

**Conservation Commission
Monday, January 13, 2020 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 6:37 pm and welcomed everyone to the meeting and advised the public that they were being televised and recorded.

2. Quorum/Attendance

Nick Sylvia, Dan Doyle, Gary Lavalette, Geoff Haworth, Jay Simmons, and Amy DeSalvatore were present. Nick Carrigg was absent.

The Conservation Agent, Whitney McClees was also present.

3. **Minutes:**

a) Approve the minutes of December 9, 2019

Geoff Haworth made a motion to approve the meeting minutes of December 9, 2019, seconded by Dan Doyle, this motion passed unanimously (6-0-0).

4. **Filing Fee Schedule Revision**

Mr. Haworth explained that the single proposed revision was a peer review deposit fee of \$2500 for Notices of Intent only. The deposit will be returned if not used when the file is complete.

Mr. Simmons questioned how the Commission had done that previous.

Ms. McClees noted that previous it was done individually based on an estimate from the peer reviewer.

Mr. Haworth made a motion to accept the revised fee schedule, seconded by Dan Doyle, this motion passed unanimously (6-0-0).

5. **Draft Town Meeting Article: Transfer of Land to Conservation Commission**

Mr. Haworth made a motion to table this item until the end of the meeting, seconded by Dan Doyle, this motion passed unanimously (6-0-0).

6. **Requests for Extensions:** none

7. **Requests for Certificates of Compliance**

a) **SE 023-1127, CON 023-111:** 1 Bella Vista Island

Geoff Haworth made a motion to table SE 023-1127, CON 023-111: 1 Bella Vista Island until the public hearing associated with the same property, seconded by Gary Lavalette, this motion passed unanimously (6-0-0).

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

Mr. Simmons noted that the first two public hearings were previously continued to a future meeting date as noted in the agenda.

Continued to a Future Meeting

a) SE 023-1302, CON-19-066: **6 Emerson Avenue** – *continued to March 9, 2020*

Notice of Intent filed by Natalie Reis for the installation of a garage, stamped patio, and concrete driveway at the property located at 6 Emerson Avenue, Assessors Map 29A, Lot 119. Work to take place within Land Subject to Coastal Storm Flowage/Zone VE and Buffer Zone to Coastal Beach.

b) SE 023-1296, CON-19-050: **46 Sconticut Neck Road** – *continued to February 24, 2020*

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.

Continued Requests for Determination of Applicability

c) CON 023-109: **40 Wapatma Lane** – *continued to January 27, 2020*

Request for Determination of Applicability filed by Ecosystem Solutions, Inc. for the adjustment of the existing fence to allow for 25-foot setback from wetlands and the creation of a 12-inch soil berm to prevent agricultural runoff from entering the wetlands at the property located at 40 Wapatma Lane, Assessors Map 29, Lots 28-29. Work to take place in Land Subject to Coastal Storm Flowage/Zone AE and buffer zone to Bordering Vegetated Wetland.

Ms. McClees reviewed the minor edits to the plans after discussion at the previous meeting. The plan has been revised to include erosion control along the length of the installed berm and include a note clarifying that the berm will be located directly under the fence between Flags B5 and B7. Ms. McClees noted that her recommendation is to close the public hearing and issue a Negative 3 and Negative 6 Determination with three conditions as outlined in the staff report dated January 21, 2020.

Ms. DeSalvatore asked that anything used for erosion control be something that would not spread weed seed. Ms. DeSalvatore questioned what would prevent the berm directly underneath the fence from eroding into the wetland once it's installed.

Ms. McClees noted that it should be constructed in a way that it doesn't continue to erode and also it will be seeded after installation to stabilize it.

Mr. Simmons noted that the straw is placed to hold the berm in place until it is vegetated.

Ms. DeSalvatore questioned whether there would be a timeline for the project.

Ms. McClees stated that one of her recommended conditions included a timeline.

Mr. Haworth made a motion to close the public hearing for CON 023-109, 40 Wapatma Lane and issue a Negative 3 and Negative 6 Determination with the three conditions listed below, seconded by Mr. Lavalette, this motion passed unanimously (6-0-0).

Work shall be completed within one (1) year of issuance date of this Determination.
Erosion controls as depicted on the approved plan shall be installed prior to any earth-disturbing work commencing.
Contact the Agent to conduct a site visit within 90 days of the completion of the work.

New Requests for Determination of Applicability

d) CON 023-114: **5 Billy's Way**

Request for Determination of Applicability filed by Sharon M. Simmons for the installation of an 8-foot by 19-foot deck on two sonotubes at the property located at 5 Billy's Way, Assessors Map 29A, Lot 185. Work to take place in Land Subject to Coastal Storm Flowage and buffer zone to Coastal Dune.

Mr. Simmons noted that he shares the same last name as the applicant, but they are not related and that he has no financial interest in the property whatsoever.

Ms. McClees explained that the applicants are looking to install an 8ft by 19ft deck with the two sonotubes. The property is in the velocity flood zone and within the buffer zone to the Coastal Dune. In her opinion, the project proposes negligible impact. There are only two sonotubes that are

proposed to be installed. She recommends the Commission close the public hearing and issue a Negative 2 and Negative 6 Determination.

Mr. Haworth stated that he felt the impact was very minimal and it was a simple project.

Mr. Haworth motion to close the public hearing for CON 023-114 5 Billy's Way and issue a Negative 2 and Negative 6 Determination, seconded by Ms. DeSalvatore, this motion passed unanimously (6-0-0).

e) **CON 023-116: 42 Bayview Avenue**

Request for Determination of Applicability filed by Florence Lawson for the replacement of the existing 10-foot by 6-foot deck and sonotubes at the property located at 42 Bayview Avenue, Assessors Map 28A, Lot 444. Work to take place in Land Subject to Coastal Storm Flowage.

Ms. McClees explained that the applicants propose to remove and replace the existing attached deck and associated sonotubes. The replacement will be constructed in the same footprint as the existing structure. The property is within both AE and VE flood zone, but outside the 100-foot buffer zone to coastal resource areas. In her opinion, the project proposes negligible impact as the disturbance involves the replacement of existing sonotubes. She recommends that the Commission close the public hearing and issue a Negative 2 and Negative 6 Determination.

Dennis Lavoie was present for the applicant.

Geoff Haworth made a motion to close public hearing for CON 023-116: 42 Bayview Avenue and issue Negative 2 and Negative 6 Determination, seconded by Dan Doyle, this motion passed unanimously (6-0-0).

Continued Notices of Intent

f) **CON 023-108: 4 Pequod Road – *continued to January 27, 2020***

Notice of Intent filed by Sheldon Scott, United States Postal Service, for parking lot resurfacing, concrete walk replacement, and related exterior maintenance measures at the property located at 4 Pequod Road, Assessors Map 36, Lot 13C. Work to take place in buffer zone to Bordering Vegetated Wetland.

