

Conservation Commission
November 15, 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 Public 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, Karen Isherwood, Gary Lavalette, Michael Kelly, Jacob Galary, Corey Pietraszek and Amy DeSalvatore. Non-voting consultant, Ron Medina was also present. All members were attending via zoom. Staff: Whitney McClees, Conservation Agent

3. **Requests for Certificates of Compliance**

- a) **SE 023-1094: 1 & 2 Marsh Island**

Ms. McClees briefed the Board that this Certificate of Compliance is related to the upcoming Marsh Island, Salt Marsh Restoration Project at Taber Street. The project was fully permitted in 2010, but timing constraints related to grant funding from NOAA, as well as issues pertaining to the radio towers on the property delayed the project and all permits have since expired. The project site is comprised of two parcels owned by Buzzards Bay Coalition (BBC) and Fairhaven-Acushnet Land Trust (FALPT). The Buzzards Bay Coalition is looking to close out the old Order of Conditions in preparation for submitting a new Notice of Intent. Ms. McClees recommended the Board issue a Certificate of Compliance for an invalid Order of Conditions for 1 and 2 Marsh Island.

Mr. Haworth made a motion to issue a Certificate of Compliance for an invalid Order of Conditions at 1 & 2 Marsh Island, SE 023-1094 and was seconded by Mr. Galary. The motion passed unanimously via roll call vote (7-0).

- b) **SE 023-0084: 230 Scoticut Neck Road**

Ms. McClees addressed this Certificate of Compliance for an old Order of Conditions from 1983, which was an Order of Conditions for the construction of a single-family home. The property owner is looking to close out the old order to facilitate selling the property. There were three special conditions attached to the order: 1) A letter from Fairhaven Board of Public Works allowing use of the street for a private sewer line and the privilege of other abutters being allowed to tie into this line if they desire, without any monetary requirement; 2) copies of easements from abutters must be on file before any building permits are issued; 3) any fill used shall be clean, non-polluting, and for landscaping purposes only. The property owner indicated that the sewer was done and is connected. Ms. McClees recommended issuing a Certificate of Compliance for Complete Certification.

Mr. Haworth made a motion to issue Certificate of Compliance for complete certification for 230 Sconticut Neck Road, SE 023-0084 and was seconded by Ms. DeSalvatore. Motion passed unanimously via roll call vote (7-0).

4. **Request for Extension**

a) SE 023-1258, CON 023-162: **Sconticut Neck Road at Overlook Lane**

Ms. McClees stated the applicant is seeking a 24-month extension to allow more time to complete the wetland crossing to Lot 6 and wetland replication monitoring. This Order of Conditions was issued on September 13, 2017 and will expire on December, 19 2021. The majority of the work has been done, with regard to the installation of the road and capping off utilities. Given that the wetland line was done in 2016, Ms. McClees recommended granting the 24-month extension for work only and does not extend to the approval of the wetland line.

Mr. Haworth made a motion to grant a 24-month extension for Sconticut Neck Road, SE 023-1258, CON 023-162. This extension is for the work only and does not extend the approval of the wetland line. The motion was seconded by Ms. DeSalvatore and passed unanimously via roll call vote (7-0).

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 Meeting

a) SE 023-1345, CON 023-206: **2 Oxford Street – Continued to December 13, 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.

Requests for Continuance

b) 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 asked the applicants for a continuance date, but has not heard back. If the Board continues to a date unspecified, then the applicant would have to renotify abutters. Ms. McClees recommended to continue to December 13, 2021.

Mr. Haworth made motion to continue 12-18 Rio Way, SE 023-1356, CON 023-229 on December 13, 2021 and was seconded by Ms. DeSalvatore. Motion passed unanimously via roll call vote (7-0).

c) SE 023-1366, CON 023-251: **Bridge Street, Map 36, Lot 15J**

Abbreviated Notice of Resource Area Delineation filed by Paul Downey, Fairhaven Properties, LLC, requesting confirmation of all jurisdictional resource areas under the Wetlands Protection Act and Fairhaven Wetlands Bylaw at the property located at Bridge Street, Assessors Map 36, Lot 15J.

Mr. Haworth made a motion to continue Bridge Street, Map 36, Lot 15J, SE 023-1366, CON 023-251 to December 13, 2021 and was seconded by Ms. DeSalvatore. Motion passed unanimously via roll call vote (7-0).

