A-13 "the split rail fence and Virginia rose or native shrub equivalent shall be extended...etc."

Mr. Haworth asked for any other member of the board who wanted to weigh in and that included Mr. Medina as well. Seeing and hearing none, he opened to the public who wanted to be heard on 1 Boulder Court, the one and only opportunity. Raise hand using zoom feature, unmute and speak first and last name or indicate in the chat that you would like to speak. Seeing and hearing none, confirmed by Ms. McClees. Mr. Haworth asked for any final thoughts, comments, questions or concerns from the board. No further discussion.

Mr. Haworth made a motion to close the public hearing on SE 023-1347, CON 023-210, 1 Boulder Court, and issue an Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the 62 recommended conditions as outlined in the staff report dated July 8, 2021, with condition A-13 being modified to read: "the split rail fence and Virginia rose or native shrub equivalent shall be extended to the east from flags KT-4 to KT-1 parallel with the wetland line and maintaining 10 feet off the wetland line on the upland side. The split rail fence shall be extended to the west 45 feet to test pit location B1, following the wetland line between KT-14 and test pit B1." Plans dated June 30, 2021 and mitigation plan dated May 17, 2021. Seconded by Ms. Isherwood, no discussion, roll call vote, 5-0 in favor, motion passes unanimously. Ms. McClees will be in touch for the next step.

- i) SE 023-1352, CON 023-225: **Scoticut 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 Scoticut Neck Road/Overlook Lane, Assessors Map 29, Lot 1E. Work to take place in the 100-foot buffer zone to Bordering Vegetated Wetland.

Ms. McClees said Mr. Dave Davignon asked for this item i) be tabled, he is on his way from another meeting and is hoping to be on before the meeting is adjourned.

Mr. Haworth made a motion to table item i) SE 023-1352, CON 023-225: **Scoticut Neck Road/Overlook Lane (Map 29, Lot 1E)** to later in the meeting, seconded by Ms. DeSalvatore, no discussion, roll call vote, 5-0 in favor, motion passes unanimously.

If online for Scoticut Neck Road/Overlook Lane it has been tabled until later in the meeting.

- j) SE 023-1360, CON 023-236: **6 Cherrystone Road** Notice of Intent filed by Alexander and Sheila May for the demolition of the existing cottage and construction of a new single-family dwelling at the property located at 6 Cherrystone Road, Assessors Map 43B, Lots 148 & 149. Work to take place in Land Subject to Coastal Storm Flowage.

Ms. McClees said Mr. Dave Davignon asked for this item j) be tabled, he is on his way from another meeting and is hoping to be on before the meeting is adjourned.

Mr. Haworth made a motion to table item j) SE 023-1360, CON 023-236: **6 Cherrystone Road** to later in the meeting, seconded by Ms. Isherwood, no discussion, roll call vote, 5-0 in favor, motion passes unanimously.

If online for 6 Cherrystone Road it has been tabled until later in the meeting.

- k) SE 023-____, CON 023-237: **1 & 2 Marsh Island**

- l) Notice of Intent filed by Buzzards Bay Coalition for invasive plant vegetation management at the property located at 1 and 2 Marsh Island, Assessors Map 15, Lot 1, and Assessors Map 17, Lot 129. Work to take place in Riverfront Area, Land Subject to Coastal Storm Flowage, Bordering Vegetated Wetland, Salt Marsh, and Buffer Zone.

Mr. Haworth asked if there was an SE number available for this item. Ms. McClees said we do not have it yet so cannot close the public hearing, could discuss to the point to see if the board wanted needed to have any other changes or comments or anything like that and that way ready to go for next meeting and we should have a file number by that point.

Mr. Haworth opened the public hearing on item k) CON 023-237: **1 & 2 Marsh Island**

Ms. McClees shared screen and reviewed. This is part one of a several phase restoration project. Applicant is proposing approximately an 8.2 acre of invasive plant control and management as part of the larger restoration project. The applicant is proposing to control primarily phragmites and a small area of other invasive plants. They are proposing control for at least two growing seasons ahead of the future salt marsh restoration project and annual monitoring and spot treatment of invasive plants is proposed to continue thereafter. They are proposing to control the invasive species onsite through a combination of manual cutstem treatments as well as foliar herbicide application to limit their presence and prevent their continued spread on the property. Management techniques are species-specific and include: Cut-stem treatments for woody species, Selective foliar treatments for herbaceous species and Hand wiping or cut and drip applications when near sensitive plant communities.

