

**Conservation Commission  
September 20, 2021  
Minutes**

1. **Chairman's Welcome and Media Notification:** Mr. Haworth opened the meeting at 6:36p.m. Ms. McClees read the protocol for Zoom meetings and Open Meeting Law.

Ms. McClees 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 will be televised at a later date and some attendees participated by phone and video conference and used chat on Zoom.

2. **Quorum/Attendance:** Present: Chairman, Geoff Haworth, Michael Kelly, Jake Galary, Gary Lavalette, Amy DeSalvatore, Karen Isherwood. Non-voting consultant, Ron Medina was also present. All members were attending via Zoom. Staff: Whitney McClees, Conservation Agent  
Absent: Cory Pietraszek

3. **Review and approve minutes:**

- a) Commission did not have the August 30, 2021 minutes to approve.

4. Request for Certificate of Compliance: SE 023-1311, CON 023-108: **4 Pequod Road**

Ms. McClees explained the proposed repaving and drainage project at the Postal Service facility on Pequod Road. The completed work is substantially in compliance with no encroachment into wetland area, which is 50 feet from the edge of the building. The as built submitted is also substantially compliant. The Operations and Maintenance Compliance Statement was submitted, which ensures stormwater Best Management Practices (BMPs) are being implemented.

Ms. McClees recommended issuing a Certificate of Compliance for complete certification with continuing conditions that were outlined in the staff report.

Mr. Haworth made a motion to issue a Certificate of Compliance for complete certification at 4 Pequod Road, with continuing conditions outlined in the report and was seconded by Mr. Galary. The motion passed unanimously via roll call vote (6-0).

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

**Continued to a Future Date**

- a) SE 023-1332, CON 023-173: **18 Bass Creek Road – *continued to a date uncertain***

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.

**Requests for Continuance**

- b) SE 023-1345, CON 023-206: **2 Oxford Street – *request for continuance to October 4, 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 October 4, 2021 at the applicant's request, and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (6-0).

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

c) **CON 023-241: 39 Nakata Avenue**

Request for Determination of Applicability filed after-the-fact by Robert and Dana Ferreira for the installation of a fence at the property located at 39 Nakata Avenue, Assessors Map 43, Lot 114. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Coastal Beach.

Ms. McClees stated the applicants contacted her immediately upon receiving their stop work order and have not continued work since. The completed work thus far includes installation of a shadow box fence in a velocity flood zone, which satisfies FEMA's requirements for vertical structures in a velocity zone. The fence is being installed only on one side of the property, along the continuation of Nobska Avenue. Previously, there were a large strand of phragmites that afforded them some privacy. Their proposed fence does not appear to cause any barrier to wildlife. They are trying to reestablish the fence for privacy concerns, since the vegetation removal. The fence itself does not cause barriers or negatively impact storm damage.

Ms. McClees recommended closing the public hearing and issuing a Negative 3 and Negative 6 Determination under both the Wetlands Protection Act and the Fairhaven Wetlands Bylaw (Chapter 192), with two conditions outlined in the staff report.

Homeowner of 39 Nakata Avenue, Robert Ferreira, expressed concerns about the cat tails/phragmites that were removed. Without such buffer, a pond develops on their property in close proximity to their house. Mr. Ferreira asked if the town will plant vegetation to avoid erosion. He believed it acted as a great barrier and aided in water absorption. Mr. Ferreira stated the vegetation removal is beyond their proposed fence and not on their property; this land is town owned.

The Chair stated this issue is not on the agenda, so will not discussed. The applicant is Compliant with no further questions.

Ms. McClees investigated this vegetation removal and spoke with the Department of Public Works (DPW) superintendent and they did not conduct maintenance on that street.

Mr. Lavalette went to the property and he will also inquire to identify those responsible. He concurred with the applicant and believes someone is responsible for replacement.

Ms. DeSalvatore suggested native plants, in which no permit is needed.

Robert Ferreira stated this is the main reason for putting up a fence as a barrier.

Mr. Haworth gave input that native shrubs would soak up ground water.

Ms. McClees made the Board aware that replacing the vegetation within their property would not help with the flooding issue, as there is a retaining wall on the shore. The vegetation should be planted outside their property on the side of their house.

Mr. Haworth opened up the meeting for public comment and there were none.

Mr. Haworth made motion to close the public hearing for 39 Nakata Ave, CON 023-241, and issue a Negative 3 Negative 6 Determination under both the Wetlands Protection Act and the Fairhaven Wetlands Bylaw with two conditions outlined in the staff report dated September 13, 2021; motion was seconded by Ms. DeSalvatore. The motion passed unanimously with a roll call vote (6-0).

d) **CON 023-242: 5 Wamsutta Street**

Request for Determination of Applicability filed by David Lee for the installation of a shed at the property located at 5 Wamsutta Street, Assessors Map 42A, Lot 244. Work to take place in Land Subject to Coastal Storm Flowage.

