



CONSERVATION COMMISSION MEETING MINUTES –January 30, 2023

Present: Carolyn Nielsen- Vice Chair, Laurie Freeman, Bob Hidell, Bob Mosher and Nina Villanova– Commissioners and Loni Fournier- Interim Conservation Officer (ICO)

Absent: Crystal Kelly and Tom Roby

The remote meeting was held via Zoom with Dial in #929-205-6099, Meeting ID # 830 7325 4349

The meeting was called to order at 7:03 PM.

Vice Chair Nielsen stated that the meeting is being held remotely as an alternate means of public access pursuant to Chapter 107 of the Acts of 2022 and all other applicable laws temporarily amending certain provisions of the Open Meeting Law. You are hereby advised that this meeting and all communications during this meeting may be recorded by the Town of Hingham in accordance with the Open Meeting Law. If any participant wishes to record this meeting, please notify the chair at the start of the meeting in accordance with M.G.L. c. 30A, § 20(f) so that the chair may inform all other participants of said recording. No participants expressed a wish to record the meeting.

Approval of Minutes

October 12, 2022 eligible- KELLY, NIELSEN, ROBY, FREEMAN, & MOSHER

Comm'r Freeman requested an edit to the minutes and the Commission was in agreement.

Motion: Comm'r Freeman moved to approve the 10/12/22 draft meeting minutes as edited.

Second: Comm'r Mosher

Roll Call: Comm'r Nielsen: aye, Comm'r Mosher: aye, and Comm'r Freeman

January 9, 2023 eligible- KELLY, HIDEELL, FREEMAN, & MOSHER

Motion: Comm'r Freeman moved to approve the 1/9/23 draft meeting minutes.

Second: Comm'r Mosher

Roll Call: Comm'r Freeman: aye, Comm'r Mosher: aye, and Comm'r Hidell

Certificates of Compliance

132 Martins Lane – DEP 034-358

Applicant: Heidi M. Lehner, Trustee

Representative: Mahoney Law Group, P.C.

Meeting Documents & Exhibits: Staff memo, Request for Certificate of Compliance, and Engineer letter.

Excerpts from the Staff memo: An Order of Conditions was issued in February 1992 for the reconstruction of a residential dock. Civilworks New England documented the following discrepancies in the constructed dock:

- 1) The approved float was 8ft x 20ft and the constructed float is 9.85ft x 19.5ft.*
- 2) The approved gangway was 3ft x 20ft and the constructed gangway is 3ft x 25ft.*
- 3) The approved dock was 46.2ft x 3ft and the constructed dock is 47.2ft x 3.3ft.*

Staff conducted a site inspection on 1/18/23 and did not observe any unusual resource area impacts. Staff notes that the Commission's current performance standards for docks and piers were not in effect when this Order was issued.

Commissioner Hidell recused himself from this matter. Brad Mahoney, attorney for applicant, was present on the call. The ICO described the dock project, noted that the conditions did not require an as-built, only the engineer's letter, and reviewed the details provided in the staff memo. The Commission had no further questions or comments.

Motion: Comm'r Freeman moved to issue a Certificate of Compliance for 132 Martins Lane, MA DEP 034-358.

Second: Comm'r Villanova

Roll Call: Comm'r Nielsen: aye, Comm'r Freeman: aye, Comm'r Villanova: aye, and Comm'r Mosher: aye

262 South Street – DEP 034-1267

Applicant: Jeffrey A. Born

Meeting Documents & Exhibits: Staff memo & Request for Certificate of Compliance

Excerpts from the Staff memo: An Order of Conditions was issued in August 2016 for the construction of a single-family home and associated amenities. None of the proposed work was completed and the Order has expired. Following the recommendation of staff, the applicant recorded the expired Order at the Registry and filed a Request for Certificate of Compliance to formally close out the permit. Staff recommends waiving the By-Law fee associated with this application and issuing a Certificate of Compliance to complete this task.

The Commission was in agreement to waive the fee and issue the Certificate of Compliance.

Motion: Comm'r Freeman moved to issue a Certificate of Compliance for 262 South Street, MA DEP 034-1267.

Second: Comm'r Hidell

Roll Call: Comm'r Nielsen: aye, Comm'r Freeman: aye, Comm'r Villanova: aye, Comm'r Mosher: aye, and Comm'r Hidell: aye

Request for Determination of Applicability

1103 Main Street, cont'd from 12/12/2022

Applicant: Antonellis Construction, Inc.

Proposed: Concrete Pad

Meeting Documents & Exhibits: Staff memo and Request for Determination of Applicability

Excerpts from the Staff memo: This is an after-the-fact filing, i.e. the concrete pad and refrigerator have already been installed. Staff was made aware of the project when the applicant filed for a building permit, which was distributed to Town departments for review and approval. The property owner has paid double the application fee, per the Wetlands Protection By-Law Fees (February 10, 2017).