Request for Determination of Applicability**d) CON 023-253: 36 Monondach Avenue**

Request for Determination of Applicability filed by Jen Foley for the installation of a 45-foot-by-32-foot seashell driveway at the property located at 36 Monondach Avenue, Assessors Map 42A, Lots 229 & 230. Work to take place in Land Subject to Coastal Storm Flowage and Coastal Beach/Coastal Dune.

Ms. McClees stated the applicant is seeking to place a shell driveway in front of the existing house. Coastal dune regulations state that an accessory project may be permitted, if there is a building already in existence. Subsequent to a site visit, and comments from the Commissioners, the applicant revised the size of the driveway and location to be directly in front of the house. They indicated they are looking to place 1 to 2 inches of shells over the area, without significantly altering the grades. Based on this revision, Ms. McClees recommended to close the public hearing and issue a Negative 2 and Negative 6 Determination under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw, with the three conditions as outlined in the staff report.

Jennifer Foley, property owner of 36 Monondach Avenue, was present and concurred with Ms. McClees.

Ms. McClees confirmed the width of the house to be 28 feet wide, according to the assessor's record.

Ms. DeSalvatore asked if it would be possible to do plantings to stabilize the dunes.

Ms. McClees answered that one side of the property is already vegetated. There is some vegetation on the property to help migration and stabilize the dune. There is a cement wall that runs between the two properties and will unlikely migrate given the conditions.

Mr. Lavalette has no problem with the size. He does not suggest plantings on the South side, which is the only path to the beach.

Mr. Haworth made motion to close the public hearing for 36 Monondach Avenue, CON 023-253 and issue a Negative 2 and Negative 6 Determination with the following conditions, CAP-3, shells in the driveway shall not exceed the width of the house, and no grade or elevation changes are permitted beyond adding 2 inches of shells. The motion was seconded by Mr. Galary and passed unanimously via roll call vote (7-0).

Abbreviated Notice of Resource Area Delineation**e) SE 023-1367, CON 023-254: 0 & 277 Bridge Street**

Abbreviated Notice of Resource Area Delineation filed by Bridge Street Holdings LLC, requesting confirmation of all jurisdictional resource areas under the Wetlands Protection Act and Fairhaven Wetlands Bylaw at the property located at 0 and 277 Bridge Street, Assessors Map 30A, Lots 87 & 87A.

Ms. McClees stated to the Board that the applicant submitted an ANRAD for 600 linear feet of a Bordering Vegetated Wetland boundary. The Commission is to determine if they would like a peer review. Currently, there is an open Order of Conditions on the adjacent property that does include some of the resource area near the subject's property. The review could potentially be more complicated than is typical, since there is an open Order of Conditions. Additionally, the Commission's Winter Wetland Delineation regulation states, "it is the policy of the Commission to presume that delineation - including verification of previous delineations - performed after

November 15 and before March 31 are insufficient". The Commission will need to determine if the weather will allow for a determination of wetland boundaries within the next month. The other option is to wait to perform a peer review after March 31, 2022.

Dan Aguiar, the Senior Project Manager at SITEC Engineering & Environmental Consultants, Inc., represented the applicant. He brought to the Board's attention that this ANRAD is fairly different. The wetlands line and the ANRAD determination has a valid delineation on file with the existing Order of Conditions, which is not set to expire until September 11, 2023.

Mr. Aguiar added there is a current line, but would like to utilize a new line and file a new Certificate of Compliance. He did not want to assume the old line was accurate, so a wetland scientist reflagged the line. It is very similar to original filing approved under, SE 023-1246, which was noted in the plan and the Order of Conditions. This original Order of Conditions was issued in 2017 and the extension was filed in August 2020, which will grant a 3-year extension until 2023. He is hoping to get this issue resolved to begin design work this winter and move into construction Spring 2022.

Mr. Haworth asked where the 200-foot river-front line is on the plan.

Mr. Aguiar stated the stream has been determined to be intermittent and Steve Gioiosa has submitted a document regarding the previous ANRAD. There has never been a 200-foot river-front zone for this portion of the river, which has been determined over many wetland delineations over the last 5 to 6 years. The 2016 verification is still valid until 2023.

Ms. McClees added the verification and approval of the line does run with the Order of Conditions, unless the Commission specifies otherwise.

Mr. Lavalette asked if there has been any change in the delineation line. He was concerned of noticeable changes in the area, since it has been unusually wet last the couple of years.