Ms. McClees explained the proposed work is in an area subject to coastal storm flowage and velocity flood zone. The applicant is proposing to remove and construct a new shed, which is under the 100-square foot limit for sheds in the velocity flood zone. The project does not impose a negative impact on storm damage, prevention or flood control.

Ms. McClees recommended closing the public hearing and issuing a Negative 2 and Negative 6 Determination under the Wetlands Protection Act and Fairhaven Wetlands Bylaw. She also recommended speaking with the zoning enforcement officer to ensure all setbacks are appropriate.

Homeowner, David Lee, had nothing to add. The Board did not have any concerns to discuss.

Mr. Haworth made motion to close the public hearing for 5 Wamsutta Street, CON 023-242, and issue a Negative 2 and Negative 6 Determination under the Wetlands Protection Act and Fairhaven Wetlands Bylaw; seconded by Ms. Isherwood. Motion passes unanimously via roll call vote (6-0).

e) **CON 023-243: 78 Middle Street**

Request for Determination of Applicability filed by Gail Isaksen for the reconstruction of 90 feet of stone wall at the edge of the parking lot at the property located at 78 Middle Street, Assessors Map 11, Lots 11 & 165. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Coastal Beach.

Reconstruction of a 90-foot stone wall at edge of parking lot. Takes place in land subject to coastal zone flowage within 100-foot buffer zone to coastal beach.

Ms. McClees explained the stone wall is within 100-foot buffer zone to coastal beach. The project consists of an existing deteriorating stone wall on the property. The plan is to put stones back into configuration; stack stones with no cement. The work will be done from the upland parking lot side. No changes are proposed, just building up higher than the parking lot and is

also out of the geographical jurisdiction for Chapter 91, The Massachusetts Public Waterfront Act. There is no need to permit with the state.

There is an unpaved parking lot right up to the edge of the beach flanked on either side by paved parking lots, constructed with sea walls significantly higher than the subject property.

Ms. McClees recommended to close the public hearing and issue a Negative 3 and Negative 6 Determination under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with conditions outlined in the staff report.

Ms. Isaksen stated cement will be placed in the middle to mitigate deterioration. The wall will be erected 10 to 12 inches high (above the ledge), where there is a 3-foot drop between parking lot and the beach.

Ms. Isherwood questioned the applicant about the use of any concrete. The Board's report stated no sealer within the stones. Ms. Isherwood expressed her concern for small wildlife unable to traverse the wall. She preferred no cement, if possible. Either side has a riprap or stone retaining walls.

Mr. Haworth questioned if additional stone was shipped in and does the tide come up to the wall. Ms. Isaksen stated the tide only reaches the wall during a Moon tide.

Ms. DeSalvatore agreed that the addition of cement does complicate the project. She would like the wall to consist only of boulders and placed in a soft formation, since the wall is in velocity flood zone.

Ms. McClees corrected that the wall is in 100-year flood zone and above the Chapter 91, high tide line. The wall is within the hurricane barrier and is considered a retaining wall.

Ms. Isherwood still felt the comments need to be corrected.

Ms. McClees was also under the impression that no cement would be used, but that could have been her misinterpretation.

Mr. Haworth stated concrete can be used without sealing as a solid wall.

The applicant agreed with the Board in that it is not a complete wall. It goes up to the height of ledge of parking area.

Ms. DeSalvatore asked if the wall will be natural foundation with a little cement or a vertical stone wall.

Ms. McClees thinks if within tidal area than that would beget a different discussion with waves hitting twice a day, but this is well above the mean high-water line. This wall is not in a velocity zone, so will not withstand as many flooding impacts.

Ms. DeSalvatore stated the need for written conditions for the use of concrete.

Mr. Galary agreed with the Chair. A little cement is the right call to avoid deterioration, especially on the water side.

Mr. Lavalette stated he has taken care of this property for the last 5 or 6 years and has recused himself on this vote. He wanted to point out there is a steel fence then another 8 feet before the rocks; water hardly ever reaches the rocks.

Ms. McClees confirmed only the base rocks are hit by water.

Ms. Isherwood would like to see as minimal cement as possible do not want to hinder path of wildlife.

Mr. Haworth added the WAS-2 condition for cement.

Applicant also added that the fence at the end of the parking lot will be coming down.

Mr. Haworth opened it up for public comment and there were none.

Mr. Haworth made a motion to close the public hearing for 78 Middle Street, CON 023-243, and issue a Negative 3 and Negative 6 Determination under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw with the conditions outlined in the staff report dated September 13, 2021 with the addition of WAS-2, and the motion was seconded by Mr. Galary. The motion carried via roll call vote with one abstention. Mr. Lavalette abstained; remaining 5 members had unanimous vote (5-0).

f) **CON 023-245: 1 Crow Island**

Request for Determination of Applicability filed by New Bedford Inc. for the installation of two pilings for a floating dock at the property located at 1 Crow Island, Assessors Map 44, Lot 1. Work to take place in Land Subject to Coastal Storm Flowage, Land Under Ocean, and Land Containing Shellfish.