Staff visited the site on 12/1/22. The resource areas were not flagged and the applicant is not requesting confirmation of the boundaries. Estimates of the buffer zones and Riverfront Area were taken from aerial photography, plans for the construction of the school (c. 2012), and statewide GIS data. The concrete pad is located in a level area in between the school building and a paved, rear access road. Prior to construction, the area was maintained as lawn. Following construction, lawn was restored around the concrete pad and at the time of the site visit, there were no signs of erosion, sedimentation, or construction-related debris in the area. Staff recommends that the Commission review this project as redevelopment within a previously developed Riverfront Area. Accordingly, the following criteria must be met (*staff comments follow in italics*):

1. At a minimum, the proposed work shall result in an improvement over existing conditions of the capacity of the Riverfront Area to protect the interests identified in MGL c. 131 s. 40. *Staff identified a large, mowed area south/southeast of the concrete pad, within the Inner Riparian Zone, that could be allowed to naturally revegetate and improve the quality and capacity of the Riverfront Area on the property. A representative of the school has informally agreed to this change in maintenance practices.*
2. Stormwater management is provided according to the standards established by MassDEP. *The scale of this project is an important consideration. The associated de minimis runoff would either be absorbed by the surrounding lawn or directed into the stormwater infrastructure installed as part of the construction of the school.*
3. The proposed work shall not be located closer to the river than existing conditions. *This criteria is satisfied.*
4. The proposed work shall be located outside the Riverfront Area or toward the Riverfront Area boundary and away from the river. *This criteria is satisfied.*
5. The area of proposed work shall not exceed the amount of degraded area, provided that the proposed work may alter up to 10% if the degraded area is less than 10% of the Riverfront Area. *Staff calculated the total Riverfront Area on the lot (204,174sqft) and the total degraded area within the Riverfront Area (all areas lacking topsoil) and found that the degraded area already exceeds 10% (22,910sqft). Staff notes that these calculations are based on current, statewide GIS data and not site specific data. Additionally, the Order of Conditions for the construction of the school permitted the alteration of up to 36,005sqft of Riverfront Area, which means that the*

total Riverfront Area on the lot could be greater than what was calculated and the lawn area in question was likely altered and could be considered degraded.

Loreto Antonellis, of Antonellis Construction, was present on the call, along with Katie Hartman, Hingham Public Schools Maintenance Director. L. Antonellis briefly described the installation of the concrete pad, located 5 ft off of the building, is 14' by 16', with a walkway out to the parking lot. The ICO shared photos to the screen, noted that work is complete, and there are no signs of erosion or sedimentation. The ICO briefly reviewed the criteria detailed in the staff memo, talked of the lawn area proposed to be left unmowed, the stormwater, and described her calculations regarding degraded area in the Riverfront area. She stated that, given all the construction that's happened around this small area, the Commission could consider this area degraded. She'd drafted findings that account for stormwater and the alteration. And for the one draft condition, the ICO suggested that she could formalize emails she'd exchanged with K. Hartman, regarding the future maintenance. Responding to a question, the ICO stated that it appeared the mown area was not formally used for anything and there had been no hesitation from the school about not mowing it. The Commission was satisfied with the proposal.

Motion: Comm'r Freeman moved to issue a Negative Determination of Applicability for the proposed work at 1103 Main Street, as shown on the submitted plans, and adopt the findings of fact a through d, and condition 1 of the staff report.

Second: Comm'r Hidell

Roll Call: Comm'r Nielsen: aye, Comm'r Freeman: aye, Comm'r Villanova: aye, Comm'r Mosher: aye, and Comm'r Hidell: aye

Vice-Chair Nielsen read the Notice of Intent statement.

Notices of Intent

6 Village Lane – DEP 034-1456, cont'd from 1/9/23

Applicant: Sachindra & Melanie Nimboorkar

Representative: Joseph Hannon, Atlantic Coast Engineering, LLC

Proposed: Deck and hardscaping

Ahead of the meeting, the applicant's representative had requested to continue to the 2/13/23 Commission meeting.

Motion: Comm'r Villanova moved to continue 6 Village Lane, MA DEP 034-1456, to the 2/13/23 meeting.