Mr. Aguiar responded they only want to move forward with a line that was still valid, which is their reasoning for reexamining. When he compared the delineation from the original Order of Conditions, insignificant changes were identified. Mr. Aguiar is not opposed to a peer review, but does not want to delay the project.

Mr. Lavalette asked if Ms. McClees believes a peer review is required.

Ms. McClees believes anytime an ANRAD is submitted someone should look at the line. Overall, it could be same square footage. She does not recommend just approving off paper without a review.

Mr. Haworth suggested immediate peer review.

Ms. McClees has already solicited several quotes in anticipation for the peer review. If the Commission chooses a peer review, a \$2500 deposit, as listed on the fee schedule is required. Whatever is not used, will be returned.

Mr. Aguiar stated he will submit the peer review deposit tomorrow.

Bob Carrigg, one of the property owners, referred to the letter dated August 2016 from Douglas Schneider and Associates. LEC Environmental Consultants stated the property was properly delineated in 2008 and sent out for peer review. He also believes the same line was delineated in 2004. These delineations show the same line over the course of 15 years with minimal changes. He requested the conservation agent walk the line with their consultants, in lieu of a peer review.

Mr. Haworth feels the property owner and the applicant's representative need to be in agreement. He additionally explained that the conservation agent is too busy to walk the line on commercial

projects. He believes the peer review could potentially be done and ready to be discussed by the next meeting on December 13, 2021.

Ms. Isherwood would like to go with the peer review recommendation cited on the staff report.

Mr. Galary asked Ms. McClees how long it would take to walk the line.

Ms. McClees responded that walking the line is one facet of verifying the documentation, in terms of the ANRAD process. She would examine soils, vegetation, along with looking at historical documentation, along with the other filings that Mr. Carrigg has referenced. Examining the line alone would take approximately half a day.

Ms. DeSalvatore stated that even if the line has not changed dramatically, our weather has changed dramatically. This is a property with a stream, which makes it more complex.

Alex Carrigg, project manager for the site, noted that other portions of the project with an existing Order of Conditions went through the MEPA process in 2017. It has been reviewed by MEPA, DEP, and other agencies. Additionally, through the Order of Conditions, the site has been maintained and mowed quarterly.

Mr. Haworth made a motion to move forward with the peer review for 0 & 277 Bridge Street, SE 023-1367, CON 023-254 and that the agent will coordinate the peer review. The motion was seconded by Mr. Lavalette and passed unanimously via roll call vote (7-0).

Mr. Haworth made a motion to continue 0 & 277 Bridge Street, SE 023-1367, CON 023-254 to December 13, 2021 at the applicant's request and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (7-0).

Request for Amended Order of Conditions

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

Mr. Haworth made a motion to continue 1 Bella Vista Island, SE 023-1309, CON 023-110 to December 13, 2021 and was seconded by Ms. DeSalvatore. Motion passed unanimously via roll call vote 7-0.

Mr. Haworth gave a brief explanation for this continuation to the Board. He and Ms. McClees met with the applicant's representatives to discuss some of the conditions associated with the Order of Conditions. They are now requesting an additional meeting with Mr. Haworth, Ms. McClees, and the Harbormaster and should be ready to move forward at the December 13, 2021 meeting.

g) SE 023-1365, CON 023-250: 86-88 Middle Street

Notice of Intent filed by Patrick Carr, A1 Crane Company, for the installation of a 968-square-foot concrete pad for fuel tank storage 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.

Ms. McClees explained the applicant is looking for approval on the remaining project initiated without permits. They proposed two scenarios for a stormwater management system. The first scenario, Option A, would be the installation of a stormwater management system by the town. This would treat stormwater that comes in from Middle Street and adjacent properties. The agent spoke with the superintendent of public works, Vinny Furtado. His intention is to ask for funding from the town to relocate the drainage entirely off the property and down to Pease Park.

If that project is not funded then the applicant is proposing Option B, which is to install a stormceptor on the property to treat all stormwater in the rear of the property. This application also

includes the relocation of a temporary building and proposing a permanent structure on steel storage pods, as well as repaving this area. Based on the site visit last week, there were some discussions and other items that the Commission wishes to see on the plans. The applicant's representative submitted the revised plan on November 12, 2021.