Mr. Simmons stated that the Commission had indicated that the applicant did not need to be present for this meeting at the previous meeting.

Ms. McClees explained they appeared at the previous meeting and there were some questions regarding silt fencing and maintenance of stormwater facilities. The applicant provided revised plans and a revised Operation and Maintenance Plan to include silt fencing along the side of the property adjacent to the wetland. The revisions also include a location onsite for concrete truck washout and the applicant does not anticipate needing to do any dewatering but have made a note on the plan that if it is needed, it will occur offsite. The notes on the plans have been revised to include maintenance of the stormwater facilities onsite and that they will be cleaned out in line with manufacturer's recommended maintenance measures. Ms. McClees noted that the applicant is of the opinion that based on the system that was designed when the building was built, the stormwater calculations are by and large the same for the purposes of stormwater management.

Mr. Lavalette questioned whether the Office receives reports regarding stormwater facility maintenance.

Ms. McClees stated that she does receive some.

Mr. Lavalette questioned whether this project is an expansion of impervious surface.

Ms. McClees noted that there is no increase in impervious surface.

Mr. Lavalette questioned whether they had previous problems with stormwater.

Ms. McClees stated that she did not believe there had been.

Ms. DeSalvatore questioned the raising of the sidewalk and how that might impact drainage.

Ms. McClees noted that it is not substantially changing the amount of impervious surface on the site.

Mr. Haworth noted that the grades are not changing according to the plans.

Ms. DeSalvatore questioned if a peer review of the stormwater was done when the building was constructed.

Ms. McClees stated that there was nothing in the file, but that doesn't mean one wasn't done.

Mr. Haworth stated that this filing will get them back onto a maintenance schedule.

Ms. McClees noted that the applicant stated that even though the stormwater facilities have not been consistently maintained since construction, they are still functioning.

Ms. DeSalvatore stated that typically with a project like this, the Commission would ask for a peer review.

Ms. McClees shared the applicant's opinion regarding improvements in the context of the redevelopment project. According to the applicant, completely redesigning the parking lot would be beyond the scope and cost of what they are seeking to do.

Geoff Haworth made a motion to close the public hearing for SE 023-1311, CON 023-108, 4 Pequod Road and issue an Order of Conditions using the plans dated January 16, 2020 with the 53 conditions as outline in the January 20, 2020 staff report, seconded by Nick Sylvia, this motion passed with five members in favor and Amy DeSalvatore in abstention (5-0-1).

g) SE 023-1297, CON-19-051: **Hiller Avenue & Timothy Street, Assessors Map 28C, Lots 71 and 71A – continued to January 27, 2020**

Notice of Intent filed by Robert Roderiques for the construction of paved roadways and stormwater management systems and the installation of utilities including the placement of fill for the aforementioned work for a proposed 16-lot subdivision at the property located at Assessors Map 28C, Lots 71 and 71A. Work to take place within the Buffer Zone to Bordering Vegetated Wetland.

Mr. Simmons noted that there has been a request for continuance from the applicant to a date in May.

Ms. McClees stated that the applicant had submitted a request to continue to the second meeting in May, which is May 18, to allow time for addressing some issues through other boards.

Mr. Haworth stated that at the last meeting, the Commission had requested someone to appear on January 27th. He observed that no one is present to request the continuance. He stated that he believes that things shouldn't be held up in Conservation just because of issues with other boards. He feels they should be working with the Commission on their concerns and at least have a conversation with the Commission. Mr. Haworth feels they should be present before the Commission rather than continually requesting continuances.

Ms. DeSalvatore stated that she feels they should have to start over again.

Ms. McClees noted that they have been revising plans with regard to stormwater, but had not yet addressed comments that were made in the opening hearing about the plan overall.

Mr. Simmons noted that there has been activity but they have not been before the Commission.

Ms. McClees confirmed that was the case.

Mr. Simmons stated that there will be a renotification of abutters.

Karen Isherwood of 3 Teal Circle questioned the action and continuance of the project.

Geoff Haworth explained that he will be including in his motion that the applicants will be required to be present at the May 18 meeting.

Discussion regarding processes for continuances.

Amy DeSalvatore expressed recommendations for reapplying.

Jay Simmons explained they could come forth and explained where they are in the process.

Whitney McClees explained they aren't able to reapply with an open filing.

Geoff Haworth made a motion to grant the continuance to May 18, 2020 for SE 023-1297, CON-19-051: Hiller Avenue & Timothy Street, Assessors Map 28C, Lots 71 and 71A at the applicant's request with the condition that they readvertise and renotify abutters via certified mail by May 7, 2020 and that a representative be present on May 18th in the event that the Commission decides to move forward with the public hearing, seconded by Dan Doyle, this motion passed unanimously (6-0-0).

h) SE 023-1299, CON 023-081: **Bridge Street, Assessors Map 36, Lot 15 – *continued to January 27, 2020***

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.

Rich Rheume, Prime Engineering, and applicant Craig Lutz were present.

Ms. McClees stated that there have been a few rounds of stormwater peer review. She noted that of the items that needed to be changed on the plans, most have been changed. She noted that the count of *Ilex crenata* in the planting table is still incorrect. Ms. McClees reviewed the proposed plantings as outlined in the staff report. She noted that the invasive vegetation control plan in the O&M plan has not been amended and it still lacking in detail. It does not address the legacy of multiflora rose on the site, nor does it address who would be doing the removal. The amended Stormwater Report Appendix A refers to haybales in several places. Haybales are likely to introduce invasive species, so an appropriate substitute should be proposed. Additionally, this is not consistent with the amended plans, which refer to compost logs. The applicant has previously stated that the project will need a Stormwater Pollution Prevention Plan (SWPPP). According to the most recent stormwater peer review, the applicant is requesting several waivers to the MassDEP Stormwater Regulations in addition to requesting several waivers to the local stormwater regulations. It appears there are areas where there may not yet be compliance with the Massachusetts Stormwater Handbook. If the Commission would like to continue with stormwater peer review to further assess the changes to the plans, the applicant will need to provide another deposit for peer review fees.

Discussion of peer review deposit and remaining amount.

Ms. McClees noted that there are waivers being requested to the DEP Stormwater regulations and the Commission will have to consider whether that is something they want to do. The Commission granting those waivers does not protect the applicant from MassDEP taking issue with those waivers being granted, so the Commission will have to consider whether they would like to see full compliance with the Massachusetts Stormwater Standards or if they would consider granting those waivers.

Ms. DeSalvatore questioned how the town's stormwater bylaw affects the local regulations.

Ms. McClees explained that there are both the Planning Board regulations and the new Stormwater Bylaw that was passed at Town meeting the previous fall. She also explained that the Conservation Commission has a policy that applications shouldn't just meet DEP standards but also the Planning Board regulations as well.