Ms. McClees described the floating dock will be in the same position and location, but with two additional 12-inch piles to extend off the end of both the vertical and horizontal sections of the dock. The L-shaped dock will be 81 feet heading East-West and a 60.63-foot dock North-South.

The project occurs within a priority habitat, which is in jurisdiction for a Massachusetts Endangered Species Act (MESA) review, with a direct filing through the Natural Heritage and Endangered Species program. The proposed project also needs a Chapter 91 license, since it occurs below the mean high-water line. Before work can begin, they will be required to submit a shellfish mitigation fee of \$100.00, as required by the fee schedule established under Chapter 192-4.

The Conservation Agent has had previous conversations with the Harbormaster to ensure boating safety. Must be sure the bathymetry underneath does not cause obstruction.

Applicant's representative, Christian Farland, Principal Engineer of Farland Corporation added that the reason for extending the dock is due to elevation. They must get out to a minus 6. This area is under state jurisdiction and will be deeper due to dredging. The applicant will file a Chapter 91, before beginning the project. He added that dredging will take place around the dock.

Ms. McClees asked when they will be filing with the Natural Heritage for MESA review. Mr. Farland assured the Board they will do so as soon as receiving a determination from the Commission and will be using that to file.

Ms. Isherwood was concerned about not having MESA review yet.

Ms. DeSalvatore questioned why the Board is voting before the Commission has heard from other parties.

Mr. Farland stated that Conservation has to vote first before we can file a Chapter 91 with the State. This is main reason they filed with the local Conservation first.

Ms. Isherwood asked the applicant if there will be any adverse effects on species in the area during the construction.

Mr. Haworth stated if we continue forward it would be contingent on all those other approvals and would come back to us.

Harbormaster Timothy Cox, asked if there are lines around dredged work. Ms. McClees responded to the Harbormaster that their limit of work is the entire site.

The harbormaster has seen the dock and asked for buoy positions to avoid hitting the sandbar. He advised adding a condition for channel markers, along with buoys around the pier to discourage boaters from heading North towards the sandbar when leaving the pier. He had no issue with the dock itself.

Mr. Haworth stated the applicant will submit appropriate channel markings to the Harbormaster for approval.

Mr. Haworth opened it up for public comment and there were none

Mr. Haworth made a motion to close the public hearing for 1 Crow Island, CON 023-245, and issue a Negative 2 and Negative 6 Determination under the Wetlands Protection Act and the Fairhaven Wetlands By-law, with the following conditions: (a) a CAP-3, (b) no work permitted until the MESA review is complete and a Chapter 91 license has been issued, (c) a shellfish mitigation fee of \$100.00, as required by the fee schedule established under Chapter 192-4, shall be submitted before work can begin, (d) and no work permitted until channel markings and buoy placements are submitted and approved by the Harbormaster. The motion was seconded by Mr. Galary; motion carried unanimously via roll call vote (6-0).

#### **Request for Amended Order of Conditions**

g) **SE 023-1308, CON 023-095: Huttleston Avenue, Map 31, Lots 115A & 117C**

Request for Amended Order of Conditions filed by Dana Lewis for approval of changes to the stormwater infrastructure at the property located at Huttleston Avenue, Assessors Map 31, Lots 115A & 117C. Work to take place in Bordering Vegetated Wetland and its 100-foot buffer zone.

Ms. McClees stated the amended order is based on changes that were made through the Planning Board. The proposed project now includes a large number of infiltrators to provide better recharge to the groundwater, adding a 12-inch pipe to detention basin outlet to be

connected to existing manhole in the wetlands. This non-functioning manhole will be re-built and reinforced. When installing the 30-foot length pipe beneath the wetlands (approximately 4-feet deep), the hydric soil will be sequestered and replaced so there will be no permanent impact to the wetlands.

Ms. McClees recommended a waiver for having the infiltration basin within 50-feet of the wetland. According to Massachusetts Stormwater Standards, waivers are based on location of the infiltration basin, square footage of impact, and if it is within 50-ft of the wetland.

The Commission should consider whether or not the final storm water peer review is warranted at this time, given the most recent plans have not been finalized by GCG Associates, Inc.

Rich Rheume, from Prime Engineering prepared the plans and was unaware a waiver from the was needed. He erroneously believed only infiltrators themselves needed to be 50-feet away, but now concurs all infiltrators near units are 50-feet away from the wetlands. The infiltration basin on the West side is 25-feet (average of 30 feet) away and the closest point is 10-feet away.

The stormwater manual dictates the infiltrators should be 50-feet away. As far as methodology, sheet 4 of the plan depicts plywood set down on the wetlands, and note 18 it describes a bobcat used separating organic top soil on plywood and the remaining material placed on the opposite side (estimates give a 27-foot excavation, 2 feet wide with total of 54 square foot of temporary impact). Post construction, the area will be back-filled with top soil placed on top. After the pipe is placed in the topsoil a wetland seed mix will be planted and the plywood will be removed. The applicant guarantees no permanent impact to the wetlands.