A solution of herbicide, surfactant, and marking dye will be used for all treatments and conducted by licensed contractors. Beginning to control these plants this summer ahead of the larger restoration project, which is proposed for fall 2022, will result in a much greater chance of success to establish native vegetation in areas of newly created salt marsh. In subsequent years, monitoring of treated areas will be conducted annual and spot treatments applied as needed with foliar spray, hand wiping, or cut-stem treatment of herbicide by pesticide-licensed staff. Hand pulling will be utilized where possible for species such as spotted knapweed.

DEP has not issued a final number for this project so we cannot close the public hearing until that happens. Outlined a draft Order of Conditions for tonight, ultimately it is an invasive species management project as part of a larger saltmarsh restoration.

Sara Quintal, Restoration Ecologist from Buzzard's Bay Coalition is online for this project. She said Ms. McClees did a great job summarizing and would add the BBC has successfully done other restorations at other treatment sites around our watershed and been doing phragmites management in the same manner at two sites in Falmouth, one site in Dartmouth and most recently ahead of a dam removal project in Wareham. They are actively going to the sites and in follow-up phase and go in for annual monitoring and spot treatment to ensure that the populations they spent time and energy controlling stay controlled and manageable and this is what they intend to do here as well.

Mr. Haworth said has no problem with this at all, feels they will handle it appropriately and they know more about invasive species management that he does. Really has no comment other than we have to get rid of these invasive species before they completely destroy everything we really want there. He opened to the board for comments, questions or concerns.

Mr. Lavalette said this is a great plan, fell in love with that area. This spring was the area where 14 volunteers took 2200 lbs. of trash from that shoreline, it is like a magnet to the harbor where everything ends up and that would be a help to get rid of some of those invasive species.

Ms. DeSalvatore said she was not sure of name of the group who did a cleanup at the state beaches and they send the trash back to the companies that produced it and might be willing to coordinate with the cleanup effort. Time to look at all the plastics we produce and where they wind up.

Ms. Quintal said it was operation clean sweep that recently started that initiative of mailing the trash back. There have been other volunteer groups assisting them which has been wonderful and the volunteers have picked up a huge amount of trash especially over the last year. They have expressed their continued interest in doing so, operation clean sweep is one of them. Looking forward to working with those groups to collectively make the site a better place.

Mr. Haworth asked for any other board comments and then opened to the public who wanted to be heard, raise hand in zoom feature, indicate in the chat or if on the phone, unmute and speak first and last name at this time. Confirmed there were no additional comments. Cannot close the public hearing because we do not have an SE number from the state.

Mr. Haworth made a motion to continue SE 023-____, CON 023-237: **1 & 2 Marsh Island** To August 2, 2021 at applicant's request, seconded by Mr. Lavalette, no further discussion, roll call vote, 5-0 in favor, motion passes unanimously.

5. Violations/Enforcement Orders/Cease and Desist Notices

Ms. McClees said there is no update on ongoing violations or enforcement orders. There is one that is outstanding that we are waiting for more information and they have until August 2, 2021.

6. Correspondence

Ms. McClees said one notice from Eversource they will be doing some utility line maintenance around town and putting out the erosion controls to do the maintenance. Because this is utility work they are exempt from the WPA but they do notify us as a courtesy.

No questions from the board on this.

7. Ongoing Projects

Noting at this time to update

8. Upcoming Projects

Ms. McClees said filing deadline for August 2, 2021 was today and only one new Request for Determination for the August 2 meeting. Did receive a request today for a pre-application site visit for two upcoming project but that would not be until a later August meeting.

9. General Business

a) Bills

\$155 to Bristol County Registry of Deeds for recording fee for the land transfer for the Nonquit Avenue parcels that we accepted as a donation

\$355 to MACC for five training courses for Ms. Isherwood
\$800 Neighborhood News for legal ads
\$550 to Power Options for annual membership dues
\$303.66 to Ms. McClees for 2021 mileage reimbursement
\$400 John Rockwell for peer review services at 14 Plaza Way
\$20 MSMCP (Massachusetts Society for Municipal Conservation Professionals) for FY22 dues
\$548 to MACC for FY22 dues and 9 handbook subscriptions, enough in budget for all including consultant to have access to the MACC online handbook, a ton of information about resource area projects, performance standards, summarizing and rules and regulations. All should get an email soon with access to that.

a) Upcoming MACC Trainings

Many of the upcoming trainings are remote due to COVID. John Rockwell will be teaching his wetland delineation course in September, two rounds of them, he teaches them in two parts across 2 Saturdays, one on soils and one on vegetation. Two opportunities in September if interest let Ms. McClees know so she can get you registered with FY22 budget. Mr. Rockwell is out of Marion, MA and is the closest. Typically half the day at the Marion Townhouse and the other in the field at a property where he will go through a delineation. Let Ms. McClees know if interest in any trainings offline.

