

**Conservation Commission
Monday, September 16, 2019 at 6:30 pm
Town Hall, 40 Center Street
Fairhaven, Massachusetts**

1. Chairman's Welcome and Media Notification:

Chairman Jay Simmons opened the meeting at 6:34p.m. and notified the public that the meeting was being televised and recorded.

2. Quorum/Attendance: Chairman Jay Simmons, Vice-Chair Geoff Haworth, Amy DeSalvatore, Nick Sylvia, and Gary Lavalette.

Whitney McClees, Conservation agent was present.

3. Approval of Minutes of the meetings of August 12 and August 26, 2019.

Geoff Haworth made a motion to approve the August 12, 2019 minutes, seconded by Amy DeSalvatore. This motion passed unanimously with Gary Lavalette in abstention (4-0-1).

Geoff Haworth made a motion to approve the August 26, 2019 minutes, seconded by Amy DeSalvatore. This motion passed unanimously with Gary Lavalette in abstention (4-0-1).

4. Requests for Extensions: None

5. Requests for Certificates of Compliance:

a. SE 023-1112, CON 023-093: 350 New Boston Road

Expired Order of Conditions for a septic system repair at an existing dwelling.

Whitney McClees explained that the Order of Conditions were issued in 2011 however work never started therefore issue invalid order of conditions and any other work would need a new filing.

Geoff Haworth made a motion to issue a Certificate of Compliance for an Invalid Order of Conditions, seconded by Amy DeSalvatore, this motion passed unanimously (5-0-0).

Jay Simmons noted that there was a request from the engineer for one of the continued public hearings to be taken out of order to allow the engineer to get to another meeting on time.

Geoff Haworth made a motion to take 88 Fort Street out of order, seconded by Nick Sylvia, this motion passed unanimously (6-0-0).

Jay Simmons opened the continued public hearing for 88 Fort Street.

7. b) 023-1305, CON 023-079: 88 Fort Street – continued to September 16, 2019

Notice of Intent filed by the Terje Tonnessen Revocable Trust - 2015 for the reconstruction of a stone/concrete seawall at the property located at 88 Fort Street, Assessors Map 5, Lots 4 and 5. Work to take place in Land Subject to Coastal Storm Flowage/Zone AE and Buffer Zone to Coastal Beach.

Dave Davignon was present and representing Mr. Tonnessen

Geoff Haworth asked the Chairman if the Agent could review voting eligibility for the hearing.

Whitney McClees reviewed which Commission members were eligible to vote: Jay, Geoff, Dan, Gary, and Amy with a signed Mullin form.

Mr. Davignon explained that he submitted a revised plan to address the fill that was placed on the property and around the tree and elaborated on the changes made, including grades. He also discussed the shellfish mitigation fee and that he spoke with the Agent and they agree that the removal debris from the old seawall will be a positive impact, a net gain of habitat. They won't be removing more than 99 cubic yards, above which additional permitting is triggered with Army Corps of Engineers. We will request that the project be conditioned for the removal of debris up to 99 cubic yards.

Whitney McClees explained her recommendations regarding the removal of debris and that the current recommendation is written as up to 100 cubic yards and it could be changed to 99 cubic yards.

Mr. Davignon explained that they are also in the process of obtaining permits for the seawall from MassDEP Waterways and the Army Corps of Engineers. Mr. Davignon explained that the Army Corps is requesting an in-lieu fee of 4500 dollars to square off the proposed new seawall.

Discussion whether to approve contingent on federal approval.

Whitney McClees explained that the area that they are filling is 114 sq. feet and the debris to be removed results in a net gain of shellfish habitat. She spoke with the shellfish warden and he said he felt that since there was a net gain, he doesn't view the impact to the habitat in the same way as with a dock piling. Ultimately, it is up to the Board to determine whether or not a shellfish mitigation fee needs to be paid in accordance with the fee schedule.

Mr. Davignon elaborated on what the \$4500 fee is for, with regard to shellfish propagation. He noted that the licensing is moving along and they need an Order of Conditions to receive a Waterways permit.