The applicant requested a waiver to allow the infiltration basin to be less than 50-feet from the wetlands.

Mr. Haworth concluded that a waiver is needed and the applicant agreed to ask for one.

Ms. DeSalvatore would like a final stormwater peer review. She remembers the peer reviewer mentioned that the infiltrator could be moved 50-feet from wetland basin, but would include removal of vegetation 25-feet from the wetlands.

Mr. Galary commented that he understands there are new members on the Board with questions, but the Board was just given a detailed outline. This project has been ongoing for two years and we do not want to waste any more of the applicant's time. The Planning board has already approved this project, but Conservation is to approve these minor amendments. The more opinions we require on varying different issues will only tie people up.

Mr. Haworth concurred and expounded upon the fact that the only change is working within the wetland; there were no significant changes. The applicant is trying to fix a broken structure, which is causing constant problems for neighbors and the wetlands. The applicant agreed to fix the structure that carries water from their property to the neighbors. They are doing the neighborhood and the town a favor and they should not be paying for it. We want to make sure we are undertaking this properly, but we need to understand the purpose. Mr. Galary added that the applicant volunteered to fix this pipe, which is a town/state issue.

Ms. Isherwood asked if there is more of a negative impact by not fixing than fixing. She wanted more information about possible impacts.

Mr. Haworth stated water is traveling at 1000 gallons per minute on land, instead of flowing through a pipe.

Ms. Isherwood asked how much vegetation will be disturbed.

Mr. Lavalette stated the drain has to be fixed. The engineer explained as perfectly as possible. The waiver is to be 50-feet away, but going to be 25 ft. The Board's decision is holding up a project. If Rich Rheaume feels 35-feet works for the project, then we should trust his professional judgment.

The Chair maintained the Planning Board will feel that same way. Delaying this issue is a disservice to the neighborhood and the wetlands. It should be treated as an emergency. He does not feel a peer review is necessary. We have been given the square footage of the area that will be affected.

Ms. DeSalvatore believed they should respond to the peer reviewer's comment that the infiltration basin (which does involve clearing of vegetation) could be moved to 50-feet out of the wetlands. The limit of work justification should be the least impact possible. She would like to see a more complete plan.

The applicant stated he can move the pipe 50-feet away, but would need to remove trees along Route 6. Currently, we have about 45 percent frontage with trees preserved. He does not see a significant negative impacts to have the pipe 25-feet from the basin. Losing a mature forest along Route 6 would pose a much greater negative impact.

Mr. Haworth elaborated that if we make additional changes and send back to the Planning Board, this will continue to stay open and frustrate the applicant. We have to agree to the same plan as the Planning Board. Mr. Rheaume explained in detail how it will be completed and is asking the Board for a waiver for the infiltration basin. Temporarily, 54 square feet will be impacted. Once the plywood is removed it will regrow. Area will not be grubbed, just flattened temporarily.

Ms. McClees stated it is up to the Board. She is able to draft an order for the Board's next meeting that incorporates all these concerns.

The Chair reiterates that the pipe flowing into the wetlands is more detrimental.

Ms. DeSalvatore asked for a description of the work process.

Ms. McClees read again from the staff report highlighting the organic top soil will be segregated from the underlining soil and both layers will be placed on plywood. Once the pipe is installed the area will be seeded with a wetland seed mix. The entire process will be observed by an agent from Prime Engineering.

Ms. DeSalvatore requested a site visit.



Mr. Haworth agreed to a site visit in interim before the next meeting, but does not want to hold up the project any longer than we have to.

**Action:** Ms. McClees to schedule a site visit week of September 27, 2021.

Mr. Haworth recommended site visit after a rain storm to see the extent of the flow.

Mr. Haworth asked if the Board had any other concerns.

Ms. Isherwood believed a site visit would enable the Board to document any impact. The Board would have documentation to prove whether or not any permanent damage had been done.

Mr. Rheume agreed to site visit and to continue on the October 4th meeting.

Mr. Haworth opened up the meeting for public comment.

Resident, Nate Bekemeier, spoke and expressed that the project is very complex. This project has changed and been through 5 or 6 peer reviews. He believes this project should not be rushed, since there is no room for error. This project is proposed to be incredibly elaborate with holding pools. He also expressed concerns about who is responsible when it blows again.

Mr. Haworth believed it should be the state's responsibility to fix, since it is state pipe that failed.

Ms. DeSalvatore feels this needs third peer review, since it is a complicated project.

Mr. Haworth disagreed and believes prolonging this project only hurts the neighborhood. He is pleased to finally see progress.

Ms. DeSalvatore asked if the proposed drainage pipe plan had been peer reviewed.