Second: Comm'r Hidell

Roll Call: Comm'r Nielsen: aye, Comm'r Freeman: aye, Comm'r Villanova: aye, Comm'r Mosher: aye, and Comm'r Hidell: aye

14 Seal Cove Road – DEP 034-1457, cont'd from 1/9/23

Applicant: Leonard & Karin Monfredo

Representative: Joseph Hannon, Atlantic Coast Engineering, LLC

Proposed: Boat lift and lighting for an existing dock

Meeting Documents & Exhibits: Staff memo, 14 Seal Cove Rd Boat Lift Drawing (1-20-23), Letter to Conservation Commission from applicant's attorney (1.23.23), Letter to Commission from McGrath (1-30-23), Light Spec Sheet, and light Layout Plan (shared by J. Hannon)

Excerpts from the Staff memo: This is a new application for a boat lift that the Commission discussed in multiple public hearings from May 2022 through October 2022. The applicant withdrew the last application without prejudice. This will be the first opportunity for the Commission to discuss this application, as the first two public hearings were continued at the request of the applicant.

The original plan has been revised (revision date of 1/20/23) to match the last version of the plan that the Commission reviewed in October 2022. The seasonal float is 10ft x 10ft, the boat lift is 10ft x 10ft (measured from the center of the supporting piles), and both are proposed as a straight-line extension of the existing dock and gangway.

The applicant has submitted a lighting layout plan and a spec sheet on the lights, which was sent to staff only and is attached to this memo. One question that the applicant raised and staff could not answer is whether two lights directly across from one another, on the right and left hand sides of the 4ft wide dock, meet the standard that lights be "set a minimum of 12 feet apart." Additional guidance from the Commission on this standard, specifically, is needed.

Finally, staff notes that the applicant has requested a waiver of the By-Law fee and the Town's share of the state fee for this application, as a courtesy, given that it also resolved a quorum issue.

Attorney Adam Brodsky, was present on the call along with the applicant, Len Monfredo, and the professional engineer for the project, Jed Hannon of Atlantic Coast Engineering. A. Brodsky gave a brief review of the filing history for the boat lift project, noting that they'd withdrawn their original application due to a Commission quorum issue, and therefore are requesting a waiver of the bylaw fees. They refiled in November 2022 having changed the orientation from the original Notice of Intent to respond to Commission and abutter concerns, but, having received feedback, they have now revised it back to the original size; a 10' by 10' float and a 10' by 10' boat lift, which combined, does not exceed the Commission's maximum dimension of 10' by 20', which is the footprint of the existing float at the site. During the first filing, the proposed roof was removed from the design. He added that they are also filing to bring the lighting into compliance.

A. Brodsky reviewed the points made in his 1/23/23 letter submitted to the Commission;

- Addressing the suggestion that the Hingham Wetland Regulations (HWR) requires only 1 float not exceeding 120sf, he read aloud HWR 23.4 (c)(9) summarizing that the regulations allow multiple floats provided that combined they don't exceed 10' by 20'.
- Regarding the suggestion that the HWR prohibits boat lifts because boat lifts are not expressly authorized under the regulations, A. Brodsky stated this is a misinterpretation of the regulations. He compared the HWR to the zoning bylaw, noting that it is not restrictive like the zoning bylaw that has a specific use chart and if a use is not listed, then that use is prohibited. He stated that the WPA and wetlands bylaw operate with performance standards for categories of activities but just because there are no performance standards for a particular activity, does not mean that it is prohibited. He that Conservation Commissions in the Commonwealth and Mass DEP issue Orders of Conditions permitting boat lifts, even though the phrase boat lift does not appear in the Wetland Protection Act. He noted that J. Hannon had permitted a boat lift in Quincy, added that their project is not going to be like that one; that this project is designed to meet the Hingham regulations. He added that DEP also issues Chapter 91 licenses for boat lifts.
- A. Brodsky noted a 2022 adjudicatory appeal relating to a boat lift in the matter of James Valis, where a neighbor was determined to have no standing to challenge a Chapter 91 license.
- Briefly speaking about the Hingham regulations, A. Brodsky stated that docks and piers are used interchangeably and are defined to include the entire structure and emphasized that they say 'including any part thereof'. He suggested that boat lifts are typical components of a dock or pier. He noted that the Hingham regulations don't specify other things one would typically find with docks and piers including ladders and stairs; these other components of docks and piers are typical and routine and the regulations should not be narrowly construed so that if the word 'boat lift' does not appear in the regulations, that it somehow prohibit it.
- Commenting on the seasonality of floats, A. Brodsky pointed out that HWR 23.4(c)(8) only requires that **if** a float is seasonal, it must be stored property outside of wetlands.

A. Brodsky stated that they recognize that boat lifts are not common in Hingham, but they are permissible, have been permitted in other communities on the south shore, and it's likely that people will see more of these in the future. They believe the proposed boat lift meets the performance standards in the WPA and the Hingham bylaw. He stated that they received a permit from the Zoning Board of Appeals and received no adverse comments about the proposal from either the Harbormaster, Coastal Zone Management or MA DEP. He commented that some town residents had written letters of support and requested that the administrative record for this filing include documents and letters, both for and against, that were connected with the original filing.