Mr. Rheume noted that they would be having their first meeting with Planning Board the following night, during which the entire project will be reviewed, not just stormwater. He noted that there may be supplemental changes. He stated that he believes their most recent plans address all of the peer reviewer's comments and that any waiver from the Massachusetts Stormwater Regulations would be very minor.

Mr. Haworth questioned what those waivers were.

Mr. Rheume explained the requirements for the rain garden and how they meet the rain garden standards. They also changed to constructed pocket wetlands, which they believe meets the criteria.

Ms. McClees noted that the waivers were noted in the last comments from the peer reviewer, who has not seen these most recent revised plans yet.

Mr. Rheume noted that they would like to appear before the Planning Board and make any necessary changes to the plans, submit additional money for the peer review, and have the peer review confirm that there are no more changes are needed and that no waivers are needed. He noted they want a continuance to a future meeting.

Mr. Simmons explained that the agent's concerns need to be addressed before they bring a plan back before the Commission.

Mr. Lutz noted that they would likely not be coming back until stormwater is addressed.

Ms. McClees noted that stormwater is not the only issue and she has other concerns, as she previously outlined, that also need to be addressed.

Mr. Lutz queried what the Agent would like to see for invasive vegetation control.

Ms. McClees explained that she would like to see something that addresses the history of multiflora rose on the site and include further detail on who will be doing the removal.

Ms. DeSalvatore noted that a record of when that will be occurring would be good.

Mr. Rheume noted that his recommendation is that there be a provision in the Certificate of Compliance that allows management of invasive species going forward, with notification to the Agent.

Mr. Lutz noted that the second meeting in February would be realistic.

Geoff Haworth made a motion at applicant's request to continue SE 023-1299, CON 023-081 Bridge Street, Assessors Map 36, Lot 15 to February 24, 2020, seconded by Gary Lavalette, this motion passed unanimously (6-0-0).

i) **SE 023-138, CON 023-095: Huttleston Avenue, Assessors Map 31, Lots 115A & 117C**

Notice of Intent filed by Dana Lewis for the construction of four 3-unit residential buildings with ancillary earthwork and utilities, along with two storage buildings and a shed at the property located on Huttleston Avenue near Gellette Road, Assessors Map 31, Lots 115A and 117C. Work to take place in Buffer Zone to Bordering Vegetated Wetlands.

Engineer, Rich Rheume from Prime Engineering was present. He explained the changes that were made since the presentation of the original plan. Mr. Rheume explained that this plan is still awaiting to appear before the Planning Board so will also be asking for a continuance. He explained that they have addressed the concerns of the peer review and meet all DEP stormwater regulations. The Agent will need to find out status of peer review budget. They applicant will be before Planning tomorrow then again before Conservation hopefully for final approval. The applicant will be

requesting a continuance for the project due to presentation before planning and stormwater peer review.

Mr. Simmons noted that he sees the tree on site that will remain, as he has requested in the past. He asked if would be possible to put a barrier/perimeter around the trees for protection for the roots during construction.

Discussion of appropriate size of perimeter around tree for protection.

Mr. Simmons noted that there will potentially be additional plantings required and he recommended that they are plantings the Agent agrees with and are friendly for the area they're going in.

Ms. McClees noted that the majority of the plantings proposed are native plants.

Mr. Rheaume explained some of the plantings.

Mr. Lavalette questioned drainage associated with the state road.

Mr. Rheaume noted there was a broken manhole in the wetlands.

Mr. Lavalette asked if the stormwater on the site ends up in that drain or somewhere else.

Mr. Rheaume explained where the drainage coming in from offsite is going on the property.

Mr. Simmons explained that engineer should coordinate with the Agent and the Planner on issues that need to be addressed.

Ms. DeSalvatore recommended *Ilex glabra* as a native option.

Mr. Haworth provided the board with pictures and video of flooding running across the property and onto Brookview. Mr. Haworth stated that if they will continue to feed water that direction, there will be an issue.

Discussion regarding water flow, rate, existing and proposed drainage.

Ms. McClees questioned how the addition of the detention basin would impact the current conditions of the drainage on the property.

Mr. Rheaume explained that the detention basin would meter the flow so it releases more slowly over a longer period of time.

Mr. Haworth asked the Agent to provide the photos and video to the peer reviewer.

Ms. McClees noted that a previous order of conditions approving vegetation clearing up to 25 feet off the wetland line and questioned again what the feasibility of maintaining the same setback for this project. She also questioned how much of the buffer zone is proposed to be cleared.

Mr. Rheaume requested the hearing be continued to the second meeting in February.

Mr. Haworth asked the Agent to talk to Vinnie Furtado about the crushed manhole structure.

Geoff Haworth made a motion to continue SE 023-138, CON 023-095: Huttleston Avenue, Assessors Map 31, Lots 115A & 117C at the applicant's request until February 24, 2020, seconded Nick Sylvia, this motion passed unanimously (6-0-0).

New Notices of Intent

j) CON 023-115: 132 Weeden Road

Notice of Intent filed by Patty G. Matheson for a sewer line extension to connect four existing structures at the property located at 132 Weeden Road, Assessors Map 32, Lot 9. Work to take place in Riverfront Area, Land Subject to Coastal Storm Flowage, and buffer zone to Salt Marsh.

Green cards were provided to the Agent.

Discussion regarding resource areas in close proximity to property.

Christopher Capone, wetlands consultant, was present representing the applicant.

Ms. McClees explained that it is a new filing for a sewer line extension. The resource areas on site are Riverfront Area, Bordering Vegetated Wetland, Coastal Bank, Buffer Zone, and Land Subject to Coastal Storm Flowage. The whole property is within the flood zone. The BVW was delineated toward the rear of the property. The work that is happening close to the resource areas at the rear of the property is the sewer line extension to the cottages near the rear of the property. This project proposes what appears to be an improvement of existing conditions given the cesspools within the water table will be abandoned. Straw wattle is proposed for erosion control approximately 25 feet off the wetland line. The wetland delineation was performed in November 2019 and has not been verified. For this particular project, it may not be necessary to verify the line. In her opinion, the project appears to be an improvement of existing conditions.

Mr. Simmons questioned if there was a condition for clean fill.

Ms. McClees confirmed that it was included in her recommended conditions.

Mr. Capone explained that this is an overall improvement to the area because the cesspools are within the water table and the removal of that nitrogen is a benefit. Mr. Capone explained the mechanics of the sewer lines that will be installed. He explained that some fill may have to be removed due to placement of sand, but will be taken offsite.

Mr. Lavalette questioned the process of laying the pipe in the bed of sand and creating a water trail along the pipeline and whether the pipe will be placed on top of blocks.

Mr. Capone stated that he wouldn't be opposed to something like if either the Commission or Public Works required it.

Ms. DeSalvatore questioned whether a peer review is needed.

Mr. Simmons explained that he doesn't believe it does because it's an improvement.