Mr. Haworth does not feel that is necessary. We should not make this applicant pay more for another peer review, which may dissuade the applicant from proceeding. They are already trying to help the neighborhood.

Mr. Lavalette agreed and stated they are not changing the dynamic of the pipe, just repairing it and putting it back as before. Whether the drain line is capable of handling the flow is an entirely different issue. Mr. Rheume is competent to repair the pipe and does not need a peer review to instruct him. We have an engineer on board, so please let him repair it.

Mr. Haworth expressed that he is passionate about this issue because the neighborhood actually gets something out of it. Slowing down the flow should be done as soon as possible.

Ms. DeSalvatore asked if vegetation cleared in infiltration basin is being replaced anywhere. She understood from the peer review that clearing was required for the basin to function.

Mr. Rheume confirmed that Prime Engineering will replant; there will be no total loss. In his opinion, he does not believe the pipe will need cleaning. He explained how other basins that Prime Engineering have constructed do not need frequent cleaning. They do not accumulate significant amounts of silt.

Ms. DeSalvatore stated that should be clarified.

Mr. Rheume agreed that the Board will get clarification during the site visit.

**Action:** Ms. McClees to provide the Board with photos and video of the pipe during a rain storm.

Ms. Isherwood would like to see in order of conditions that you cannot go in and continually clear it.

The applicant will provide the latest O&M plan from the Planning Board which will spell that out clearly.

**Action:** Mr. Rheume to provide most up to date Operations and Maintenance (O&M) Program and all appropriate storm water documentation that goes with it. He will also schedule a site visit before the October 4th meeting.

Mr. Haworth made motion to continue Huttleston Ave, SE 023-1308, CON 023-095, to October 4, 2021 at the applicant's request and was seconded by Ms. DeSalvatore. Motion carried unanimously via roll call vote (6-0).

#### **Notices of Intent**

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

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.

Ms. McClees has not received updated plans and the project has yet to be in front of the Planning Board. She believes there have been some plan changes due to additional issues with storm water. Ms. McClees stated there are no updated plans and needs to go before the Planning Board to weigh in with plan changes and additional issues. We cannot make any recommendations at this time. The public hearing will remain open until the Planning Board has an opportunity to provide feedback.

Applicant, Callie Thompson, stated they have readjusted with a less impervious surface, and moved further away from adjacent residential neighborhood. They have received preliminary feedback for additional calculations for storm water plans and sent revised plans to the Planning Board.

Ms. McClees needs a storm water peer review, but would like to have the Planning Board weigh in before proceeding. We are not peer reviewing a plan that may change.

Mr. Lavalette stated that he noticed steam line drains where storm water management system will be placed. He is concerned about the amount of steam. It drains into an area we are trying to protect and questions the legality of the drain.

**Action:** Ms. Thompson to answer Mr. Lavalette and present information on the steam line during the next meeting. The Planning Board will also look into this.

Mr. Haworth made a motion to continue at the applicant's request to the October 18<sup>th</sup> meeting for 12-18 Rio Way with a storm water review and was seconded by Ms. DeSalvatore. Motion passed unanimously via roll call vote (6-0).

i) SE 023-1324, CON 023-153: **86-88 Middle Street**

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. Rheaume requested to withdraw without prejudice. He is asking to withdraw due to lost Commission members. Within the next three weeks, he will provide a detailed topographic survey of area.

Another site visit will be scheduled after receiving formal filing for resubmission.

Mr. Haworth reopened public hearing, since there was already a discussion 88 Middle Street.

Mr. Lavalette shared is already a basin in this location with 6 to 7 sand catchers that remove it from the street. A-1 Crane wants to tie into these sand catchers. If he had his own system, we would be able to control and monitor what is running off his property. We could separate the drain with an interceptor allowing clean water to flow into the existing basin. With everything going into one drain, accusations ensue between neighbors.

Mr. Rheaume met with the DPW. They have agreed to put in funding for a large treatment system that treats everything. The down grade would be on the Coast Guard Auxiliary property, which would treat in the existing system. The other plan includes water being treated before going into the pipe and A-1 will have a separate system.

Mr. Haworth made clear there will be a filing with these two plans, but there isn't a quorum to vote on this now. All we can vote on tonight is to withdraw without prejudice.

Mr. Haworth made motion to allow 86-88 Middle Street, SE 023-1324, CON 023-153, to withdraw without prejudice and was seconded by Mr. Lavalette. Motion carried unanimously via roll call vote (6-0).

j) SE 023-1363, CON 023-244: **4 Fox Run Lane**

Notice of Intent filed by Justyna Kaisig for the construction of a 22-foot-by-30-foot garage addition at the property located at 4 Fox Run Lane, Assessors Map 30, Lot 452. Work to take place in the 100-foot buffer zone to Bordering Vegetated Wetland.