J. Hannon shared the plan to the screen and provided details; the boat lift and seasonal float will both be 10' by 10', the boat lift will be supported by four 10" diameter southern yellow pine piles, the axial capacity is determined by a hammer formula which is standard for marine construction industry, all riggings and beams are galvanized, and the boat lift is operated with electric winches. He stated that the safety factor for this design is 5 times the actual load. There is carpet on the lower 2 beams so as not to damage the boat. At the end of the pier they will eliminate the existing float.

The ICO and J. Hannon briefly discussed the FEMA zone, clarifying that the proposed boat lift would be located in the VE zone and the lowest structural member would be 2 ft above the base flood elevation. The ICO and J. Hannon discussed and clarified that there will be 4 new piles for the boat lift; of the 4 existing piles for the float, 2 new ones will be installed and the 2 closest to the gangway will remain, resulting in a total of 6 new piles for the project.

A. Brodsky explained that there are existing lights on the pier that had not been included in the original Order of Conditions. The lighting spec sheet was shared to the screen. He noted that some of the lights are not in compliance with the regulations and they have a redesign. He stated that there is a question regarding the interpretation of the regulations with respect to the distance between certain lights. J. Hannon explained that the lighting complies with the luminaire requirement in the bylaw. He also shared a plan view drawing of the lighting, pointing out that the little circles are the posts, the darker colors are the lights themselves, the spacing is correct, 12ft on center, they are not supposed to be less than that, and that the height of the lights off the pier is correct.

Vice Chair Nielsen stated that when the regulations were originally written, by her, Charles Berry and Chris Daly, their intention, working on the regulations for docks and piers, was that there be only the types of structures that were listed; they did discuss boat lifts and it was their intention that boat lifts not be permitted in Hingham. They wrote the regulations as they did, listing off the sorts of structures that would be allowed, and boat lifts are not included on that list. Having been present when the regulations were written, it is her contention to respectfully disagree with A. Brodsky's interpretation.

Vice-Chair Nielsen asked about the electric winch system, noted there would be moving parts that would need lubrication at some point, asked what maintenance would need done, and noted the concern of dripping volatile material into the water. J. Hannon replied that the manufacturer's O&M manual does include pre-season and post-season maintenance recommendations, noted that the winches are electric powered and not hydraulic powered, and suggested that a condition might be included requiring that as the annual maintenance takes place, any lubricants would need to be contained and it be done in a proper manner. A. Brodsky agreed that it would be appropriate for lubricants to be addressed in an Order of Conditions with a special condition to prevent lubricants dripping into the water.

Brief discussion followed regarding an earlier comment regarding materials from the prior filing being included with this application; such as abutter support letters. A. Brodsky stated that he could get a full copy of the original filing and resubmit materials for a complete administrative record.

Vice Chair Nielsen invited other members of the Commission to comment. Comm'r Mosher wanted it on the record, as he had for the previous filing, that his wife plays pickleball now and then at the McGraths and he's been there to watch sometimes, or have a hamburger, but any connection with them has been purely minor and social and feels that it doesn't, in any way, affect his position on the dock.

Comm'r Hidell commented that one assumption of the intent of the bylaw is to preserve the integrity of the environment, in particular the sea floor, flora and fauna. He suggested that, setting aside any legal debate, the question before the Commission is what the best method is to preserve the environment in the vicinity of docks and piers. In his experience with boat lifts, he feels they do a better job than anything else that is laying on the seabed. He is generally in favor of lifts because they keep boats elevated, light can get in underneath, and there's no damage to the seabed. He appreciates Vice Chair Nielsen's and the McGrath's notes but thinks this system is environmentally superior.

Responding to Comm'r Mosher's question if the Harbormaster had a similar opinion, the ICO stated that potentially the Harbormaster only commented on the previous application and not the current application. She stated that he would only be reviewing it from the Harbormaster perspective, evaluating it to be sure there is no recreational or safe passage negative impact, and, as the shellfish constable to ensure that mitigation measures are in place for work occurring in land containing shellfish; those would be the two areas he would comment on. She stated that it might be out of his role, in reviewing applications before the Commission, to comment on environmental impacts from a structure like a boat lift.

Comm'r Freeman, responding to A. Brodsky's comment that there is not a performance standard for boat lifts therefore it would not be prohibited in the regulations, she suggested that the Commission does have a performance standard for that activity and it is the dock and pier regulation which specifies exactly what is permitted on a dock and pier. She added that the regulations are extremely explicit, detailed and restrictive,

and it would seem unusual that something as large and impactful as a boat lift would not have been listed as permitted, within various parameters, if it had been contemplated.