Patrick Carr, owner of A.1. Crane Company and property owner of 86-88 Middle Street, spoke with Mr. Furtado and Mr. Charbonneau of the DPW and believes the town already has a pipe. The stormceptor at the end of the road filters their basins and the water from the Coast Guard Auxillary. Mr. Carr believes he produces 10 percent of what flows into that drain. The town installed the pipe in 1939 and upon retrieving the corresponding documentation, he has discovered the town owns the pipe from the street to the harbor, so it is their responsibility to maintain and repair.

Mr. Haworth does not see a positive vote tonight on this project, but maybe on December 13, 2021 the Commission will be able to vote. Mr. Haworth would like more information from the DPW.

Ms. McClees advised the Commission that if the applicant proposes Option B, he would not have to wait for the DPW. This would involve installing a stormceptor on the subject's property, instead of waiting for funding from the town. ARPA funding may take a while to come through. The Commission could move forward with what has been presented as Option B, then the Commission would determine if a peer review is necessary.

Mr. Haworth further highlighted that Option B would require significant digging on the property.

Ms. DeSalvatore would like to see project peer reviewed, since it does not meet the FEMA guidelines, due to the elevation of the water.

Mr. Haworth does not believe peer review is necessary; believes both proposed plans are sufficient.

Rich Rheume of Prime Engineering, and Chief Engineer of the project was present and confirmed a peer review has already been done on the project. The treatment system proposed was not accurate for this use. Option B is accepted for land with higher pollutant loads. He submitted a letter addressing each one of their comments on how they have met the peer review. Paving the lot will provide a stable ground to meet performance standards for land on coastal zone flowage. If they are allowed to proceed under Option A or B, they will properly cover the soil to prevent ground contamination. He believes the concrete could be approved, since it is an environmental benefit.

Ms. Isherwood did not feel comfortable voting until there was an approved plan in place, but Option B seems more time efficient.

Rich Rheume believes Option A is more efficient and solves the neighborhood problems. Option B only treats this particular site and does not address all the other properties draining through it. The National Infrastructure Bill has been passed which encourages such projects. He believes the project could get approval within the next year and a half.

Mr. Haworth states that Option A, according to the DPW, is to abandon the pipe all the way to Pease Park. This would leave no other choice than Option B. He advises to reconvene on December 13, 2021.

Action: Applicant and representative should get as much information to the agent a week before the December 13, 2021 meeting, as well as discuss with DPW and all necessary agents.

Ms. DeSalvatore suggested an intermediate plan to allow Mr. Carr to begin other aspects of the project. She believes treating street pollutants is paramount.

Mr. Galary feels Option B is the best scenario. The disconnect with town Boards is only holding projects up.

Mr. Lavalette is concerned answers and/or funding from the DPW may take time. He believes Option B will allow the applicant to move forward in a timely manner.

Mr. Haworth also has concerns with regards to funding and would like to see the quickest path to a resolution.

Mr. Carr was under the impression that Option B would ensure more immediate water treatment, while allowing the DPW time to gather funding and begin their project. He stated there are 100 outfalls in Fairhaven that flow to the harbor and not one with a filter system. He understood the contingent plan was Option B, but does not want the extra expense if he is the only one responsible for filtering stormwater.

Mr. Haworth stated all new projects require storm water filters. He recommended coming back on the December 13, 2021 meeting. The Town will need to start working on the stormceptors, but it will be one project at a time.

Mr. Carr questioned the advantage of one filtration system when surrounding properties are not in compliance. After speaking with Mr. Furtado, he was under the impression the town would be seeking a Storm Water Management Program (MS4).

Mr. Lavalette reiterated that he does not want to see Mr. Carr spend any more money.

Mr. Haworth agreed and would like this to be as efficient and inexpensive as possible, but still recommended further discussion with the DPW and come back on December 13, 2021, for a definitive plan. The town is going to have to start working on stormceptors; all other outlets in town will have to be filtered. It will be one project at a time bringing them all into compliance.

Mr. Haworth made a motion to continue SE 023-1365, CON 023-250, 86-88 Middle Street to December 13, 2021 per the applicant's request and was seconded by Ms. DeSalvatore. The motion passed unanimously via a roll call vote (7-0).