The applicant is proposing a 2-story garage addition that will be 22x30 feet. They have submitted a variance request under buffer zone regulations associated with the bylaw. Their variance request states that after meeting with Ms. McClees on site, they made changes to the plans in reducing the width of the garage, along with converting the paved and impervious driveway to crushed stone. They also added an area of wetland plantings to offset proposed work within the 25- foot buffer zone.

The Commission is to determine (under Section 8 of the buffer zone regulations) if the project will cause any adverse effects on the resource area or cause further detriment than the existing

conditions. They have converted to crushed stone and plan on an additional vegetated buffer to aid in infiltration and runoff control. A roof drain and dry wall system will be installed, which was a requirement with the original Order of Conditions when the house was constructed. The applicant is offering to remove all debris within the wetland and 25 feet of the wetland. They will use pervious materials and shrink it from 20 feet to 16 feet. If the Commission feels it will not cause adverse effect to resource area, then it will be granted. Ms. McClees recommended closing the public hearing with buffer zone regulations to work within 25 feet no disturb, with conditions that the driveway will remain pervious. If board elects to grant the variance she recommended closing the public hearing and issuing an Order of Conditions under both the Wetlands Protection Act and Fairhaven Wetlands Bylaw, with conditions outlined in the staff report.

Property owner, Justyna Kaisig had nothing further to add.

Ms. DeSalvatore asked the applicant what materials they selected for driveway.

Mr. Haworth stated variance says crushed stone and they reduced size of driveway by 4 feet.

Property owner then asked if they are limited to crushed stone or is any other permeable substance allowed.

Mr. Haworth specified a new Variance would need to be drafted, if they want something different.

Ms. DeSalvatore stated she recommended interlocking blue stone at the site visit, which doesn't sprout weeds and is pervious.

Ms. McClees added pavers will be placed in a portion of the driveway for better stabilization. The engineer did bring up different types of pervious options for portions of the driveway.

Mr. Haworth has no problem with any pervious substance, but requires it properly written out in a revised variance.

Ms. Isherwood stated the engineer is not here, but pavers for portions of the driveway were brought up at the site visit. She thought that was on the request.

Ms. McClees stated if applicant were to revise, the request and associated plan should stipulate only that it is pervious, instead of crushed stone.

Mr. Haworth asked the applicant to come back to the October 4 meeting with a revised variance request, which the Board can appropriately vote on.

Mr. Haworth opened up the meeting for public comment and there were none. Mr. Haworth made a motion to continue 4 Fox Run Lane, SE 023-1363, CON 023-244, to October 4, 2021 at the applicant's request and was seconded by Ms. Isherwood; motion passed via roll call vote (6-0).

## **6. Violations/Enforcement Orders/Cease and Desist Notices**

- a) SE 023-1302, CON 19-066: **6 Emerson Avenue**  
Violation item A – 6 Emerson Ave.

Ms. McClees stated Board previously issued cease and desist; not in compliance with issued site plan. Applicant did have interim as built plan. The patio is larger than approved. The staff report outlines items that need to be addressed before any work can be done in terms of continuing forward with garage.

Ms. McClees and the building inspector went to site to address the property owner's safety concerns. Only those safety changes were made under the cease and desist. All other aspects of the project have stopped until it comes back into compliance with site plan.

Applicant, Natalie Reis, would like to finish the interior of the garage and the garage door. The unfinished condition allows animals to roam inside. She would also like to clean building material debris.

Mr. Haworth asked the applicant why as built shows you haven't been following exactly as far as plans. He asked her how she plans to address that.

Applicant did not realize the size was going to be problem. She asked if she could keep the existing back patio, which has permeable blue stone.

Mr. Haworth told applicant they did not ask for permission with amended Order of Conditions. He clarified for the applicant that if you submit a plan, it must be followed exactly as plan states. When you sign your Order of Conditions, you are agreeing you understand the work. The contractor doing the work should also understand the plan.

Mr. Haworth asked applicant the size of the flat stones, which she replied are 2 by 2. Mr. Haworth asked if that means 6 feet areas of impervious surface and only less than one square foot between that is pervious.

Mr. Lavalette expressed his opinion that this is not even close to what was submitted by the contractor and needs to come back into compliance. The backyard is not pervious. We are required to know what is not pervious. They should not proceed with garage until property is in compliance.

Ms. Isherwood stated there had to be a reason for the original plan; it is definitely out of compliance and should not proceed.

Mr. Haworth explained to the applicant that the Conservation Commission's role is to review the impact on resources. Everything needs to be in writing for a reason. There are many reasons for reviewing a project, including lot coverage and impact on resources. A site plan is required to determine if the project falls within certain regulations. There are more requirements and rules to follow when owning property on the water and it is the property owner's responsibility to adhere to these laws of environmental protection. The Chair Recommended not lifting the cease-and-desist order. Furthermore, within 14 days a \$300 dollar a day fine will be imposed until brought into compliance. The Board will readdress cease and desist order, once the applicant is in compliance.