Comm'r Freeman stated that, in her careful reading of the regulations, she does not think the Commission has the regulatory support to approve the boat lift. She noted that it appeared that Town Counsel had an alternative reading of that; if Town Counsel has said that the Commission does have the authority, then it would be more of a matter of discretion on the Commission's part. Comm'r Freeman stated that it would be a huge change to suddenly allow boat lifts in Hingham when there is nothing in the regulations that set up the parameters necessary for them.

Comm'r Freeman thanked Comm'r Hidell for his comments, but added that one wetland value not mentioned is aesthetics and she does believe it would be impactful in this case. She noted that it is a specific value in Hingham bylaw that the Commission is required to attend to as well. Comm'r Freeman stated that, in her opinion, if the Commission is going to approve boat lifts, then the Commission would need to amend their regulations to allow for them, and set parameters, and allow for public comment so that Hingham residents can decide if they are okay with the shoreline being populated with boat lifts. She expressed her respect for the Commissioners' opinions and added that there are reasonable arguments to be made on both sides. Comm'r Freeman asked the ICO for her thoughts, in terms of the impact of allowing boat lifts, on the other wetland values, besides aesthetics, in order to add her input to the Commission's decision making. Comm'r Freeman noted she hoped that staff could provide any information on surrounding towns and their policies on boat lifts.

The ICO stated that she'd be happy to do that research, whether in the short term in light of this project or, in the longer term should the Commission be interested in pursuing amendments to the regulations, but she does not currently have information on surrounding towns with respect to boat lifts. The ICO stated that the impacts to resource areas, in the case of the boat lift, would be limited to the four permanent pilings. She agreed with Comm'r Hidell's assessment in that the typical boat anchoring methods, moorings that are bottom anchored, do allow a boat to shift and light to reach the bottom, but the mooring and the bottom anchor itself can be fairly destructive in that there are sometimes chains attached that can drag across the ocean floor, causing damage to potential habitat and sedimentation or turbidity in the water. She added that chains are not always what is used but those are some of the potential impacts. She noted that in mooring fields in particular, those impacts are reduced or eliminated due to dredging. She summarized that one mooring for a boat at a private property could have larger impacts than this boat lift because of the bottom anchoring system that is more typically used, whereas this system would have 4 permanent pilings and the boat would be lifted out of the water. Brief discussion clarified that there will be 6 new pilings, 2 of which would replace 2 existing float piles.

A. Brodsky stated that he agreed with Comm'r Freeman on one point and that is that there is a performance standard and it is the performance standard for docks and piers because the boat lift is part of a dock and pier. He agreed that is the relevant performance standard. He stated that the bylaw does not expressly prohibit boat lifts and, as he had pointed out, the bylaw does not expressly authorize things like ladders or stairs. He stated that in Chapter 91, when dealing with coastal structures, one can't impair the public's ability to travel along the shoreline, so DEP will require that someone have the ability in the intertidal zone to either walk beneath a pier or travel over a pier through either stairs or ladders; he noted that those components of a typical pier are also not authorized or spelled out in the regulations but are routinely used. He suggested that the definition of docks and piers is broad and is intended to include all of the components that one would find to connect with a pier. He stated he didn't have any information regarding Town Counsel's opinion and asked that if there is any information, to help him understand the Commission's position, for it to be shared with him.

In regards to aesthetics, A. Brodsky stated that in the bylaw, it is the aesthetics related to the particular resource areas and the only two resource areas implicated by the boat lift are Land Under Ocean and Land Subject to Coastal Storm Flowage. He suggested that the construction of any structure is not going to impair the aesthetic impacts of Land Under Ocean and Land Subject to Coastal Storm Flowage. He stated that generally because one doesn't like the look of something is not what aesthetics means in the context of the Hingham wetlands bylaw; it has to relate to the particular wetland resource area. He stated that he doesn't feel it's a relative ground in order to deny the project.

Comm'r Freeman commented on A. Brodsky's example of ladders and stairs, stating that they would be ancillary components to the structural components to the dock and pier. And in reference to the comment that

the docks and piers performance standard does not exclude boat lifts, she noted that it doesn't list a huge list of things that one could come up with. She stated that she is not persuaded at all that the Commission can add new big structures to the docks and piers as long as they're within that dimension. She added that the Commission has already heard one of the drafters of the regulations specifically state that the intention was to only be permitting the stated components in that regulation and not boat lifts. Commenting on the matter of aesthetics, Comm'r Freeman stated that it is a subjective thing one can argue about, as to whether or not the aesthetics are impaired, and she raised it because it is a component of the regulations.

Comm'r Villanova stated that Comm'r Freeman had summed up her points on the reading of the bylaw and she agrees with what she had to share.