Notices of Intent

h) SE 023-1368, CON 023-252: 184 Balsam Street

Notice of Intent filed by Robert and Karen Sullivan for the construction of a fixed pier, gangway, floating dock, and hydraulic lift at the property located at 184 Balsam Street, Assessors Map 43B, Lots 40 & 41. Work to take place in Land Subject to Coastal Storm Flowage, Salt Marsh, Land Under Ocean, Land Containing Shellfish, Coastal Beach, and the 100-foot buffer zone to Salt Marsh and Coastal Beach.

Ms. McClees gave the Commission an overview of the Notice of Intent for a fixed dock and floats with a hydraulic lift system. This will be going to the Zoning Board of Appeals on December 2, 2021. At that point, the Board will go over a Variance for the length of the dock. The work proposed includes 14 pilings, as well as water and electrical service from the house. The project has been designed based on comments from the Division of Marine Fisheries. They recommend the height of the lowest structural member of the dock be one and a half times the width of the dock. The width of the dock is 4 feet, and the height above the salt marsh will be at least 6 feet. The dock is in the Southeast location, which can create greater shading impact on salt marsh vegetation. This project will also require a Chapter 91 license from the state.

The Harbormaster/Shellfish Warden has no concerns about the project in relation to both the summer mooring field, as well as shellfish beds in the area. The length of the dock does fall short of a mapped priority habitat for rare and endangered species, so no comments are needed from the Natural Heritage program. The applicant already provided a shellfish mitigation fee in accordance with the Commission's fee schedule. Abutter letters were received in regards to wetland related concerns. Based on the regulations outlined by Wetlands Protection Act and the Fairhaven Wetlands Bylaw, the project has been designed to comply with all applicable regulations under the jurisdiction of the Conservation Commission. Ms. McClees recommended 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 staff report.

Michael Koska, the engineer responsible for the plans briefed the Commission on the project. He assured the Commission that the decking surface will allow sunlight through. Access to the fixed dock would include a set of stairs from the upland portion or lawn portion of the property. To meet the 25-foot requirements from any sidelines, the dock will be 27'3" to the South and 28'6" to the North.

Ms. DeSalvatore read the citizens' letters and she felt they present a compelling argument that the multiplication of docks along the coast could interfere with the town's Bylaw under recreation and aesthetics; residents raised issues for kayakers, swimmers and wildlife.

Mr. Koska added that the design provided passage between mean high and mean low water, which is spelled out in the regulation. There is an existing pier and dock 3 properties up. He understands and is sensitive to the concerns of congestion, but it is permissible under the Wetland Protection Act and also Chapter 91 licensing program through the state.

Mr. Haworth answered Ms. DeSalvatore, stating the only docking regulation is through the Zoning Board. Ms. DeSalvatore believes there is an issue with recreation and aesthetics in the Conservation Bylaw. Mr. Haworth believes that is general and not solely on docks.

Mr. Haworth stated in the staff report there is letter dated October 19, 2021 from the Commonwealth of MA Division of Marine Fisheries (DMF), which weighed in on some of these concerns.

Mr. Haworth read the letter from the DMF, which stated they reviewed the Notice of Intent for Robert and Karen Sullivan for the proposed dock and floats at 184 Balsam Street on Nasketucket Bay in the town of Fairhaven. They cited no issue other than height to allow adequate sunlight.

Ms. DeSalvatore brought up migratory birds being affected and the proliferation of docks.

Mr. Lavalette was present on a site visit with the Harbormaster who had no concerns. He believes it is a well thought out project. The applicant has covered everything as far as wetland protection and all bylaws and expressed being in favor.

Mr. Galary agreed with Mr. Lavalette. If the applicant's project is in accordance to all regulations, we cannot deny them the dock.

Ms. Isherwood stated the Commission protects habitats for wildlife; wildlife itself is not the Commission's jurisdiction. She believes the neighbors could be directed to different Boards with their concerns.

Mr. Haworth agrees with Ms. Isherwood. The Commission's job is to review the regulations; we cannot pick and choose and interpret the regulation to fit the Commission's wishes. The Commission needs consistent and fair approval processes.

Mr. Kelly agrees with Ms. Isherwood and believes it is outside the purview of the Board to deny this project.

Mr. Galary added there are not many homes on this street and had concerns the citizens' issues lie with the applicant and not the project itself. There was a similar proposal a few months ago and only one objection letter was presented to the Board.

Harbormaster, Tim Cox, met with the engineer and they conducted a site visit and determined boats do not come near this dock. He also stated he plants shellfish from Bluepoint to Cherrystone Road and there is no access to get out and plant where this dock is proposed. Additionally, this dock will give a proper 6-foot height and will not hinder shell fishing or kayaking.