The applicant recognized the safety issues on the garage brought up by the building inspector, but honestly did not think there would be a problem with blue stone. She understands her responsibility to the land and values and respects the wetlands. She asked for guidelines and suggestions for making changes to the patio.

Mr. Haworth approved measurements of 15 x 36 on the plan; it cannot be larger. They would have to go through an amended order of submissions to change.

Applicant explained how concrete was original material submitted by John Romanelli. Ms. McClees had her change to pavers or blue stone.

Ms. Isherwood asked how will you bring the firepit back into compliance.

Mr. Haworth stated plan showed fire pit with 4 small seating spots; as of August 2021, there appears to be a retaining wall. Plan A and B are different with a foot increase in grade from a 6 to 7. Ms. McClees concurred that on approved plan there was a grade 6 and whole property has been built up by a foot.

Ms. Reis stated her firepit has been there for two years and the property has not been built up in that time.

Mr. Haworth asked the applicant where the top soil was moved to when building the patio. The contractor had to have taken top soil off first, otherwise it would be muck. They then must have moved dirt to the other side to elevate by a foot.

Ms. McClees presented two plans. The original with a Notice of Intent, dated May of 2019, depicts a contour of 6 throughout the fire pit area. The as built of August 2021 has a contour of 6 on the beach and a 7 that runs around the turf and up along the side.

Mr. Haworth reiterated the as built must reflect the plan that was approved. Otherwise, we are not doing amended order.

The applicant asked if she could finish her garage, before making changes to the patio area.

Mr. Haworth told the applicant that the building commissioner will need to approve the safety updates to the garage before she may finish. The Board will vote on plans submitted.

Ms. McClees stated a major part of the project and permit was building the garage. The changes allowed for safety reasons from the building commissioner were hurricane clips on the breezeway, attaching first floor beams to the concrete columns, and adding a doorway to the breezeway.

**Action:** Ms. McClees to check the dimensions on the plan.

Mr. Haworth lets the applicant know that if everything else is fixed then they can finish the garage. The environmental impact should be limited.

Mr. Haworth made motion to maintain the cease-and-desist until applicant presents to the Board and proves she rectified all issues under current Order of Conditions. The motion was seconded by Ms. DeSalvatore and carried unanimously by roll call vote (6-0).

b) 20 Yankee Lane

Ms. McClees had site visit and site walk with the applicant and a wetland scientist, who is writing a restoration plan to address enforcement order issue.

Scott Goddard, wetland scientist and owner of Goddard Consulting, has been retained by the owner of the property. The consulting firm was also involved in this project when the Commission for Environmental Cooperation (CEC) did the initial permitting for a solar project that has been fully constructed. The consultant has an extensive background with property. He also visited the site and observed the alterations operating under assumptions of agricultural activity. Some of that activity clearly has gone beyond what the Commission would have expected without a permit in place. There have been alterations of wetland resource areas in both Extended Detention Wetlands (EDW) and on a bank of the stream channel. He met with Ms. McClees to address hydrology, proper soils, and ensure the vegetated cover site is completely stabilized. There is currently no ongoing activity and no raw soils.

The applicant retained council and a wetland consultant to do a thoughtful restoration plan that can be practically implemented with timing sequence imposed. A restoration plan will soon be ready for Boards to review and approve with a protocol timeline.

Mr. Haworth is comfortable with extending the timeline. He has renewed sense that the project is going in the right direction and expressed his appreciation of the thoroughness of the project.

Mr. Goddard expects to have something to present to Ms. McClees by October 4, which will allow time for review before presenting to the Board on the October 18 meeting

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

Ms. McClees explained she received notification over the weekend that there was a potential wetland issue at 29 Mangham Way. Mr. Haworth went out to speak with property owner and issued a cease-and-desist order. The Property owner contacted Ms. McClees to determine their next steps. The owner sent pictures of work that was completed. Ms. McClees will meet with the resident to go over site plan with original approval. Once there is a better idea of location and scope of work, they can make a better recommendation on the next steps that need to be addressed and what violations exist under the Wetlands Protection Act and the Fairhaven By-law.

Mr. Haworth witnessed a truck load of soil (10 yards) was delivered to the property, which was just starting to be shoveled into a wheel barrel.

Mr. Haworth had discussion with the property owner, Robert Baccelli, in regards to the clearing and filling of the property. He also discussed the wetland line with Ms. McClees.

Ms. McClees stated a plan was done when the house was built and when the land was subdivided. She will analyze and use to compare with current soils to see if wetland line is accurate. She added that having a current wetland line is required to determine what needs to be done to address work within wetland resources, versus the buffer. There are different requirements depending on where you are working.

Mr. Haworth made motion to have the cease-and-desist remain and to Continue on the October 4 meeting to rediscuss. If work is outside the 100-foot buffer then it is outside the Commission's jurisdiction.

Motion to have cease-and-desist remain until next step of property. Motion was seconded by Ms. Isherwood and carried by roll call vote with remaining board members (5-0). Mr. Lavalette was no longer present.