Whitney McClees reviewed some of the changes to the plan in response to the questions the Commission had asked at the previous meeting, including addition of vegetation behind the seawall and a pervious patio. She asked questions regarding what the pervious patio is proposed to be constructed out of, the addendum plan to address the fill around the tree.

Discussion continued regarding fill and grading around the tree.

Jay Simmons expressed concerns about the longevity of the tree that is to be retained and the property maintenance of the tree and if the fill will create ponding around the tree.

Discussion continued about issuing conditions regarding tree and flooding on to neighboring property in which Mr. Haworth doesn't seem comfortable with flooding on either property.

Gary Lavalette questioned how much fill would need to be removed in order to obtain an agreement.

Discussion ensued.

No abutters or interested parties were in attendance that would like to be heard on the matter.

Dave Davignon withdrew addendum plan

Geoff Haworth made a motion to accept the applicant's request to withdraw addendum plan, seconded by Gary Lavalette, this motion passed unanimously (5-0-0).

Geoff Haworth made a motion to close public hearing and approve the plans dated August 26, 2019 minus the addendum plan subject to all state and federal permits being in place and changing all three instances of 100 cubic yards in condition 13 to 99 cubic yards with the 60 conditions as laid out in the staff report dated September 12, 2019. Seconded by Gary Lavalette. Motion carries with 4 in favor and one opposed (Amy DeSalvatore) (4-1-0).

6. Brief Discussion with 9 Goulart Memorial Drive

Whitney McClees provided a brief overview and explained that the Owner has reached out and wanted to know if he wanted to take down additional trees, would that be something the Commission would approve or if it was something that should be left along and the Order of Conditions should continue forward as approved. Ms. McClees showed some images of the location and pointed out the areas and vegetation the property owner is looking to remove, marked off by caution tape. She noted that everything that is being discussed is directly adjacent to the salt marsh and is within the bordering vegetated wetland.

Geoff Haworth recused himself and left the room.

Jay Simmons expressed his concern that it's up to the applicant to show what the impact is and to show that there is a gain or what the improvement is from a Conservation perspective, not for the view.

Fernando Lemos, property owner, described the trees and noted that the trees were in the way.

Mr. Simmons noted that in the way is not the concern of the Commission.

Mr. Lemos explained that in the process of removing the approved trees that he discovered a lot of underbrush that was in the way of the approved planting plan.

Ms. McClees noted that most of it was highbush blueberry. Ms. DeSalvatore agreed.

Mr. Simmons stated that one of the concerns is that the property owner is proposing to take out healthy plants and replant the same thing and who's to say the new ones will thrive as well as the existing ones are.

Ms. DeSalvatore also noted that it takes years to establish a root network.

Nick Carrigg arrived at 7:14pm

Jay Simmons expressed that the property owner could file for an amended Order of Conditions, but he recommends that the owner hire a professional. It's not the burden of the Board or the Agent to prove that the project is doable. The burden is on the applicant or property owner to show why taking healthy, thriving trees in a resource area is something that the Board wants to allow.

Amy expressed her concerns with replacing healthy trees.

Owner explained that the plan will have to change to fit the landscape that wasn't expected.

Ms. DeSalvatore explained that things often have to change when you're planting because of on the ground conditions.

Whitney McClees explained that any project looking to remove healthy wetland vegetation would generally need a replacement of same type of mixture of vegetation. For example, a removed tree should be replaced with a tree rather than a shrub.

Mr. Simmons recommended the property owner consult with a professional.

Gary Lavalette stated his observations from his site visit.

Ms. McClees noted that it is important to consider the impact of equipment to remove the tree in addition to the removal of the tree itself.

Discussion regarding health of trees and potential modification of plans.

Nick Sylvia asked whether the owner has a replication plan for the tree.

Mr. Lemos stated that he does not at this time.

Discussion ensued.

Jay Simmons explained that the burden of proof is on the applicant to show the Commission why the project is feasible.

Ms. DeSalvatore explained that just because something is clustered or spindly doesn't mean it's unhealthy. That's just how things grow in the wild sometimes. It's a wetland.

Geoff Haworth returned.

1. **Public Hearings:**

Continued Public Hearings until later dates.