David Davignon joined the meeting for Notice of Intent items i) and j) that were tabled earlier

NOI item 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.

Ms. McClees shared screen and reviewed, from last meeting the commission had requested information related to the buffer zone regulations, applicant submitted the variance request noting the only alternative to what has been proposed is a no-build scenario which would constitute a taking of the property. Previous to that the applicant had revised the plans to include a number of planting mitigations, reduced the scale of the project, provided a permanent boulder as a visual no-touch zone demarcation. If the commission feels that the submitted variance request and other changes that the applicant has made have addressed all their concerns recommendation is to close the public hearing and issue an Order of Conditions under both the Wetlands Protection Act and the Fairhaven Wetlands Bylaw with the conditions outlined in the July 9, 2021 staff report.

Mr. Haworth said at last meeting it was left with the applicant if they submit the variance and we agreed with it we would be good to go on this project. Want to go to Mr. Davignon if he has comments or concerns to add.

Mr. Dave Davignon, Schneider, Davignon & Leone representing Ms. Lauren Francis. He has nothing to add, concurs with all said.

Mr. Haworth opened to the board. Seeing and hearing none. Mr. Haworth opened to the public who wanted 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 made a motion to close the public hearing for SE 023-1352, CON 023-225: **Scotcut Neck Road/Overlook Lane (Map 29, Lot 1E)** and issue an Order of Conditions under both the Wetlands Protection Act and the Fairhaven Wetlands Bylaw with the 54 conditions outlined in the July 9, 2021 staff report, we will approve the plans dated June 7, 2021 and approve the variance. Motion seconded by Ms. Isherwood, no discussion, roll call vote 4 in favor and 1 abstention from Ms. DeSalvatore. Motion passes.

NOI item j) SE 023-1360, CON 023-236: 6 Cherrystone Road

Notice of Intent filed by Alexander and Sheila May for the demolition of the existing cottage and construction of a new single-family dwelling at the property located at 6 Cherrystone Road, Assessors Map 43B, Lots 148 & 149. Work to take place in Land Subject to Coastal Storm Flowage.

Ms. McClees shared screen and reviewed. This is a flood zone only project. The applicant is proposing to demolish the existing cottage and construct a new flood zone compliant single-family dwelling.

Ms. McClees showed on screen with cursor the dotted line showing the demarcation of the flood zone, half the property falls in Zone AE and the other is in Zone X or the 500-year flood plane or not the regulatory flood zone per the WPA. The work within the flood zone includes a portion of the house and decks, the propane tanks, a portion of the site grading, and a portion of the electricity/telephone/cable lines. There are three mature trees on the lot. It doesn't appear they are proposed to be removed. The house is proposed to be flood-zone compliant with the appropriate flood openings to comply with the 100-year flood regulations.

Overall, this project appears as though it will not have a negative impact on flood control and storm damage prevention. Ms. McClees recommends closing the public hearing for SE 023-1360, CON 023-236, 6 Cherrystone Road, and issuing an Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the conditions outlined in the staff report. Also, to note, this is another filing that is registered land and will need wet ink signatures as opposed to electronic signatures.

Mr. Dave Davignon, Schnieder, Davignon & Leone representing Alexander and Sheila May, property owners. Only thing he would add is that the project as proposed does require setback variances from the east side towards Cottonwood Street and the rear side opposite Cherrystone Road. It also needs Building coverage, it was over by 0.7% which is the shed, the house itself meets the 15% building coverage requirement. Those variances were approved last Tuesday evening by the Board of Appeals. Mr. Haworth asked if overall lot size was undersized. Mr. Davignon said yes it was and required a special permit for tear down, rebuild for the lot being undersized.

Mr. Haworth said the only thing he does not see and it is more of a Building Department issue is in an AE zone the propane tanks need to be strapped. Mr. Davignon said they do and Mr. Haworth said he did not see it noted on the plan and make sure it does not get missed. Mr. Davignon said it was noted.

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

Ms. DeSalvatore asked if there was root protection for the trees. Ms. McClees said it is included in the list of conditions.

Mr. Haworth opened to the public, raise hand in zoom feature, indicate in chat or unmute and speak first and last name. Seeing and hearing none, confirmed by Ms. McClees.