## 7. Correspondence

### a) 732 Sconticut Neck Road Notice of Intent to Sell Land under Chapter 61A

Ms. McClees received notice to sell land under Chapter 61A. Property owner intends to sell property and take out of Chapter. This triggers notification to the town. Any land taken off Chapter 61, 61A or 61B gives the town Right of First Refusal to acquire property when converted into regular land. This property is currently under 61A for agricultural protection. The property is across from Shipyard Farm Conservation Area and abuts the Monondach Salt Marsh Conservation Area, both owned by the Fairhaven Acushnet Land Preservation Trust. The property contains open field, bordering vegetated wetland, salt marsh, and access to the water via Monondach Avenue.

The Commission considered sending a letter to the Selectboard recommending the Town to exercise right of first refusal to acquire all or part of the property. This land is in close proximity to other preserved areas. He has entered into agreement to sell and subdivide. There is a Purchase and Sell for each lot.

Mr. Haworth would not like to see this property turned into lots. It is sensitive land. As a Commission member he made recommendation to retain the property.

Mr. Haworth made motion that we send letter supporting acting on Right of First Refusal to preserve the property to the Select Board and was seconded by Ms. Isherwood. Motion carried by roll call vote unanimous by remaining members (5-0).

**Additional correspondence:** Ms. McClees brought up auction properties. There are a multitude of queries and concerns regarding wetland parcels. Anyone with questions or concerns should contact Wendy Graves.

Ms. McClees has provided Ms. Graves parcel list with wetlands and priority habitat for rare and endangered species.



## 8. Ongoing Projects

### a) SE 023-1309, CON 023-110: 1 Bella Vista Island

The attorney representing the owner has submitted a request for Superseding Order of Conditions from the Department of Environmental Protection (DEP). They have also submitted a query seeking to resolve some concerns they have with some of the special conditions that they feel are beyond commission's jurisdiction.

Town Counsel took a look at the attorney's request and provided that under our bylaw, Chapter 192, section 6D, any permit issued under this Chapter may be revoked or modified by the Commission after public notice and notice to the holder of the permit, upon finding the existence of circumstances which would justify the denial or imposition of conditions on a permit.

Town Counsel determined the applicant has two options. Option one is for the applicant to appeal in Superior Court, costing the town litigation fees. Option two, under Section 6D of Chapter 192, would allow the applicant to ask the Commission to modify the permit by addressing the specific concerns that he challenges. If the Commission denies that modification, the applicant would still have 60 days to appeal.

In summary, if the Commission agrees with the town council's interpretation, it would allow the Commission to reconsider the issue under the bylaw only, and separate the two permits. One permit would supersede the order to the DEP and there would be a separate permit that the applicant would be addressing through the Conservation. This may allow the commission to provide clearer language in the Order of Conditions, if it does end up going to Superior Court. If the Board is open to an amended Order of Conditions under the bylaw and reconsiders special conditions, Ms. McClees would be allowed to work with town council and the applicant's representative to follow the procedure outlined in the bylaw. It would then be brought back in front of the Board. It would allow the applicant opportunity to provide information as to why they feel the conditions the Board issued are not in keeping with the bylaw regulations.

Ms. McClees believes it provides a way for the Commission to strengthen the conditions under the bylaw. The applicant would have to provide a way to refute the Commission's findings. If the Commission does not agree, then the Order of Conditions would stand and they would appear in Superior Court. She also believes it is an opportunity to provide more clarity. Currently, the language maintains that work can only be done at low tide, but low tide is only a minute long. They are stating it should say within 3 hours on either side of low tide.

Ms. Isherwood made motion to allow the agent to work with the town council to bring the Order of Conditions under the bylaw back to the Commission in accordance with Chapter 192, section 6D. Motion seconded by Mr. Haworth and passed unanimously via roll call vote (5-0).

## 9. Upcoming Projects

Received two requests with determination of driveways within 100-year flood plain and one Notice of Intent for paving Eaton Road by the DPW.

**10. General Business****a) Bills**

- Staples: \$47. 47 for office supplies
- Fairhaven Neighborhood News: \$195 for legal advertisements for August meetings.
- Massachusetts Association for Conservation Commissions (MACC): \$275 for training courses.

MACC Fall conference is in October. They have released the workshop list and opened registration.

**Action:** Ms. McClees will send out MACC registration for the Fall conference.

**b) Discussion regarding continuing remote meetings**

Mr. Haworth made motion to continue to conduct meetings remotely until April 1, 2022 and motion was seconded by Mr. Galary. Motion carried unanimously via roll call vote (5-0).

**c) Next Meeting: October 4, 2021**

Mr. Haworth made a motion to adjourn and was seconded by Ms. Isherwood. The motion passed unanimously at 9:47p.m. (5-0).

Respectfully submitted,

Kelly Camara  
Recording Secretary