



CONSERVATION COMMISSION MEETING MINUTES –March 6, 2023

Present: Crystal Kelly – Chair, Carolyn Nielsen- Vice Chair, Bob Hidell, Tom Roby, and Laurie Freeman (joined at 7:39pm), – Commissioners and Loni Fournier- Interim Conservation Officer (ICO)

Absent: Bob Mosher and Nina Villanova

The remote meeting was held via Zoom with Dial in #929-205-6099, Meeting ID # 895-2265-5949

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

Chair Kelly 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

There was no vote on minutes as there was not quorum of eligible commissioners.

Certificates of Compliance

0 Otis Street (Town boat ramp) – DEP 034-1347, cont'd from 1/9/23

Applicant: Foth Infrastructure & Environment, LLC

Representative: Michael Count, Foth Infrastructure & Environment, LLC

Meeting Documents & Exhibits: Staff memo

Excerpts from the Staff memo: The Commission continued this discussion to give the applicant additional time to make minor modifications to the new pilings that would facilitate the removal of the three new seasonal floats from the harbor. As of 2/28/23, the minor modifications had not been made and the floats had not been removed. The Harbormaster indicated that the minor modifications will not be completed in time for this meeting, nor is it likely that they will be completed this spring. As a result, the floats will not be removed from the harbor before they are allowed back in for the season. Additionally, the next steps related to closing out a previous Order for a very similar project in the same location have yet to be confirmed. As a reminder, the Commission first issued an Order for this project (similar in scope) in July 2008 (DEP 034-0964). Two separate Extensions were also issued (2015 and 2018) and all three documents have been recorded at the Registry of Deeds. The By-law fee was waived for the Notice of Intent and is typically waived for municipal projects.

The ICO stated that she'd had a conversation with the Harbormaster that morning and that they were delayed making the modifications to the pilings that they need to get the floats out of the water. They had requested additional time to make the modifications and identified the June 26th meeting date to continue to.

Motion: Comm'r Nielsen moved to continue 0 Otis Street, MA DEP 034-1347, to June 26, 2023.

Second: Comm'r Roby

Roll Call: Comm'r Kelly: aye, Comm'r Hidell: aye, Comm'r Nielsen: aye, and Comm'r Roby: aye

12 Boulder Glen Road (including work on 9 Porters Cove Road)– DEP 034-1362

Applicant: Crowley & Cummings LLC

Representative: Kirsten Jensen, Crowley & Cummings, LLC

Meeting Documents & Exhibits: Staff memo, Request for Certificate of Compliance and Land Stewardship Inc Report

Excerpts from the Staff memo: A Restoration Order of Conditions was issued in May 2020 for the treatment of 9,824sqft of phragmites. Treatment included mowing and applying an herbicide over the course of three years. One final report, documenting the work completed over all three years, was submitted on 2/27/23 and is posted to GIS. The report indicates that by the second year of treatment, native grasses were observed in the treatment area. By the third year, there was “very minimal phragmites density in the treatment area.” At this point in time, there are no plans for restoration planting.

Staff notes that ongoing maintenance will be required in order to keep phragmites out of the treatment area for the long term, per the approved Habitat Management Plan. Options include “hand pulling, spot herbicide spraying, and/or cutting.” Additional permitting may be required to pursue this work.

No representative for the project was present on the call. The ICO gave the Commission some background on who was requesting the Certificate of Compliance, explaining that 9 Porters Cover Road was for sale, and that the owner of 12 Boulder Glen Road was supportive of the Request for Certificate of Compliance. The ICO gave a review of the phragmites treatment plan project, noted the positive report from the consultant, and stated she’d conducted a site visit. She noted the time of year makes it difficult to assess the effectiveness of the treatment, but it was easy to identify the end of the phragmites stand where treatment stopped. The ICO stated that the order had been set to expire in a couple of months, the decision had been made to not pursue any additional treatment, and that the applicant is aware that should additional treatment be needed that would require a new application.