With that being said, the Harbormaster does agree with some of the neighbors' concerns and will work with Ms. McClees on a bylaw that addresses these concerns going forward. He will bring up bylaw modifications with department heads. This is an issue to be analyzed by the Building Department, Board of Health, Conservation and Marine Fisheries. He hopes edited bylaws will answer more questions and not rely on interpretive language.

Ms. McClees shared that all abutter comments are posted under this filing on the town website.

Mr. Haworth added that every Board member has a copy of these letters.

Ron Keys, owner of 198 Balsam Street, addressed the Board in his objection to the dock. He first claimed this objection is not personal and the residents would have objected to the dock proposed earlier this year, but the residents did not have time to prepare a response. He also believes the dock approved earlier this year did not go over wetlands and marsh lands. He claimed that Mr. Cox's assertion that there is no impact to shellfish contradicts the 2001 assessment by the MA DEP. This assessment stated it would cause permanent damage. The residents would like to see documentation that challenges the MA DEP assessment. Mr. Keys finalized his thoughts with concerns of a proliferation of docks and destruction of the shore.

Mr. Haworth stated that the project from 2001 differed from the current filing. The 2001 project included a seawall and significant other work. It would have been inherently destructive to shellfish.

Diane Elander Keys, owner of 188 Balsam Street, and Chair of the Citizens' group does not believe the Board should ignore 65 individuals that have opposed the construction of the dock in this area. The Board has a duty to protect the public's right to free access over the water. She believes the dock will impact recreational swimmers, paddle boarders, and boaters in the area.

Jon Elander III, of 188 Balsam Street, brought up the filing from earlier in the year as well, and feels the Sullivan's proposal is located in a popular boating area and will cause havoc.

Eduardo Marks, of 178 Dogwood Street, claimed the dock will cause land erosion.

Cindy Marsh Heath, of 186 Balsam Street, was concerned her mooring is too close to the proposed dock and that the piers would collide.

Mr. Cox stated the residents do not own a mooring. They must register every year to maintain that mooring, and have it inspected every three years.

Mr. Haworth added moorings are not in the Commission's jurisdiction.

Mark Williams, of 5 Cherrystone Road and 190 Cottonwood Street, is in favor. The abutters have changed the landscape of the entire cove and did what they needed to improve their properties. They should not be denying someone else the same opportunity. He went on to further point out that boaters head in a Southwest direction toward the marina, and do not head Southeast back to this proposed dock.

Jonathan Keys, of 188 Balsam Street, stated the width of these properties are approximately 100 feet or less and the proliferation of these docks will impact the coastline and impede on neighboring properties.

Mr. Haworth agreed, but again reiterated that these concerns are mainly in the ZBA's jurisdiction. Additionally, he does believe the town should put regulation in place to prevent every house that is along the water from eventually building a dock. That regulation is not in effect today; therefore, the Commission will govern by the rules that are currently in effect.

Mr. Cox confirmed that docks do not affect shellfish, and has consulted with biologists on the matter from the DMF.

Ms. DeSalvatore believes the Commission does have jurisdiction, since boat pollution could affect the resource area.

Matt Keys, of 188 Balsam Street, witnessed the Board delay a few projects in the past and would like to see the Board take a step back evaluate this project further before approval.

Mr. Haworth stated an act of town meeting is needed to amend or enact a bylaw.

Sheila May, of 6 and 10 Cherrystone Road, expressed concern that the hydraulic lift is designed for larger boats than currently on the mooring.

Mr. Haworth stated the filing does not indicate larger boats will be occupying the dock.

Ron Keys, of 188 Balsam Street, cited the Fairhaven Wetlands Bylaw (Chapter 192.1) and feels the Board should always make a determination based on likely impact.

Eduardo Marks, of 178 Dogwood Street, claimed that 18 percent of the chemicals from treated pilons can seep into the water, affecting water quality, vegetation and wildlife along the shoreline.

Mr. Larsen Keys, of 188 Balsam Street, feels noise pollution will be disruptive to the waterfront.

John Elander III, of 188 Balsam Street, believes the applicant will be bringing electrical out to the boat on the dock. All the chemicals from washing will go into the bay at a closer range to the shoreline, which he believes will affect habitats.