Responding to a question from Comm'r Mosher, J. Hannon pointed out the 3D View of New Lift image, and clarified that the float and the boat lift are independently supported, each with 4 piles; they are independent but one can step from the float onto the lift, they are not physically connected, and the boat will be at a right angle to the float.

The ICO offered a summary of town counsel's comments on the regulations. She quoted from a staff memo in the earlier filing where the former CO, Emily Sullivan, wrote that "Town Counsel has said that the "including" language as it exists in these definitions provides examples and is not an exclusive list." The ICO continued, reading that Town Counsel agreed with staff's interpretation that the installation of a boat lift would fall under the definition(s) and would be subject to any limitations on size imposed by the regulations. The ICO stated that at that point in time, they were looking at both the definition of 'dock and pier' and 'pier' and both definitions have the term 'including pilings, ramps, walkways, etc.' at the end of the definitions. The ICO stated that Town Counsel's interpretation was that it was not an exclusive list; it was simply a list of examples. Vice Chair Nielsen stated that Town Counsel's interpretation is not consistent with the intention of the drafters and that is something that the Commission will have to work through.

Comm'r Freeman recalled that her understanding of the interpretation was that there were two issues; one, is this the correct place to be looking for regulation on boat lifts. She felt that Town Counsel was saying this is where boat lift regulation would be. Comm'r Freeman suggested that, in terms of determining if boat lifts are allowed, one needs to look at this language because it is inclusive of anything that's being attached to, or complementary to, or adjacent to, or about docks and piers. Comm'r Freeman did not think Town Counsel made the determination that because it is not prohibited in this regulation, it is therefore allowed and the Commission has the discretion to permit it; and that is a big distinction.

Comm'r Mosher stated that he would like a clearer definition from Town Counsel as it relates to this proposal. Brief discussion followed about whether or not there might be a record of the deliberations when the regulations were created; Vice Chair Nielsen stated she had no records as she kept nothing when her term ended.

Vice Chair Nielsen opened the meeting up to public comments.

Ed McGrath, of 8 Seal Cove Road, was present on the call and noted that a lot of points that he had to make had been made by commissioners and so he would not repeat those. He stated that in terms of boat lifts and piers, he's argued for a long time that boat lifts don't work in areas that have very high tides like they have. He stated that he's asked for several months for an example of one in an adjacent town; the one boat lift that was shown is on a fixed pier that sits ten feet up in the air, not on a float. He would still like to see an example of a boat lift that is in a situation that's consistent with Hingham's regulations, in an adjacent town.

E. McGrath stated that, in terms of dimensions, the representative is arguing that this is another float, or a second float, and multiple floats are allowed by the bylaw. He added that there is an inconsistency in the bylaw, where 23.4(c)(1) states that it can only be a single float; and (c)(9) says when multiple floats are used, then total dimensions have to comply. He'd be interested to hear how that discrepancy got into the bylaws and what Town Counsel thinks of that discrepancy.

E. McGrath stated that he had been pleased with the submission that had been made and then withdrawn that actually showed the specs and dimensions of the lift, and he stated that the applicants or engineers had suggested that the lift was smaller than it actually was. With this proposal there are no specs or dimensions other than to the center of the post, and if the one looks closely, it appears that the lift extends at least to the outside of the post if not beyond it. He stated that if the applicant is intending to use the same boat

lift as proposed last time, then the boat lift is a 150 inches; it is not 10ft. He added that he doesn't see how the Commission can accept anything without real specs and real dimensions.

Regarding the seasonal aspect, E. McGrath commented that if he puts in a float, it's seasonal and has to be removed. He doesn't see how this thing, if it's a float, can be permanent.

Regarding the lighting, E. McGrath, noted that the regulations say that lights have to be 12ft apart and lights that are 4ft apart, on opposite sides of the ramp, are obviously not 12ft apart. He added that the bylaw also states that the lights have to be on a switch and not on a timer; these are on a timer and if one should go out that night and look, at 4 am, they will be on.

A. Brodsky responded to E. McGrath's comments. He stated that the boat lift is separate and distinct from the float; the boat lift is not sitting on the float, it is structurally separate on pilings, similar to a boat lift on a pier. He agreed that sometimes the regulations are not crystal clear, but he stated that they are crystal clear because they specifically deal with the issue of multiple floats and the combination of floats provided they are not great than 10' by 20'. He stated that he read (c)(1) as a general requirement and (c)(9) as a clarification of that, specifically dealing with multiple floats.