- a) SE 023-1286, CON-19-029: **200 Mill Road – request for continuance to October 28, 2019**
Mr. Haworth questioned why the applicant was requesting a continuance.

Mr. Simmons commented regarding renotification of abutters.

Ms. McClees explained that the reason they are requesting a continuance yet again is due to the fact that the stormwater management plan needing to be peer reviewed, they have indicated that they would like to do the review at the same time between Conservation and Planning and have yet to submit to the Planning Board. Apparently everything is set to go from the engineering firm but the engineer is waiting on the applicant.

Geoff Haworth made a motion to continue at the applicant's request to October 28, 2019, seconded by Nick Carrigg. This motion passed unanimously (6-0-0)

- b) SE 023-1297, CON-19-051: **Hiller Avenue & Timothy Street, Assessors Map 28C, Lots 71 and 71A – request for continuance to October 15, 2019**

Geoff Haworth made a motion to continue at applicant's request to October 15, 2019, seconded by Nick Carrigg. This motion passed unanimously (6-0-0).

- c) SE 023-1303, CON 023-075: **240 Alden Road – request for continuance to September 30, 2019**

Geoff Haworth made a motion to continue at applicant's request to September 30, 2019, seconded by Nick Carrigg. This motion passed unanimously (6-0-0).

- d) SE 023-1302, CON-19-066: **6 Emerson Avenue – *continued to September 16, 2019***
Geoff Haworth made a motion to continue at applicant's request to September 30, 2019, seconded by Nick Carrigg. This motion passed unanimously (6-0-0).
- e) SE 023-1299, CON 023-081: **Bridge Street, Assessors Map 36, Lot 15 – *continued to September 16, 2019***
Notice of Intent filed by Craig Lutz, Carapace LLC for the construction of an auto dealership with ancillary paved parking on vacant lot at the property located at Bridge Street, Assessors Map 36, Lot 15. Work to take place in Bordering Vegetated Wetland.

Craig Lutz was present.

Ms. McClees explained that the Commission requested peer review proposals, one of which was to come from John Rockwell. She noted that she solicited proposals from four different peer reviewers, John Rockwell, Magdalena Lofstedt, Brad Holmes from Environmental Consulting & Resources, Inc, Natural Resources Services, and Brooke Monroe of Pinebrook Consulting. She explained that John Rockwell indicated he was unable to do the peer review due to conflict of interest. Ms. McClees reviewed the submitted proposals from Brad Holmes, Natural Resources Services, Inc., and Magdalena Lofstedt.

Mr. Simmons commented that he felt that Ms. Lofstedt would be the best choice due to the fact that she mentioned that she has experience with disturbed sites.

Ms. DeSalvatore agreed.

Mr. Haworth asked about liability insurance and if she was a registered business.

Mr. Simmons noted that these are not items the Commission has requested from peer reviewers in the past.

Discussion regarding different possible candidates ensued.

Ms. DeSalvatore made a motion that the Commission choose Magdalena Lofstedt as the peer reviewer with the second choice as Brad Holmes if Ms. Lofstedt does not have the appropriate liability insurance, seconded by Gary Lavalette.

Mr. Haworth noted that he does not want to see the project held up.

Discussion regarding process of contacting peer reviewers for documents.

Discussion regarding timeline for getting the peer review completed.

Mr. Simmons noted that there was a motion on the table and reviewed the motion.

Mr. Lutz requested that he be contacted by the peer reviewer prior to the peer review being conducted.

Mr. Simmons called for the vote. Motion passed unanimously (6-0-0).

- f) SE 023-1296, CON-19-050: **46 Sconticut Neck Road – *continued to September 16, 2019***
Notice of Intent filed by Joshua Alves, Alexander Grey Development LLC, for the construction of an 8-house subdivision, roadway, stormwater facility, and utilities and for wetland mitigation of historical impacts at the property located at 46 Sconticut Neck Road, Assessors Map 28, Lot 24. Work to take place within Bordering Vegetated Wetland and Buffer Zone to Bordering Vegetated Wetland.

Mr. Arsen Hambardzumian, NESRA Engineering, was present.