Daniel Ristuccia, of 191 Balsam Street, stated his family owns the dock that currently exists in the bay. The bay is being pecked away by the cumulative effects of projects.

Mr. Haworth restates that the Board cannot pick and choose who gets a dock.

Mr. Galary asked if the Board of Appeals will defer to the Conservation Commission on the December 2, 2021 meeting. He believes the Commission should vote tonight to aid Zoning in their decision process.

Mr. Lavalette stated that the Board of Appeals will only be approving a Variance for the length of the dock exceeding 75 feet.

Ms. McClees stated the Board of Appeals could look into indirect factors. There is language specific to docks and piers, in relation to conservation, weaved into zoning regulations.

Mr. Lavalette agreed with the neighbors and would like to see limits in the future, but this is an approvable project that meets all criteria.

Ms. McClees added additional insight, stating there are other regulations that the Commission could consider adopting, specific to docks and piers. This would include outlining the Commission's expectations on pollutants and cumulative impacts, including water quality and recreation. So instead of discussing these impacts with each dock, the applicant would understand the expectations and be forced to comply.

Mr. Haworth added that the Commission is bound by a set of regulations in which there is very little grey area. He recommended the citizen group coordinate with the Planning Board and work out a regulation for town meeting. This particular project we are discussing tonight meets the regulation.

Ms. DeSalvatore shared Ms. Isherwood's concern regarding the potential for pollution damage within the salt marsh. Our decisions need to be evidence based, even without specific regulations.

She believes the Commission has been given sufficient evidence that the project would interfere with recreation and aesthetics, under the existing bylaw.

Mr. Kelly expressed concerns that if the Conservation Commission does not do their due diligence by reviewing and questioning the effects of pollution, then no one else will. Regardless of the current purview, the Commission does need to consider impacts with every project. He believes it is important to gather more information.

Mr. Haworth stated that any boat in the water has to meet EPA standards. The pollutant level has to be based on what the EPA allows, which is obtainable information. Applicants are not required to submit what boat will be on the dock, and the Commission cannot base decisions on hypothetical scenarios. The Board is bound by facts. The boat put on the dock initially may change in years to come.

Mr. Haworth mentioned DMF were more concerned with shading and not as concerned with pollutant load. The Commission should rely on professionals with the expertise like DMF and our agent and come together to govern, based on the facts provided for a fair decision.

Mr. Lavalette stated the materials used for piers have been used for dozens of years by the EPA and DEP. He reaffirmed to the Commission that this is an approvable project.

Mr. Galary added to Mr. Lavalette's point that the marina constructs docks under the same state guidelines as residential requirements.

Mr. Sullivan agreed that pilons are state approved. He confirmed it will not be a hydraulic lift, but a gear lift. Currently, he has a pontoon boat, but any future boat has to conform to state guidelines. He believes he and his engineer are following all the necessary guidelines on this project.

Mr. Haworth asked Mr. Sullivan if dock materials are state approved. Mr. Sullivan stated it is marine grade pressure treated and state approved. He will be docking his existing boat, which is currently tied to his mooring. Also, he confirmed he will just be flushing out salt water when the boat is brought back to the dock. He has had a boat at the mooring for 20 years with no leaks.

Michael Koska, the applicant's engineer, stated a dock measuring over 200 feet was approved on Fort Street, which is located within the congested hurricane barrier.

Mr. Haworth stated the Commission's job is to look at what is in the scope of the regulation and the applicant's objective. Nothing presented tonight meets the criteria for denial. If the Board were to forbid a property owner to follow through on a project that is within the regulation, then the Board is denying use of their land, for which they own and pay taxes to use.

Ms. Isherwood asked the Chair if a gear lift is just as clean as an air lift in that shellfish area.

Mr. Haworth had more of an issue with air lift, since it is bigger in size and could cause more shading over the marsh and impact shellfish. Any equipment maintained properly should not cause an issue. He asserted that proper maintenance could be an added condition.

Mr. Haworth made a motion to close the public hearing for 184 Balsam Street, SE 023-1368, CON 023-252, and issue an Order of Conditions under the Wetlands Protection Act and the Fairhaven Bylaw with the following conditions: 1) the 37 conditions as outlined in the staff report dated November 10, 2021; 2) the approved site plan dated July 14, 2021 and; 3) the dock plan dated September 27, 2021. The motion was seconded by Mr. Lavalette and passed via roll call vote. The motion was opposed by Mr. Kelly and Ms. DeSalvatore (5-2).