Regarding the boat lift specifications, A. Brodsky stated that the structures are not only reviewed by the Conservation Commission but also by the MA DEP Waterways under the Chapter 91 regulations, as well as the U.S. Army Corp of Engineers. He added that the Chapter 91 regulations are very specific engineering and construction standards for marine structures. The review of the structural integrity and the specifics of the design of the float, the pilings and the boat lift is reserved for DEP with its engineering staff. A. Brodsky stated that the proposal meets the dimensional requirements and that the high level technical engineering review of the structural integrity is reserved for the experts in coastal structures.

A. Brodsky stated that pile held floats, although sometimes prudent to remove in winter, are not required to be removed. If it's a seasonal float, such as a bottom anchored float typically approved by the harbor master under Chapter 91, those are typically seasonal and when removed, the Hingham regulations require that they be stored in an upland area. But this boat lift is a pile supported structure, can remain in place, and is not intended to be seasonal; but should it be removed, at the end of a season, it would be stored in an upland area consistent with the Commission's regulations. He concluded that there is no regulation that requires that all floats be removed on a seasonal basis. He briefly commented on the benefits of a pile supported float versus a bottom anchored float.

Regarding the lighting, A. Brodsky stated that the pier is 4ft wide and that there is nothing in the regulations that says one cannot have lights opposite one another on each side of the pier. However, should the Commission determine that they wanted all lights, at all points, to be 12ft apart, they could change the lighting design and eliminate some of the lights, so that they would alternate on each side. He added that it's a balance, minimizing the lighting and visual impact, but also want to make sure that it's a safe structure so that people don't trip and fall in low light conditions.

J. Hannon shared his screen with the boat lift detail and, responding to some of the questions regarding the boat lift and framing, pointed out details; the lower two beams are 10ft long and hang from the upper beam by wire rope, which is part of the winch system,; these two lower beams are spaced 8ft apart; the two transverse beams are 10ft long. Responding to E. McGrath's question if this was the same boat lift proposed in December, J. Hannon responded that they have looked at multiple vendors that meet the requirements for this design, the boat size desired, and the strength requirements but they are not sure who they will use for vendor.

E. McGrath asked if the top beam channel ends at the middle of the post, or go beyond the post or at least, to the outside of the post. J. Hannon stated that the top channel beams do go beyond the piles, but the lifting beams below are inboard of the piles. J. Hannon pointed out the lower portion of the lifting system and stated that that portion is well under the bylaw requirements. He agreed that the upper channels on each end do go slightly beyond the piles in order to fully bear on them.

E. McGrath asked the Commission if that top beam channel is part of the lift and stated that if so, it is at least 11ft, if not longer. He stated that with the lift that was proposed the last time, it was 150 inches. Vice Chair Nielsen stated that it would be something that the Commission would need to discuss and asked J. Hannon what would be the length of those top beams. J. Hannon stated he could provide those exact dimensions. He pointed out that the lift itself on the inside of the pilings is under the square footage amount. He stated that, if making the case that the channels are part of the area, that's a reasonable interpretation, but the Chapter 91 process

dives into all those details and if it were to be conditioned by the Commission they obviously have to comply and show those exact areas. He stated that they could provide another plan view with those areas, but added it is a bit of a subjective question as to what's included. Vice Chair Nielsen stated that would be helpful and noted that the Commission's requirements are dimensional not square footage.

A. Brodsky stated that the beams are above base flood elevation and so, outside of Land Subject to Coastal Storm Flowage and may not be within the Conservation Commission's jurisdiction, which, in this instance is Land Under Ocean and Land Subject to Coastal Storm Flowage. He added that the portions of the structure within the Commission's jurisdiction are clearly within the Commission's regulatory guidance. Vice Chair Nielsen responded that that was splitting hairs beyond her expertise and could be set aside for now and perhaps the ICO would be able to look into that.

Vice Chair Nielsen invited any further comments from the public. There were no further comments from the public and Vice Chair Nielsen closed the public comment portion of the hearing.

Vice Chair Nielsen summarized that A. Brodsky had expressed interest in reviewing the previous filing documents and might want to include some of them with the current filing.

A. Brodsky and the Commission confirmed that they were amenable to continuing the hearing. Brief discussion followed regarding scheduling and concluded with all in agreement to continue the hearing to the Commission's March 6th meeting.

Motion: Comm'r Freeman moved to continue the hearing for 14 Seal Cove Road to March 6, 2023.

Second: Comm'r Hidell

Roll Call: Vice Chair Nielsen: aye, Comm'r Freeman: aye, Comm'r Villanova: aye, Comm'r Mosher: aye and Comm'r Hidell: aye

52 Union Street – DEP 034-1460

Applicant: Gregory Morse, Morse Engineering Company, Inc.

Proposed: Construction of a farmers porch and addition

Meeting Documents & Exhibits: none

Ahead of the meeting, the applicant's representative had requested to continue to the 2/13/23 Commission meeting.