Ms. McClees explained that there have been two rounds of peer review. The most recent letter noted that some things have been resolved and some have not.

Mr. Hambardzumian explained changes to plans. He noted that nothing was different in terms of layout, but the retention area has changed from an infiltration area to a pocket wetland. He indicated that the reason he wanted to come to the meeting given the continuations was to provide an update on the project and wanted to communicate that they are still working on the project. In particular, to the peer review, there were two questions that were left up to the Board: the land disturbance permit, through back and forth with DPW, there is no documentation to apply for a permit as of yet and the director of DPW indicated that as long as the project comply with Conservation/Planning regulations, they should be all set. Additionally, the engineer noted that given the size of the project, they will have to file for a Stormwater Pollution Prevention Plan with the EPA. The other item was filing with Natural Heritage. Mr. Hambardzumian noted that there are species on the property but they are over 500 feet from the edge of the work limit. The peer reviewer noted that it should not have an effect but that they still recommend filing, so Mr. Hambardzumian wanted to touch base with the Board on that.

Ms. McClees asked the engineer to provide her with the communication with DPW. She noted that the applicant is proposing to donate 25 acres to the Conservation Commission to conserve the salt marsh area that is listed by Natural Heritage as priority habitat. Ms. McClees asked the engineer if he has communicated with Natural Heritage.

Mr. Hambardzumian indicated that he had not.

Ms. McClees recommended that he contact Natural Heritage to determine whether or not a permit needs to be filed with them since they are a different regulatory authority.

Mr. Simmons recommend continuing the hearing to allow time to address comments and to study revised plans.

Mr. Haworth asked about the rationale regarding the pocket wetlands.

Mr. Hambardzumian noted that the pocket wetland does not require a 50-foot setback from wetlands.

Discussion regarding pocket wetlands, elevation, and groundwater.

Mr. Hambardzumian requested a continuance to September 30, 2019.

Geoff Haworth made a motion to continue 46 Sconticut Neck Road at the applicant's request to September 30, 2019, seconded by Nick Carrigg. This motion passed unanimously (6-0-0).

New Public Hearingsg) CON 023-089: **56 Balsam Street**

Request for Determination of Applicability filed after-the-fact by Edmond Lacombe for the installation of a paved driveway at the property located at 56 Balsam Street, Assessors Map 43C, Lot 13. Work to take place Land Subject to Coastal Storm Flowage Zone VE.

Edmond and Dawn Lacombe were present.

Ms. McClees noted that this came in as an after-the-fact filing for a paved driveway in a VE flood zone. There is coastal beach and coastal dune on the property, but this driveway outside Buffer Zone to both so the Commission is looking strictly at flood zone. The Board of Public Works permit was issued in June allowing the driveway apron to be widened and the paving was done subsequent to that. The driveway is 60'x26', which was added to the existing apron, which was in deteriorating condition that was approved by the BPW to be widened. Per the application, the 60'x26' asphalt driveway was added to the existing apron and installed for the ease of access to the property, reduction of maintenance from the previous stone driveway, and ease of backing up.

Ms. McClees noted that based on her rough calculations that it appears that with the paving of the driveway, lot coverage is now about 36%. The maximum lot coverage for the RR district is 25%, so potentially a variance is needed from the Board of Appeals. Given that the entire property falls within the Velocity Flood Zone, the amount of impervious surface on the lot likely reduces flood control and storm damage prevention. Ms. McClees noted that had the driveway come before the Commission prior to installation, likely her recommendation would have been to reduce the size of the driveway given the amount of proposed impervious surface on the lot.

Ms. McClees asked the applicant if they have any plan to install any plantings in the rear of the property to offset the driveway in the front.

Mrs. Lacombe indicated they did not have any plans at this time but that they certainly could.

Mr. Simmons asked if any abutters wished to be heard.

Abutter, Laura Manning spoke in favor of project

Jerry Hendrick noted that the driveway was installed with a drain due to the driveway pitching toward the house and questioned the location of the vegetation.

Ms. McClees explained why the vegetation is helps with reducing flood risk to the front of the property because it slows down water before it gets to the impervious surfaces.

Ms. DeSalvatore recommends a site visit to the property.