Mr. Haworth responded to criticism from the public in maintaining that he did not suppress any resident and gave ample speaking time. He followed the town meeting standards and gave everyone equal opportunity to express their concerns.

6. Violations/Enforcement Orders/Cease and Desist Notices

a. 20 Yankee Lane

Ms. McClees gave an overview and stated a revised document dated November 12, 2021 was sent to the Commission. The initial requested revision was received on November 8, 2021. The agent provided the applicant's representative comments on November 9, 2021.

Mr. Haworth commented that if the Board does not get materials in a timely manner, then the Commission does not have sufficient time to read and digest. He suggested in this case that the representative be given more time.

Representing applicant Brian Lopes, was Tim McGuire, Wetland Scientist and Wildlife Biologist with Goddard Consulting and Attorney John Zajac. Mr. McGuire stated they have been working with Ms. McClees to go over revisions and conduct site walks. He submitted the first revision of phase one eight days ago and offered to go through the major revision items for phases one and two. The restoration plan included the area is vegetated and stabilized. The existing stream is perennial with intermittent portions and will be addressed in phases three and four.

Mr. McGuire included a substantial revision and is now proposing restoration of the 100-foot buffer zone, as well as a small portion of the 200-foot river-front, extending beyond the 100-foot buffer zone. The rest of the area will be wet meadow and upland meadow. In addition, the equipment used will likely be an excavator and bucket truck for any needed soil. There is some existing topsoil that can be reused, per the discretion and approval of the supervising wetland scientist.

Goddard Consulting is amenable to giving the Commission an opportunity to review the revised plan in detail and will be pleased to address additional comments between now and the meeting on December 13, 2021.

Action: The Board is to send Ms. McClees any comments to be passed along to the consultant.

Ms. Isherwood would like to know exactly what is in the fill piles in the upland area. She has concerns about erosion overtime.

Mr. McGuire responded that all fill piles consist of soil that was moved around. There is also some brush from trees that were removed. Branches and rocks will be spread to provide habitat for ground dwelling mammals and birds. He does not believe there were any other streams missed in the delineation. The site was delineated prior to the start of the project and all grades on the site will be restored prior to any disturbances.

Ms. McClees reminded the Board that the second phase will address the natural stream and more complicated pieces on the site.

b. 217 Alden Road

Ms. McClees presented an update on the enforcement order and asked the applicant to work on a wetland delineation and submit a restoration plan by November 15, 2021. Ms. McClees has spoken with the property owner who has been very responsive. They have hired a wetland scientist to start the process and began the next steps to remove fill and vegetation pile, along with fine tuning the wetland line. Given that the applicant has been responsive and willing to work with the Board, an extension should be considered. The site is stabilized with erosion control in place.

Mr. Haworth made a motion to allow the applicant at 217 Alden Road to submit a restoration plan by February 15, 2022 and was seconded by Mr. Galary. The motion passed unanimously via roll call vote (7-0).

c. North Street Marsh, Map 15, Lot 43

Ms. McClees did not receive anything by November 8, 2021, so reached out to the applicant's representative for an update. They stated they misunderstood the Board's last motion. Ms. McClees will be following up to ensure what is being submitted complies with the enforcement order.

Mr. Lavalette's site visit brought up concerns. The cease and desist has left a mess where the fence has been started. The neighbors are paying a price for this and would like the Board to allow the applicant to finish the fence up until Cherry Street.

Ms. McClees reminded the Board that the enforcement order issued was part of a violation under the Order of Conditions for the fence. This order specifically stated that no regrading was to occur at any point on the property. If we allow the project to continue, it will send a message to residents that there is no need to comply with permits. The Board must maintain the same standards for all projects. There should not have been a reason to regrade and destabilize this area and use heavy equipment for the construction of a fence.

7. Correspondence**8. Ongoing Projects****9. Upcoming Projects**

Ms. McClees stated nothing has been submitted yet, but has received preliminary submittals for the December 13, 2021 meeting. She will send an email to the Board when she has definitive list.

10. General Business

a) Bills: N/A

b) Next Meeting: December 13, 2021

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

Mr. Haworth made motion to adjourn at and was seconded by Ms. DeSalvatore. Motion passed unanimously via roll call at 10:57 p.m. (7-0).

Respectfully submitted,

Kelly Camara

Recording Secretary