Mr. Haworth made a motion to close the public hearing on SE 023-1360, CON 023-236: **6 Cherrystone Road** and issue an Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the 44 conditions outlined in the July 9, 2021 staff report, approving the plans dated June 11, 2021. Motion seconded by Ms. DeSalvatore, no discussion, roll call vote, 5-0 in favor, motion passes unanimously.

b) Next Meeting: August 2, 2021

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

Ms. DeSalvatore offered to chair the meeting on August 2, 2021 in case Mr. Haworth cannot, Mr. Haworth said in the event he cannot make it and communications are down he would appreciate and he would try to join first, if cannot he appreciates it, Ms. DeSalvatore is next in seniority. Ms. McClees is also available for support. Mr. Haworth said must physically call the votes and open the public hearings Ms. McClees can help direct. In his absence would need to physically read in and open the public hearings, call the roll call votes too.

Ms. DeSalvatore asked if there was a quorum for Middle Street. Mr. Haworth said it is being looked at. Ms. McClees said she is confirming all the ones lingering and doing a double-check on attendance, etc. and following up with applicants as needed for quorum issues.

Ms. DeSalvatore, aside from the affidavit they can resubmit. Mr. Haworth said they have to withdraw without prejudice, refile and might need state. Ms. McClees said that is why she is checking with the state.

Mr. Haworth said going forward, pushing as Chair to make sure projects are set and ready to go within 2-3 meetings tops. Ms. McClees said the recent one and done are in large part due to meeting with her first. Mr. Haworth said Ms. McClees can prep the applicants for what the board wants and will ask.

Mr. Lavalette said he has been around checking some of the work sites and making sure barriers are up, confined to particular spot, etc. Mr. Lavalette said at some point projects like Torrington, Cove need follow up, gone by the wayside. Ms. McClees said with new fiscal year she has time to start putting together. Mr. Lavalette said to give him contact info and he can reach out. Ms. Isherwood said she has also offered and is available if there is a list of locations.

Mr. Haworth asked if Ms. Isherwood has her ID. Ms. McClees said she will be working the list of new members to get their IDs. Mr. Haworth said if going on a cease and desist and no ID bring another board member with an ID or Ms. McClees. Ms. DeSalvatore asked about renewing. Mr. Haworth said they expire on your reappointment. Ms. McClees said check badge and if it is expired go the police station to renew.

Mr. Lavalette said he would contact Ms. Isherwood to go along to follow-ups. Ms. DeSalvatore can ride along too. Mr. Lavalette said getting out there to let people know we are out there and concerned and had sites that get ugly, barriers are not up. Make the appearance that you have to work within your site and not affect the whole neighborhood.

Ms. McClees said two permits from tonight that need wet ink signatures so please stop in as soon as you can this week so they can be issued.

Ms. DeSalvatore on the comment on sonotubes and flood zone and a discussion she had with Ms. McClees earlier, where we need to do some standards in the bylaw for the flood zone. Aside from meeting FEMA requirements for flood zone, we might be looking at the impact of vertical surfaces in the flood zone and whether or not we want to require a certain height. Mr. Haworth said keep in mind the higher you go up on footings the weaker the footing becomes. Don't want to require something that is so expansive, most sheds sit on an 8-12' footing. As you go up the footing has to increase in size and structural integrity so want to be careful we require something that would be outside of Building Code requirement or too weak to support the structure going on top.

Ms. DeSalvatore continued and said we should be looking at paved surfaces in the flood zone and whether or not we want to permit them and what kinds of materials. Blue stone was a good choice for a flood zone, pavers are not and looking at vertical surfaces. When she went to a talk at MACC they do not recommend breakaway doors because they only break away at an extreme flood and do not protect at intermediate. Ms. Isherwood added that hopefully the future is encouraging people away from the coastline instead of continuing to build along it. Mr. Haworth said a good hurricane and people will learn lessons.

Ms. McClees added on the two points, MassDEP is considering regulations on the WPA for flood zones and she might have an intern later this summer to potentially help. Mr. Haworth said if DEP is coming out with regulations we might want to hold off and see theirs first and formulate ours around theirs.

Mr. Haworth said next meeting is August 2, 2021, he will attempt to make it, if he cannot Ms. DeSalvatore will Chair it and made a motion to adjourn, seconded by Mr. Lavalette, no discussion, roll call vote 5-0 in favor, motion passes, meeting adjourned at 8:10PM.

Respectfully submitted,
Amy Almeida
Recording Secretary