Discussion regarding vegetation and flood zones.

Mr. Lacombe noted that the most serious flooding they experienced was during Hurricane Sandy and the vegetation in the rear kept much of the flood waters at bay.

Discussion regarding previous storms.

Mr. Lavalette expressed concerns regarding location of driveway and neighbors.

Discussion regarding conditions prior to driveway being paved and current conditions.

Discussion regarding the lot coverage being 11% over what is allowed without a variance from the Board of Appeals.

Discussion ensued regarding changes in the flood zone that impact flood water.

Mr. Simmons expressed his opinion that the contractor didn't do what he was supposed to do.

Mr. Haworth noted that the contractor may not have been aware of the need for a conservation permit in a flood zone. Mr. Haworth indicated that he does not see a need for a driveway of that size in a flood zone.

Mr. Carrigg questioned where the drain in the driveway empties to.

Mrs. Lacombe indicated that it goes into the lawn.

Discussion regarding capacity of drain to handle more runoff.

Ms. McClees reviewed her recommendations in the staff report.

Jay Simmons expressed his concerns regarding the project.

Geoff Haworth expressed his recommendations regarding removing a portion that might meet zoning regulations.

Mr. Lavalette stated his agreement with Mr. Haworth.

Ms. Lacombe asked if that would be in lieu of more plantings.

Mr. Haworth indicated that it might be able to be in lieu of plantings.

Discussion regarding drainage.

The applicants requested a continuance to the next meeting.

Geoff Haworth made a motion to continue 56 Balsam Street to September 30, 2019 at applicant's request, seconded by Nick Carrigg. This motion passed unanimously (6-0-0).

h) **CON 023-090: 46 Charity Stevens Lane**

Notice of Intent filed by Clean Energy Collective, LLC for the construction of new ground-mounted photovoltaic solar arrays, gravel driveways, stormwater facilities, electrical

property located at 46 Charity Stevens Lane, Assessors Map 40, Lot 8. Work to take place in Buffer Zone to Bordering Vegetated Wetland.

Greg Carey was present.

Ms. McClees noted that DEP has not issued a file number yet and therefore the public hearing cannot be closed and that the stormwater peer review is in progress. She explained that the project is located on previous Chapter 61A land, which the Selectmen voted not to exercise right of first refusal.

Mr. Carey of Clean Energy Collective indicated that they have filed a Notice of Intent and provided a review of the project. He noted that Rich Tabaczynski of Atlantic Design Engineers and Scott Goddard of Goddard Consulting were also present.

Mr. Tabaczynski provided an overview of project and explained that the plans presented encompass about 11 acres of the 46-acre parcel. The project proposes two solar arrays in two different locations on the property. The work that is within the Buffer Zone to wetlands on site is the western array and eastern is outside Buffer Zone to both bordering and isolated vegetated wetlands. The site will be accessed by a dirt road that comes in off of Charity Stevens Lane. The western array will be a 5-acre array surrounded by a 7-foot chain link fence with a gap at the bottom for wildlife passage. The majority of construction will be within the open field, with the exception of the southern portion which will have some trees cleared for panels.

Mr. Haworth asked about the square footage of the trees that will be cut.

Mr. Simmons asked how that would fall within the town bylaw.

Mr. Tabaczynski noted that there is a 20,000 square foot area where they are proposing to coppice the trees, rather than cut them down. There will be about 5600 square feet of trees will have the tops cut off. About 1600 square feet of trees that are inside the fence will be cleared entirely to soil.

Mr. Haworth questioned how much of the tops of the trees would be cut height-wise.

Mr. Simmons asked how much of the trees to be coppiced will remain.

Mr. Carey stated that they do not have a standard and have not made a final determination. He also stated that they try not to impact trees as much as possible.

Mr. Simmons asked why the array couldn't be moved out of the woods into the field.

Mr. Tabaczynski responded that then there would be impact to the wetlands in the field.

Mr. Goddard noted that the wetlands come into the field.

Ms. McClees reviewed the location of the wetlands on the plans.

Mr. Tabaczynski noted that they are working within the existing grades and are not going to be disturbing the ground much at all for grading. The primary disturbance will be the panel structure.