Mr. Lavalette questioned the flood elevation on the site.

Mr. Capone explained that it was split between VE 14 and VE 16.

Mr. Haworth questioned the placement of the lines into the manhole on Weeden Place.

Discussion of type of pumps being proposed.

Ms. McClees noted that discharge water should not be pumped into the manhole.

Mr. Capone noted they will aim for a drier time of year to do the work.

Mr. Haworth noted that this project appears to be a net positive.

Michael Kelly, abutter, has no objections to the project but expressed concerns regarding the stone wall on the property, wanting to make sure it gets replaced.

Mr. Capone explained that the wall will definitely be replaced due to it being a property line.

Geoff Haworth made a motion to close public hearing for 132 Weeden Road and issue an order of conditions with the conditions outlined in the staff report dated January 23, 2020 with the addition of the condition that there shall be no pumping of discharge water into the manholes and WAS-2, approving the plans approved the plans dated December 19, 2019, seconded by Dan Doyle, this motion passed unanimously (6-0-0).

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

Notice of Intent filed by Heiam Alsawalhi for the reconstruction of an existing eastern groin, modification of the existing seawall, dredging the bridge channel, providing beach nourishment, a

line of wooden posts and planting a lawn in the non-jurisdictional depressions, the construction of a ten-foot-wide crushed stone path to the beach, and an after-the-fact electric gate at the causeway bridge at the property located at 1 Bella Vista Island, Assessors Map 43B, Lots 326, 359, and 360. Work to take place in Land Under Ocean, Coastal Beach, Coastal Bank, Land Subject to Coastal Storm Flowage and buffer zone to Salt Marsh.

Geoff Haworth made a motion to un-table Item 7, the Certificate of Compliance request for SE 023-1127, CON 023-111 1 Bella Vista Island and open that with the public hearing, seconded by Nick Sylvia, this motion passed unanimously (6-0-0).

Mr. Simmons clarified that both the Request for Certificate of Compliance and the Notice of Intent could be discussed.

Engineer Rich Rheame from Prime Engineering was present and provided green cards.

Mr. Rheame explained that this property has a long history with multiple filings. Mr. Rheame explained some of the history of the site regarding the causeway and the development of the island. He explained that there was a filing to reconstruction a portion of the seawall, which received an Order of Conditions. There was also a filing to fill and plant some depressions on the property, which was also approved, requiring replication in the DPW yard. The seawall that was constructed was not compliant with DEP policy, so changes had to be made to come into compliance in terms of both the length and the slope of the wall. DEP is requiring the removal of a portion of seawall and the restoration of coastal bank. Mr. Rheame also explained the dredging that is being required by DEP in the Consent Order. The Conservation Commission previously approved posts along the sides of the causeway and there are existing posts alongside of marsh. Over time, the wall protecting the pool had erosion behind it and now is exposed and now there is a need to replenish the beach. DEP has agreed that the dredged sediment could be used for beach nourishment. There were unpermitted groins and to cut some back and to make sure the other is added to its original footprint. There is also a pier that he would like to place off of one of the existing groins. Mr. Rheame recommends a site visit due to the unfamiliarity of the site. Mr. Rheame noted that a lot of the elements will require Waterways approval. He also recently received comments from Division of Marine Fisheries regarding Time of Year restrictions and how that may impact the work that DEP is requiring.

Ms. McClees explained that the project will need a Chapter 91 Waterways license, 404 Army Corps permit, 401 Water Quality Certification, in addition to the Order of Conditions from the Commission. She noted that MA DMF has provided commentary on the project with regard to potential impacts to several marine fisheries resources and habitat. The comments primarily included the following: prohibit silt-producing activities or dredging from January 15 through May 31 of any year, plan does not indicate where beach fill will be deposited, disposal of beach fill in the intertidal area should be consistent with DEP's Beach Nourishment Guide and be of equal grain size and appropriate slope to avoid premature loss from the beach and impacts to nearshore bottom habitat, proposed relocated seawall shall not be constructed below the mean high water line within the intertidal area, plan does not depict the groin work, MA DMF recommends that groin repairs remain within the existing footprint, groin shall be constructed with interstitial spaces to support marine fisheries habitat for macroalgae.

Ms. McClees noted that Mr. Rheame had indicated in his comments where the beach fill would be deposited and noted that it should be included on the plans.

Ms. McClees questioned whether a grain size analysis had been conducted for the beach nourishment.

Mr. Rheame stated that they had not and that DEP would allow the dredge material to be used for nourishment.

Ms. McClees noted that the NOI is missing the square footage of land subject to coastal storm flowage impacted and the square footage of Land Containing Shellfish impacted. She also noted that

a portion of the proposed dredging is located within Natural Heritage Estimated Habitat and filing will need to be submitted to them. The applicant was also requesting that a previous Notice of Intent process being resumed, but that was more than two years ago and that Notice of Intent was denied, so any of the work the applicant is seeking approval for under that Notice should be included in the current Notice. She also noted that the Commission could reconsider retaining a peer review to review the project and make sure everything is consistent with DEP's consent order and the history of the site. She recommends that a site visit be scheduled and changes to be made to NOI and the plans.

Mr. Simmons agreed with the Agent's recommendation for a peer reviewer. The Commission agreed.

Mr. Rheaume questioned the kind of peer review.

Mr. Simmons suggested something like a clerk of the works so the project can be done right.

Mr. Lavalette questioned the purpose of the dredging.

Mr. Cox, Harbormaster, explained that in the deed, it states that there is supposed to be 4 feet of space at low tide.

Mr. Lavalette questioned whether it would make sense to put some sort of piping system.

Mr. Cox explained that the dredging was done without a permit and incorrectly the last time it was dredged and when the sand was deposited, it immediately filled back in under the bridge. Mr. Cox explained that the area south of the causeway is not flushing out because the water cannot flow underneath the bridge and the area is closed to shellfishing because of that.

Herb Hunter, resident of West Island, expressed feelings regarding the project, the history of the property, and the history of the installation of the bridge and what was supposed to have been done. He expressed that he felt the bridge was installed incorrectly.

Ms. McClees explained that there was a Waterways license issued for the bridge structure.

Mr. Simmons noted that a site visit will be scheduled and a deposit will be needed for peer review.

Discussion regarding dredging.

Mr. Haworth questioned the lack of detail on the plans.

Mr. Rheaume explained that he submitted plans in Waterways format because the work has to be permitted by both ConCom and Waterways.

Ms. McClees reviewed the details on the dredging, the groins, the seawall reconstruction, and the dock.

Discussion of dock proposal.

Ms. McClees noted that based on the filing fee schedule, there is a shellfish mitigation fee of \$8/square foot for an impact greater than 12 square feet.

Mr. Rheaume estimated that the shellfish mitigation fee may be around \$20,000.

Discussion regarding what would count toward that shellfish mitigation fee.