Motion: Comm'r Villanova moved to continue the hearing for 52 Union Street to February 13, 2023.

Second: Comm'r Hidell

Roll Call: Vice Chair Nielsen: aye, Comm'r Freeman: aye, Comm'r Villanova: aye, Comm'r Mosher: aye and Comm'r Hidell: aye

10 Parker Driveway – DEP 034-XXXX

Applicant: Richard and Jill Blake

Representative: Laura Krause, BETA Group, Inc

Proposed: Seawall rehabilitation

Meeting Documents & Exhibits: Staff memo, Notice of Intent application, Operation & Maintenance Plan, and Site Plan (12/2/2022)

Excerpts from the Staff memo: Staff visited the site on 1/18/23. The existing patio appeared to be in fair condition, with no obvious signs of large cracks, depressions, or holes, etc. The seawall was recently repointed and appeared to be in good condition. Staff agrees with the resource areas identified in the vicinity of the project and given the scope of work, does not feel that any additional fieldwork or reporting is necessary. Staff notes that the representative filed this application as a limited project (310 CMR 10.24(7)(c)(2), which allows the maintenance, repair, and improvement of coastal structures). As such, an operation and maintenance plan is required "to ensure that the infrastructure will continue to function as designed" (310 CMR 10.24(9)). An O&M plan was submitted for this project and staff confirmed that no form of snow or ice removal is conducted on the patio in the winter.

Representative Laura Krause from BETA Group, Inc, was present on the call, briefly described the intent of the project, and turned the presentation over to Tyler Drew, also from BETA Group, Inc.

T. Drew shared his screen with the site plan, described the locus, and explained that it was a stone masonry seawall with several pvc drains embedded in the wall. He explained that the patio is paved and bordered on the

landward side by another masonry wall. He stated that existing pvc drains below the patio surface would be removed. He pointed out in a photo the higher pvc pipe drains in the wall that would remain; the ones proposed for removal are the lower set of pipes that drain the foundation. They propose to fill any void spaces in the patio with flowable fill and cover it with peastone resulting in the patio returning to a comparable condition to existing conditions. He noted that there would be 76ft of temporary impact to the Coastal Bank. Masonry repairs include hand pointing the stones, replacing stones, and adding mortar; that work will be done on foot. He described the salt marsh and rocky intertidal shore noting that the entire site is within Land Subject to Coastal Storm Flowage and the project would entail 1522sf of temporary impact.

T.Drew shared photos of the site. He explained that a mulch log would be placed across the existing gate, pvc drains will be plugged during work, there will be no stockpiling and all work would be conducted from either the patio surface or the adjacent Parker Driveway.

The ICO stated that the limit of the salt marsh is very obvious. She added that none of the drains are connected to roadway drains and all seem to be associated only with the patio. Noting that the project was filed under a limited project, the applicant needed to submit a short Operation and Maintenance plan, which, after confirming that there would be no snow removed or deicing measures used, she deemed sufficient.

The Commission was satisfied with the proposal and had no concerns or comments.

Vice Chair Nielsen opened the hearing to the public for comment. There was no member of the public expressing a wish to comment.

Noting that a DEP number had yet to be issued for the proposal, Vice Chair Nielsen and the applicant agreed to continue the hearing to the Commission's next meeting on February 13.

Motion: Comm'r Villanova moved to continue the hearing for 10 Parker Driveway to February 13, 2023.

Second: Comm'r Mosher

Roll Call: Vice Chair Nielsen: aye, Comm'r Freeman: aye, Comm'r Villanova: aye, Comm'r Mosher: aye and Comm'r Hidell: aye

Other Business:

a. Discussion and possible vote regarding approved deck at 19 Fulling Mill Lane (DEP 034-1435)

The ICO explained that a condition had been included regarding the approved deck at 19 Fulling Mill Lane that prohibited skirting around the deck. The deck is not in the floodplain and nor will be; the ICO suggested that it was perhaps a copy and paste error. The Commission had no objections to remove the condition.

Motion: Comm'r Mosher moved to remove condition #41 from the Order of Conditions

Second: Comm'r Freeman

Roll Call: Vice Chair Nielsen: aye, Comm'r Freeman: aye, Comm'r Villanova: aye, Comm'r Mosher: aye and Comm'r Hidell: aye

Adjourn

Motion: Comm'r Mosher moved to adjourn the meeting at 9:07 pm.

Second: Comm'r Hidell

Roll Call: Vice Chair Nielsen: aye, Comm'r Freeman: aye, Comm'r Villanova: aye, Comm'r Mosher: aye and Comm'r Hidell: aye

Submitted, _____

Sylvia Schuler, Administrative Assistant

Approved on March 27, 2023

This meeting was recorded. To obtain a copy of the recording please contact the Conservation office.