Mr. Simmons asked about the anchor system for the panels.

Mr. Tabaczynski stated that it hasn't been determined yet and will be based on the geotechnical study that will be conducted. Typically, driven posts are used.

Mr. Simmons questioned the height of the lowest portion of the panel off the ground.

Mr. Carey noted that it was about 3 feet.

Mr. Simmons questioned the maintenance needs underneath the panels.

Mr. Carey stated that the seed mix is allowed to grow under the panels and as long as it's below the bottom of the panel, it will be left alone. Once it begins to grow up above the bottom of the panel, it will be cut back.

Ms. McClees reviewed her questions as outlined in the staff report and the responses from the applicant. Ms. McClees noted that the proposed seed mix included no native species. She also noted that the stormwater report is in the process of being peer reviewed.

Mr. Lavalette questioned how much an acre was and what portion of what the applicant is proposing to cut makes up an acre.

Ms. McClees reviewed the potential impacts of cutting trees near wetlands.

Ms. DeSalvatore noted that the perimeter of the wetland is usually a corridor for wildlife and it's important to conserve a space there as a wildlife corridor. She also commented that cutting the tops off of the tree would likely kill them. Ms. DeSalvatore questioned if there was buffer zone on the eastern array.

Ms. McClees discussed the buffer zones on the property and some of the existing conditions.

Mr. Simmons asked why the applicant didn't propose native species to be planted.

Mr. Carey stated that he wasn't sure why native species weren't proposed, that likely the Operations Team pulled it from another plan.

Scott Goddard, wetland scientist, explained the tree line, the existing conditions with regard to the wetlands. He provided estimated dimensions of the arrays and noted that the fence allows wildlife to move freely. He went into detail about the ponds.

Mr. Goddard noted that he and Ms. McClees walked the line and made some adjustments to the line.

Mr. Lavalette questioned the ability to push the project out of the woods.

Ms. McClees noted that likely the array would have to shift into a wetland area if it were to stay out of the woods.

Discussion regarding wetland replication.

Mr. Carrigg asked about the plan for maintaining the areas where the trees are coppiced or cut.

Mr. Carey noted that if the trees were to grow back in a way that would impact shading, the growth would then be trimmed back.

Mr. Haworth questioned how the trees will be cut and access to do so.

Mr. Tabaczynski noted that the trees will be cut with a machine that might disturb the understory.

Discussion regarding access and disturbance when trees are cut.

Ms. DeSalvatore questioned the maintenance of the panels themselves.

Mr. Haworth commented that he would like to see a 50-foot setback from the wetland line as a no-disturb zone.

Mr. Goddard addressed Mr. Haworth's concerns regarding setback and discussed the reduction in disturbance to the wetland.

Discussion regarding changes the project might cause on the wetland.

Mr. Haworth stated that he believes the wetland line should be peer reviewed due to scope of project.

Mr. Carrigg questioned what the majority of the trees were.

The representatives noted that the trees were mostly pine.

Mr. Sylvia questioned the type of fence.

Mr. Carey noted that it would be chain link.

Discussion regarding height of the fence and height off the ground.

Discussion regarding wetland line and potential peer review.

Discussion regarding setback from the wetland line.

Mr. Simmons noted that the impact from agriculture will be reducing with this project.

Further discussion regarding peer review and setback from the wetland line.

Mr. Haworth noted that he felt if there was a 25-foot setback, he would feel comfortable not having a peer review done by way of compromise.

The applicant requested to continue the hearing to the next meeting.

Geoff Haworth made a motion to continue 46 Charity Stevens Lane until September 30 at applicant's request, seconded by Nick Carrigg. This motion passed unanimously (6-0-0).

i) CON 023-091: **21 Silver Shell Beach Drive**

Request for Determination of Applicability filed by Kenneth and Sandra Balthazar for the addition of some fill, loam, and seed at three locations at the property located at 21 Silver Shell Beach Drive, Assessors Map 41, Lots 41 and 29. Work to take place in Land Subject to Coastal Storm Flowage Zone VE and Buffer Zone to Coastal Beach and Bordering Vegetated Wetland.