Discussion of when a site visit would be scheduled.

Sunday, February 9, at 1:00pm for the site visit.

Mr. Haworth noted that the Commission has not yet discussed the Certificate of Compliance.

Whitney McClees explained that the certificate of compliance would benefit from site visit and be best addressed after a site visit.

Geoff Haworth made a motion to continue the Request for Certificate of Compliance for SE 023-1127, CON 023-111 1 Bella Vista Island to the February 24, 2020 meeting, seconded by Nick Sylvia, this motion passed unanimously (6-0-0).

Geoff Haworth made a motion to continue 1 Bella Vista Island for the Notice of Intent at the applicant's request to February 24, 2020, seconded by Amy DeSalvatore, the motion passed unanimously (6-0-0).

Jim Moreau, 56 Goulart Memorial Drive, stated his concerns about the state of the eelgrass and the channel needs to be opened up properly and maintained because the whole cove is dying.

Mark Dunn, 25 Littleneck Road, expressed his concern regarding the dock, lighting, and the potential risk to fishermen.

Discussion regarding the dock, impact to shellfish areas, and what the Commission can and cannot request.

Mr. Cox stated that he can provide comments to DEP and the Army Corps when they seek a permit for that.

Mr. Simmons recused himself at 9:07pm.

Mr. Lavalette made a motion to table 3 North Street until after the Items m and n, seconded by Nick Sylvia, this motion passed unanimously (6-0-0).

l) SE 023-1273, CON 023-106: **3 North Street**

Request for Amended Order of Conditions (DEP File No. SE 023-1273) filed by Lee and Elizett Miguel to add sod and stone to stabilize the area beyond the approved work limit at the property located at 3 North Street, Assessors Map 13, Lot 4. Work to take place in Land Subject to Coastal Storm Flowage/Zone AE and buffer zone to Salt Marsh.

Mr. Simmons returned as Chair at 9:08 pm.

m) CON 023-112: **Beach Street, Assessors Map 19, Lot 19**

Notice of Intent filed by Daniel E. and Pamela J. Corcoran to install fill and construct a single-family home and associated site work and utility connections at the property located at Beach Street, Assessors Map 19, Lot 19. Work to take place in Riverfront Area, Land Subject to Coastal Storm Flowage, and buffer zone to the Acushnet River.

Carmelo Nicolosi of Charon Associates was present representing Mr. and Mrs. Corcoran and provided green cards. Daniel Corcoran was also present.

Mr. Nicolosi explained that the project is construction of a single dwelling within the 100-foot buffer zone of bordering vegetated wetlands and within the second 100 feet of the riverfront area. They are proposing to tie into water and sewer and pave the road.

Ms. McClees stated that she spoke to the Public Works Superintendent regarding work within the street layout and that Public Works will have to approve the property owner doing work within the street layout.

Discussion regarding location of wetland line as well as buffer zones.

Mr. Nicolosi explained that one of the comments from DEP was that they did not provide an alternatives analysis, which has now been provided to the Agent. One item discussed in the alternatives analysis was the utilization of the adjacent lot which included Lot-17 which is the property of the town. He provided a revised alternatives analysis.

Ms. McClees explained that no work is proposed in the inner 100 feet. Prior to the property being zoned residential, it was zoned commercial, so it could potentially be considered for redevelopment of the riverfront area considering that the vegetation that may have been there at one point is no longer there. The provided alternatives analysis gives some detail, but she does not feel that is detailed enough to allow the Commission to evaluate the different options. She explained that one of the options could address bringing in fill versus no fill. One of the other options for the alternatives analysis could include revegetating the inner 100 feet of the riverfront area. She noted that the Commission needs to consider that the area is flood zone in addition to riverfront area and the alternatives analysis should address that.

Ms. DeSalvatore noted that it appears to be a significant development of the second 100 feet.

Mr. Nicolosi explained they are looking to elevate using fill by approximately 2 feet in an effort to remove the dwelling from the flood plain to reduce the cost of flood insurance to the homeowner. He noted there is no proposed basement, only crawl space.

Mr. Lavalette questioned where the displaced water will go.

Mr. Nicolosi stated that there is not much of an increase in area of flood damage because it's an A-zone and they feel that bringing in the fill will not impact much. The applicant will have to go to FEMA for a letter of map revision before bringing the fill in.

Mr. Simmons questioned the total amount of disturbance.

Mr. Nicolosi explained that they can disturb either 10% or 5000 square feet in the Riverfront area.

Ms. DeSalvatore pointed out that disturbing 5000 square feet is something the Commission may grant but is not required to and if there are less disruptive alternatives, such as raising the house instead of bringing in fill, they should consider those options.

Mr. Nicolosi stated that if there were no fill, they would be looking at concrete walls on the foundation because they still have to comply with FEMA regulations.

Ms. DeSalvatore questioned why the fill was needed.

Mr. Nicolosi stated that the fill would allow the applicant to take the house out of the floodplain and not have to take out flood insurance.

Ms. DeSalvatore questioned if the house could be put on pillars.

Mr. Nicolosi stated that this is not a velocity flood zone and building code allows solid walls with hydrostatic flood vents.

Ms. McClees explained that the building code is separate from the Commission. The Commission looks at how the project impacts storm damage prevention and flood control, specific to projects within land subject to coastal storm flowage. The Office of Coastal Zone Management provides technical assistance to Commission for review of projects that propose alternations to land subject to coastal storm flowage in terms of assessing what the impact might be, so that is something the Commission could consider. They may not be able to assist for another couple of weeks, but CZM is an option for guidance on what the potential for impact of this proposal is.

Mr. Lavalette stated that it is a wide open space and he feels the water wouldn't impact any of the other properties.

Mr. Haworth noted that the neighboring property is completely asphalt.

Mr. Lavalette stated that it seems to make sense to get it out of the flood zone and do some revegetation closer to the water.

Ms. McClees stated that the Commission shouldn't be encouraging projects to go out of the flood zone that have a negative impact on storm damage prevention and flood control.

Mr. Lavalette said that was the question, how the project would impact the neighboring properties.

Ms. McClees stated that it was not just the other properties, it is the ability of the land to mitigate flood waters.

Mr. Nicolosi stated that if this were a coastal beach or coastal dune, it would matter, but this property is all lawn.

Mr. Simmons questioned the drainage of Newbury and Alpine.

Mr. Nicolosi explained the direction of the drainage.

Ms. McClees stated that she would like to see some consideration in the alternatives analysis or on the plans for revegetation.

Mr. Simmons stated that the northern border of the property could be a good location for plantings.

Mr. Nicolosi stated they would not have issues with plantings in the inner 100 feet of the riverfront area.

Mr. Lavalette questioned who makes the determination on the effect of putting the house there.

Ms. McClees stated that Office of Coastal Zone Management could help with that, but there is a small wait.