Kenneth and Sandra Balthazar were present.

Ms. McClees reviewed the applicant's request and the existing conditions, including how much fill is proposed to be brought in.

David Alexander, 23 Silver Shell Beach Drive, questioned where the water will go and what the mitigation might be. His opinion is that a lot of the flooding might have been created by the installation of the septic system.

Ms. McClees noted that her question was similar regarding where the water will go if the front yard is filled.

Discussion regarding location of flooding and neighboring properties.

Ms. DeSalvatore expressed her opinion that the project needs an engineer.

Viola Panagakos abuts the lot across the street stated the location of a well that is no longer in service. She noted that she doesn't ever remember seeing a pond like this in the 50 years she's been there.

Discussion regarding flooding and drainage.

George Panagakos stated the location of the catch basin in the street.

Mr. Haworth recommended a slight berm on the property line to prevent flooding the neighbor's property.

Mr. Haworth questioned the elevation of the septic.

Ms. DeSalvatore questioned when the septic system was installed.

Mrs. Balthazar noted that the septic system was installed in 2016 prior to them purchasing the home.

Discussion of flooding on lot across the street.

The Commission recommended getting grades for existing conditions.

The applicants requested a continuance to the September 30, 2019 meeting.

Geoff Haworth made a motion to continue 21 Silver Shell Beach Drive to September 30, 2019 at the applicant's request, seconded by Nick Sylvia. Motion passed unanimously (6-0-0).

Jay Simmons recused himself as chair and sat in the audience.

Geoff Haworth assumed role of chair.

j) CON 023-092: **131 Dogwood Street**

Request for Determination of Applicability filed under the Fairhaven Wetlands Bylaw only by Keith Pedro for the construction of a porch and deck and to fill in a depression over a dry well to prevent puddling at the property located at 131 Dogwood Street, Assessors Map 43A, Lots 239-241. Work to take place in Buffer Zone to Isolated Vegetated Wetland.

Mr. Haworth disclosed that he is friends with Mr. Pedro but that in no way impacts his decision.

Mr. Haworth explained that he conducted a site visit and noted an excavator was digging footings for the proposed deck. At that time, a cease and desist order was issued and the paperwork has since been filed.

Ms. McClees noted that this is a bylaw only filing due to being within 100 feet of the isolated vegetated wetland on the adjacent property. The proposed project is approximately in the outer 50 feet of the buffer zone and aside from the fact that work began prior to filing for a permit appears to be a perfectly approvable project that just needs the appropriate permits.

Mr. Pedro noted that the deck is about 65 feet from the edge of the wetland and the main reason for the deck is to support the house. There is a drywell on the property that fills up and floods the yard and the applicant would like to fill that small area as well.

Mr. Haworth noted that upon his visit, he has a discussion with Mr. Pedro regarding backfilling the holes to preserve the stability of the house due to impending weather. Mr. Haworth measured distance from wetland flags on site and informed Mr. Pedro that anything outside of the 100 feet from the wetland is outside the jurisdiction of the Commission but anything inside the 100-foot buffer zone, he should wait to continue with until after the meeting with the Commission. Mr. Haworth noted that he also feels it's a perfectly approvable project that needs the appropriate permits.

Mr. Simmons, abutter, stated that he feels it is a perfectly approvable project and questioned the location of the drains near the property.

Mr. Haworth stated that he would like to remove the cease and desist order from the property and explained his recommendations for erosion control.

Mr. Pedro explained that he pulled out a few boulders during construction and stated that he would like to have it remain on the property in the rear of the property where there are already some existing rocks.

Mr. Haworth stated that he feels that that wouldn't be a problem as long as the boulders are not in the wetland.

Mr. Carrigg made a motion to close the public hearing and issue a Negative 6 determination with the condition that erosion controls are installed, seconded by Nick Sylvia. This motion passed unanimously (5-0-0).

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

Nick Carrigg made a motion to take item c) Assessors Map 15, Lot 43, North Street Marsh out of order, seconded by Gary Lavalette. The motion passed unanimously (5-0-0).

c) Assessors Map 15, Lot 43, North Street Marsh

Mr. Haworth stated that conducted a site visit earlier in the day and presented photographs to the Commission.

Ms. McClees reviewed the previous history regarding the clearing on this parcel.

Mr. Haworth reviewed some of the issues that were occurring in the clearing behind Hedge Street.

Mr. Haworth posted cease and desist notices on the property for all activity during his site visit.

Discussion regarding non-compliance of property owner.

Amy DeSalvatore made a motion to issue a violation and a \$300 fine with the warning that there can be additional fines, seconded by Nick Sylvia. This motion passed unanimously (5-0-0).

Amy DeSalvatore made a motion to issue an Enforcement Order and appear at the next meeting and the cease and desist remain, seconded by Nick Carrigg. This motion passed unanimously (5-0-0).

Jay Simmons rejoined meeting at this time and resumed his role as Chair.

a) Town Beach on West Island – waiting for \$300 fine

Ms. McClees explained that Certified letter has not yet been received but it also hasn't been returned and will stay on agenda until addressed.

b) Chamber Street

Ms. McClees received a report of cutting and performed a site visit. She didn't note any new cutting but posted a cease and desist anyway to deter further cutting.

Other Business was taken out of order.

219 Sconticut Neck Rd

Owner's sister was present. Ms. McClees explained that she received a report that a cease and desist was posted for the removal of stone wall and replaced with fence. Removal of rocks and fence to be installed as well as regrading and the property owner will be filing.

Discussion regarding machinery on property owner's sister explained the rock wall that's already existing and would like to know what the owner is allowed to do with to stay in compliance.

Discussion regarding fill and overview on plan for fence.

Ms. McClees recommended that the applicant file a Request for Determination. She asked the Board if they feel this should be an after-the-fact filing or not.

Ms. McClees stated that he is in a buffer zone and flood zone.

Geoff Haworth made a motion for 219 Sconticut Neck Rd that the cease and desist to remain in effect until such time that the Board votes otherwise and a regular Request for Determination filing be done within 90 days, seconded by Nick Carrigg. This motion passed unanimously (6-0-0).

1 Stetson Avenue

Ms. McClees explained that she received a report that down near the end of Farmfield Street, someone was cutting beach vegetation. She conducted a site visit and observed someone onsite cutting back jewelweed, which is a native wetland plant, some phragmites, and some other vegetation in the area. Ms. McClees stated that there is no permit on file and the area is VE flood zone, coastal dune, and coastal beach. She instructed the property owner that no further work could be done without a permit.

Wendy Drumm was present and explained that they didn't know they needed a permit and elaborated on the reason for the cutting.

Mr. Simmons stated there should be no more cutting on resource area unless there's a filing and that all vegetation should be allowed to grow back.

Geoff Haworth made a motion that for violation discovered today at 1 Stetson Avenue, no further cutting will occur, vegetation will grow back, any further work on the property requires a filing with the Board, seconded by Gary Lavalette. This motion passed unanimously (6-0-0).

9. General Business:

a) Bills:

Whitney McClees reviewed the most recently paid bills:

Natural Resource Services, Inc. - \$850.00 for the peer review of 240 Alden Road

Fairhaven Neighborhood News - \$420.00 for legal ads for four meetings

GCG Associates, Inc. - \$1,277.50 for the peer review of 46 Sconticut Neck Road

GCG Associates, Inc. - \$1072.50 for the peer review of 12 Howland Road

Nye Lubricants, Inc. - \$127.50 for the reimbursement of the remaining peer review fee

b) Discussion regarding MassDEP/MACC Forum: Thursday, September 26 at 6:00pm at DEP Lakeville office – They're holding a wetlands forum

c) Discussion regarding the MACC Fall Conference October 19, Devens Common Center

d) Correspondence: None

e) Next meeting: September 30, 2019

f) Reminder: First meeting in October is TUESDAY, October 15

Ms. DeSalvatore expressed her opposition to Tuesday meetings.

Nick Carrigg made a motion to adjourn at 11:28 PM, seconded by Nick Sylvia, this motion passed unanimously (6-0-0).

Respectfully, submitted
Shallyn Rodriguez