Mr. Corcoran, property owner, stated the property has been fairly unchanged for many years.

Mr. Nicolosi provides some images from google earth showing the history of the site.

Mr. Lavalette questioned the cost of open pile foundation.

Mr. Nicolosi explained that it is more expensive.

Ms. McClees noted that the alternatives analysis should address cost.

Discussion of cost of flood insurance and the reductions associated with elevation and putting the house on pilings.

Mr. Simmons stated he would be interested in seeing plantings conducive to the site.

Ms. McClees questioned why this is not being proposed as a redevelopment.

Mr. Nicolosi stated that redevelopment is associated with the amount of impervious surface on the site, which is minimal.

Mr. Haworth stated that he feels the alternatives analysis should address fill versus solid foundation in terms of adverse impact and cost.

Ms. McClees stated that if there is an alternative that causes less adverse impact, that is the alternative that the Commission should choose.

Mr. Nicolosi stated that the alternative would be a solid wall foundation with 3.5 feet of exposed concrete as opposed to a 1:3 slope of fill.

Discussion of what FEMA allows and the letter of map revision process.

Mr. Nicolosi stated that they don't feel the project will have a negative impact on the resource area.

Mr. Simmons stated that there needs to be a written determination that the lot is buildable.

Ms. DeSalvatore questioned the commercial use.

Mr. Nicolosi stated that it was primarily storage of boats and vehicles.

Mr. Corcoran stated that the property was filled close to 90 years ago.

Mr. Simmons stated that there should be a revised alternatives analysis with respect to the fill.

Mr. Haworth stated that the applicant should go to the Board of Public Works for determination on Beach Street and provide that to the Commission.

Ms. DeSalvatore noted that the paving of the road is also an increase in impervious surface.

Mr. Haworth questioned if the area under the trailer will be revegetated.

Mr. Nicolosi stated that it would be.

Mr. Simmons stated that the plans should include revegetation.

Discussion of including redevelopment, fill, and revegetation in the alternatives analysis.

Mr. Nicolosi stated they placed the dwelling as close to the 20 foot setback as possible.

Ms. McClees stated that setbacks are not a reason to exclude an alternative from the alternatives analysis.

Discussion of setbacks related to riverfront area.

Mr. Nicolosi questioned types of plantings.

Mr. Simmons instructed him to coordinate with the Agent.

Mr. Nicolosi requested a continuance to February 10, 2020.

Mr. Simmons asked if any members of the public wished to be heard, there were none.

Geoff Haworth made a motion to continue the public hearing to February 10, 2020 at the applicant's request, seconded by Gary Lavalette. This motion passed unanimously (6-0-0).

n) **CON 023-113: 12 Almond Street**

Notice of Intent filed by Paul R. and Deborah H. Casey to raze the existing house and to construct a new single-family home on a flood-compliant foundation with connections to town water and sewer, associated site work, and a new elevated walkway over the marsh to coastal beach the property located at 12 Almond Street, Assessors Map 43B, Lot 8. Work to take place in Salt Marsh, Land Subject to Coastal Storm Flowage, and buffer zone to Coastal Beach and Rocky Intertidal Shore.

Carmelo Nicolosi, Charon Associates, was present.

Mr. Nicolosi explained that they are proposing to raze the existing house and construct a new house on a flood-compliant foundation, on open piles because it is located in a VE-17 flood zone. He explained what the building code requires in terms of elevation above base flood elevation. He explained that there is a saltmarsh in front of the house, and it has been flagged. He explained that is had delineated and the current owners are aware of the resource area, which has been disturbed in the past. The new owners are looking to raise the grade slightly. They are also proposing an elevated walkway out over the marsh to the coastal beach.

Mr. Simmons questioned the changes in grade along the Almond Street side.

Mr. Nicolosi explained the existing and proposed changes in grades. He explained that is town water and sewer. They will be removing an existing chain link fence within the salt marsh. They will also be removing a pile of debris in the salt marsh.

Ms. McClees questioned how the debris would be removed.

Mr. Nicolosi stated that it would be removed by hand. He stated there is a proposed osprey nest in the salt marsh and that it would be installed using a crane with no machinery in the salt marsh.

Ms. DeSalvatore questioned the retaining wall.

Mr. Nicolosi explained the slope of the proposed wall. He explained there was a comment from DEP regarding the height of the walkway and the applicant had originally revised the plans to raise the walkway, but upon further exploration of the structural implications of raising the height of the walkway, it was determined that keeping the walkway at the same height would have less installation impact and they opted to use ThruFlow decking that allows more light through, which addresses DEP's shading concerns.

Ms. DeSalvatore expressed her concerns about the wall in the velocity flood zone.

Mr. Nicolosi stated that it is not a vertical wall, but a sloped wall with a 1-to-3 slope.

Ms. DeSalvatore asked if it was a boulder wall.

Mr. Nicolosi stated that it was with a geotextile fabric underlying it.

Discussion of the size of the proposed house.

Mr. Nicolosi stated that due to the height requirements, it will have to be a single story house.

Mr. Haworth questioned what would be underneath the house.

Mr. Nicolosi stated that it would be a slab foundation underneath. At this point there is no plan to put breakaway walls.

Mr. Simmons questioned the driveway aprons.

Mr. Nicolosi explained there is an existing driveway now and they are proposing a circular type driveway.

Mr. Haworth stated that any curb cut that is a double curb cut requires Board of Public Works approval.

Mr. Simmons asked if members of the public wished to be heard.

Herb Hunter of 8 Almond Street stated that he takes care of the house in the absence of the owner.

Mr. Lavalette asked if the wetland line was fairly accurate.

Ms. McClees stated that it was very apparent on site where the vegetation changes.

Mr. Hunter asked how high the wall will be.

Mr. Nicolosi stated that it would be about 2.5 feet high and it provides a good break to protect the salt marsh from further impact. He stated the closest the wall would be to the salt marsh would be about 3 feet.

Monica Swan, 9 Almond Street, stated that her view will be blocked and she welcomes new neighbors and she wishes them luck.

Mr. Lavalette questioned the clearance underneath.

Mr. Nicolosi stated that it would be 11.5 feet.

Ms. McClees stated that the resource areas on site are the salt marsh, coastal dune, coastal beach, rocky intertidal shore, and buffer zone to all of those areas, as well as land subject to coastal storm flowage. No work proposed in the coastal beach or the rocky intertidal zone. The applicant already addressed one of her questions regarding how he proposed to install the osprey nest. She questioned the walkway ending at mean high water and it appears the marsh grasses continue beyond the end of the walkway. She would like more clarity on how the walkway ends to get to the beach.

Mr. Hunter stated that where the walkway will be ending is pretty solid ground between there and the water.

Ms. McClees stated that it looks like the salt marsh grasses continue beyond the end of the proposed walkway and she is looking for clarification of how the walkway ends, is it on the ground or being placed directly on marsh grasses.

Mr. Nicolosi stated they will include detail and ramp the end or use steps. They have used the Buzzards Bay Project's guidelines for the mean high and low water elevations to determine where the high water line is.

Mr. Lavalette questioned the length.

Mr. Nicolosi stated that it is 96 feet. The reason they are not going beyond the mean high water is because that would trigger other types of permitting.

Discussion of impacts of the walkway to the marsh.

Ms. McClees stated that MassDEP noted that the project might need a 401 Water Quality certification. She also requested the scientific name of the trees being planted to be included on the plan.

Mr. Haworth reminded the applicant to seek Board of Public Works approval for the double curb cut.

Mr. Nicolosi requested a continuance to February 10, 2020.

Geoff Haworth made a motion at the applicant's request to continue 12 Almond Street to February 10, 2020, seconded by Dan Doyle, this motion passed unanimously (6-0-0).

Jay Simmons recused himself as chair at this time and joined the audience as an abutter.

Geoff Haworth made a motion to un-table item L (3 North Street) and open public hearing, seconded by Gary Lavalette, this motion passed unanimously (5-0-0) with Mr. Simmons recused.

Mr. Haworth opened the public hearing.

1) SE 023-1273, CON 023-106: **3 North Street**

Request for Amended Order of Conditions (DEP File No. SE 023-1273) filed by Lee and Elizett Miguel to add sod and stone to stabilize the area beyond the approved work limit at the property located at 3 North Street, Assessors Map 13, Lot 4. Work to take place in Land Subject to Coastal Storm Flowage/Zone AE and buffer zone to Salt Marsh.

Green cards were provided to the Agent.

Steve Gioiosa with SITEC Engineering was present for the request to amend the order of conditions. He oriented the Commission to the plans. He explained that the original limit of work was set as northerly boundary of the lot and that the applicant proceeded to do the approved work on the lot within the limit of work as part of the order of conditions. As he was closing out for the season, the applicant decided to place sod within the layout of North Street north of the limit of work. No changes in grade were made and there was grass there prior. The applicant felt this was an improvement, stabilizing the area. Mr. Gioiosa stated that it has always been maintained as a cleared, grassed area. He also explained there is some crushed stone surrounding the drainage structure, which was placed as part of the EPA's marsh restoration project. There are no unstable areas within the street layout and there is no erosion occurring into the resource areas, so they are looking for an after-the-fact amendment to the order of conditions. Mr. Gioiosa stated that if the activity had come before the Commission earlier in the process, he believes it meets the standards for work in a buffer zone area.

Ms. McClees explained that she compared the June 3, 2019 plans to the submitted plans and it appears the proposed plans are consistent with previous approved field changes and include the work done outside of the limit of work. The plans reflect two replacement trees on the western part of the property. She noted that the plans identify the resource area as bordering vegetated wetland rather than salt marsh, which have different performance standards. The plans also include a 200-foot riverfront area, but since this property is below of the mouth of the Acushnet River, there is no riverfront area on site so those performance standards don't apply. She noted that this project will still have to come for a certificate of compliance with an as-built showing grading, location of any of the proposed replacement trees, etc. The work that is being requested for an after-the-fact amendment is partially within flood zone and primarily within buffer zone to salt marsh.

Mr. Haworth questioned whether the grades shown on the plan are existing conditions.

Mr. Gioiosa stated that they have not yet performed a survey of the current existing conditions for an as-built, so the grades on the plan are reflective of the grades prior to the project beginning and the proposed grades. He reviewed the portions of the project that have not yet been completed. Mr. Gioiosa stated that an as-built will be done when they come in for a certificate of compliance.

Mr. Haworth stated that he thinks the grades may not match.

Mr. Gioiosa stated that he has not surveyed it yet.

Ms. DeSalvatore stated that she believes it is historically a public access to the water.

Mr. Haworth stated that was not within Conservation jurisdiction.

Mr. Sylvia asked if they have standing to grant the relief they are requesting if it is a private way with abutters.

Mr. Haworth said it is not within their purview to determine that.

Mr. Sylvia stated they are unable to make a decision if there are ownership issues.

Mr. Haworth stated that from what has been explained to him, because he owns the parcels on either side, he has the ability to do this work.

Mr. Sylvia stated that he feels that not all of the abutters have been properly notified and should include abutters of the marsh parcel as well.

Mr. Gioiosa stated that the fact that the applicant owns the parcels on both sides gives them rights that extend to the midpoint of North Street. There may be others who have rights to the road, but the work being discussed is consistent with allowing access through there, so there has been no obstruction of access along the roadway and anyone who has rights to access it is still able to do that. It was grassed prior and it is grassed now. As far as the notification issue is concerned, Mr. Gioiosa made the point that it is no different than the last few notices of intent in front of the Commission where parts of the activity are in the paper street. The applicant has notified all of the abutters for the project and there are no abutters other than the applicant within 100 feet of the work heading in a northerly direction. The activity is consistent with working within a right of way, not blocking access, and grass is grass.

Mr. Lavalette stated that he feels what is there now is different from what was there before because vehicles are no longer able to drive over it.

Mr. Haworth stated that compression from vehicle access is not a conservation issue.

Mr. Gioiosa stated that the Commission in general looks for applicants to remove hard pack surfaces, especially in an area close to the shoreline, so it is a net improvement to the area.

Mr. Haworth reminded the board that they have to look at it from a Wetlands Protection Act perspective only, not from a perspective of whether or not it is a jurisdictional right of way, vehicle

traffic, etc. The Commission cannot look at it other than to determine whether or not it degrades the resource area. Mr. Haworth stated that we don't want to open ourselves up to going beyond our scope.

Ms. DeSalvatore stated that the question of ownership is related as to whether or not the Commission has jurisdiction to approve something in an area that may or may not be owned by the applicant.

Mr. Haworth stated that it has been answered by Town Counsel.

Mr. Lavalette stated that he would like to see that in writing by Town Counsel.

Ms. DeSalvatore stated that she does not believe they would be approving a lawn in this area and they would be looking as some type of native planting. She also feels they cannot rule on this until the right-of-way issue is resolved. It is also the nth time that the Commission is being asked for after-the-fact and this project needs a project manager on site.

Mr. Haworth stated that the project is already done and he feels that the project manager on site would be moot at this point.

Mr. Sylvia noted that he feels the sodding is not insignificant and it does change the way one traverses the road and legally you need consent of all parties who have rights to that road before you can change it.

Mr. Haworth stated that this has been addressed by Town Counsel and he has asked the Agent to get that in writing from Town Counsel for the next meeting.

Mr. Gioiosa stated that he is not authorized to agree to a continuance by his client. He believes there is a definite right for this owner to make changes within the North Street right of way legally without needing other permission and if there is a legal issue, there is a legal remedy that parties who feel they have been wronged can take. It does not put the burden on the Commission. If the type of vegetation is something the Commission is not comfortable with and the decision is based on a negative impact to a resource area, then the applicant would have to decide whether to file an appeal or whether he would agree to the Commission's conditions of what would be appropriate. He is asking for the Commission to make a decision or close the hearing and make a decision within 21 days.

Discussion regarding abutter notification.

Mr. Haworth explained that there needs to be a reason under the Wetlands Protection Act to approve or deny a project. He also discussed how the Commission might condition the project regarding approval of other boards.

Mr. Doyle pointed out the existing enforcement orders requiring the removal of the sod and restoration to previous conditions.

Mr. Haworth stated that is correct and that the applicant has a right to submit an amendment if he wants to and the Commission has to hear it. He hates the fact that is an after-the-fact. The question that has to be considered is "does it meet the regulations?"

Mr. Lavalette stated he would like to see Town Counsel's opinion in writing.

Mr. Haworth stated there was an executive session where the project was discussed with Town Counsel, but they cannot yet talk about it in open session because those minutes have not yet been released.

Ms. DeSalvatore stated they could deny based on lack of information.

Mr. Haworth stated there is no lack of information.

Ms. DeSalvatore stated they don't have in writing about abutters or ownership.

Ms. McClees stated that it needs to be lack of information relating to the Wetlands Protection Act.

Ms. DeSalvatore stated that it is lack of information regarding the Commission's jurisdiction.

Discussion regarding jurisdiction and ownership.

Ms. McClees reviewed the performance standards for salt marsh.

Mr. Sylvia questioned the rights of the property owner to do work to the center line of the road.

Mr. Gioiosa stated that he has rights to do work within the layout. His ownership ends at the boundary line, but he has rights within the roadway right of way that allow him to propose activities. It is not up to the Commission to determine property ownership.

Mr. Sylvia stated that he does not feel the work is an improvement.

Mr. Gioiosa stated that whether he has the right to do that or not is not up to the Commission to decide.

Mr. Haworth stated that he feels that the Commission should stay within their bounds.

Ms. McClees noted that the Commission received a letter of opposition from an attorney that she previously provided to the Commission.

Ms. DeSalvatore stated there should be a fine for after-the-fact submissions.

Ms. McClees stated there is an outstanding fine.

Mr. Haworth asked if anyone in the audience had comments.

Mr. Simmons, abutter, provided the Commission with a Planning Board approval for a definitive subdivision.

Mr. Haworth stated that the Commission cannot enforce Planning Board regulations.

Ms. DeSalvatore questioned what a definitive subdivision is.

Mr. Gioiosa explained the history of the property through the Planning Board and the definitive subdivision approval.

Mr. Haworth explained that subdivision approval is through Planning Board.

Mr. Simmons stated that one of the conditions is CAP-3, that all other Boards and Commissions approvals need to be sought, and then read a condition of the definitive subdivision.

Discussion of what is enforceable by the Commission versus the Zoning Enforcement Officer.

Mr. Simmons continued to discuss Planning Board purview versus Conservation purview over the roadway.

Mr. Gioiosa explained the road improvements required by the Planning Board decision.

Discussion of items beyond the scope of the Conservation Commission.

Gary Lavalette made a motion that we get Town Counsel's opinion that the owner has the right to modify that right of way, seconded by Geoff Haworth, this motion passed unanimously (5-0-0) with Mr. Simmons recused.

Mr. Simmons stated that he respectfully disagrees with Town Counsel's verbal opinion.

Mr. Haworth made a note of Mr. Simmons' comment. Mr. Haworth recommended Mr. Simmons discuss it with Town Counsel.

Mr. Simmons stated he feels the abutters to the marsh lot should have been notified.

Mr. Gioiosa stated there is no proposed activity on the marsh lot. Just because a person owns an abutting lot does not mean abutters have to be notified if there is no work proposed on that lot.

Ms. McClees stated that she will verify the definition of abutter per the Wetlands Protection Act.

Discussion of abutter notification.

Mr. Sylvia explained that the long history of violations should be taken into consideration when allowing amendments.

Ms. McClees will look into whether a long history of violations can give the Commission discretion to deny a project.

Geoff Haworth explained that he conducted a site visit with the Agent and representatives from the EPA to get clarification of the stone on site. The EPA confirmed that they placed the stone on site for a construction entrance to the marsh property. The applicant stated to Mr. Haworth during that site visit that he had taken the stone up, cleaned it, and put it back down.

Discussion regarding material used in the area and fertilization.

Discussion regarding the EPA's comments on the stone.

Discussion regarding access and the conditions of the layout.

Geoff Haworth made a motion to close the public hearing for SE 023-1273, CON 023-106: 3 North Street, seconded by Nick Sylvia.

Ms. DeSalvatore stated that she would not approve lawn in that area.

Mr. Lavalatte stated that he wants a letter from Town Counsel stating the applicant has rights to do the work.

Ms. McClees stated that she will check with Town Counsel and DEP regarding rights and abutter notification.

This motion passed unanimously (5-0-0) with Mr. Simmons recused.

Jay Simmons rejoined the commission at 11:12 pm.

9. Violations/Enforcement Orders/Cease and Desist Notices

a) 44 Torrington Road

Ms. McClees explained that she had an engineer reach out to her and haven't heard anything beyond that, but the owner has hired an engineer to move forward with restoration plan.

Mr. Lavalette asked if they had paid the fine yet.

Ms. McClees stated they have not.

b) 7 Waybridge Road

Ms. McClees explained that she sent out letter today and will keep it on the agenda.

10. General Business

a) Bills- will be discussed at the next meeting.

b) Discussion regarding MACC Annual Environmental Conference: Saturday, February 29, 2020 in Worcester

Ms. McClees asked the Commission to provide her with their workshop preferences if they would like to go so she could register them.

c) Next meeting: February 10

Geoff Haworth made a motion to un-table Item 5, Draft Town Article for transfer of land, seconded Gary Lavalette, this motion passed unanimously (6-0-0).

Mr. Simmons explained that the Agent had compiled a list of properties in tax title.

Ms. McClees explained that there are quite a few properties that are owned by the town that were acquired by tax title within conservation jurisdiction that she is proposing a town meeting article to transfer them from the Board of Selectmen to the Conservation Commission. She reviewed some of the types of parcels and what the Article would look like.

Discussion of authorizing a placeholder.

Mr. Haworth made a motion to approve the Agent to submit a placeholder for an article for the transfer of tax title land to the Conservation Commission, seconded by Nick Sylvia, this motion passed unanimously (6-0-0).

11. Any other business

Mr. Lavalette raised a question on an approved project and the Agent is addressing it.

Geoff Haworth made a motion to adjourn, seconded by Gary Lavalette, this motion passed unanimously (6-0-0). Meeting adjourned at 11:21pm.

Respectfully Submitted by
Shallyn Rodriguez