Responding to a question from Comm’r Nielsen regarding further monitoring, the ICO stated that due to this being a Restoration Order of Conditions, the Commission did not have the ability to include special conditions as usual. She briefly described the management plan, the guidance given within it, and stated that the homeowners are aware that further monitoring is needed. The ICO felt that simple hand pulling of phragmites here or there is fairly minor work, and would be in line with what the Commission approved under the management plan, however, should they need a more comprehensive treatment with a similar square footage area as this project, it would require formal review by the Commission. The Commission expressed their appreciation for the applicant’s efforts at phragmites control and were in agreement to issue the Certificate of Compliance.

Motion: Comm’r Hidell moved to issue a Certificate of Compliance for 12 Boulder Glen Road, MA DEP 034-1362.

Second: Comm’r Nielsen

Roll Call: Comm’r Kelly: aye, Comm’r Hidell: aye, Comm’r Roby: aye, and Comm’r Nielsen: aye

Requests for Determination of Applicability

15 Marshall Road

Applicant: Kathryn Austgen

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

Excerpts from the Staff memo: Staff visited the site on 2/22/23. The resource area was not flagged, however the boundary likely did not change from the 2012 delineation noted on the submitted plans due to the topography of the site. The existing deck is in fair condition and surrounded by lawn that gently slopes towards the resource area. The replacement deck will include seven new footings, three of which will support a new 7ft by 12ft set of stairs. Staff noted one small pile of yard waste near the northeastern corner of the property. Staff asked the applicant for a few details on the construction of the deck (materials to be used and spacing in between the deck boards) and recommended a mitigation planting area.

Applicant and homeowner, Kathryn Austgen, was present on the call and gave an overview of the proposal; renovation of an existing deck within the same footprint but with the addition of stairs. The ICO stated that the addition of the 7’ by 12’ staircase triggers the Commission’s buffer zone mitigation policy. She stated that she and the applicant had discussed some areas and potential plants, but that a final planting plan was not yet submitted, and that draft condition #1 addresses that. The Commission had no further questions, was in agreement that the applicant could continue to work with the ICO regarding the planting plan, and would issue a Negative Determination of Applicability.

Motion: Comm’r Nielsen moved to issue a Negative Determination of Applicability for the proposed work at 15 Marshall Road, as shown on the submitted plans, and adopt the findings of fact a through c, and conditions 1 through 8 of the staff report.

Findings:

- a. This project meets the requirements of Part 1, Section 7.1 of the Town of Hingham Wetland Regulations governing procedures for a Request for Determination of Applicability.

- b. The work described is within an area subject to protection under the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations, and will not alter or adversely affect the area subject to protection under the Act or the Regulations.
- c. For the purpose of this filing, the Commission makes no finding as to the exact boundaries of wetland resource areas.

Conditions:

1. Prior to the issuance of a building permit, a mitigation planting plan shall be submitted to the Commission for review and approval. The planting plan shall include a minimum of 84 square feet of plantings, including a mix of shrubs and herbaceous species, in accordance with the Commission’s Buffer Zone Mitigation Policy (adopted 9/27/21). Locations closest to the resource areas shall be prioritized for planting. All mitigation plantings shall be native species; no cultivars, non-native species, or invasive species shall be allowed.
2. Prior to the issuance of a building permit, erosion and sediment controls shall be installed and inspected by an agent of the Commission; straw wattles and/or hay bales shall not be used as a form of erosion or sediment control.
3. Erosion and sediment controls shall remain in place until all disturbed or exposed areas have been stabilized with a final vegetative cover or the Commission has authorized their removal.
4. All demolition and excavated material shall be properly disposed of at an off-site location.
5. Any debris, which falls into any resource area, shall be removed immediately by hand and properly disposed of at an off-site location.
6. Prior to the issuance of a Certificate of Occupancy and/or final building sign off, mitigation area plantings shall be installed in accordance with the final approved mitigation planting plan.
7. Prior to the issuance of a Certificate of Occupancy and/or final building sign off, all lawn waste, brush, leaves, or other materials dumped in any resource area, including the buffer zone, in particular near the northeast corner of the property, shall be removed by hand and properly disposed of at an off-site location, and the practice discontinued, in accordance with Section 23.6 of the Hingham Wetland Regulations.
8. The Conservation Department shall be notified to any changes in plans prior to proceeding with said changed plans.

Second: Comm’r Hidell

Roll Call: Comm’r Kelly: aye, Comm’r Roby: aye, Comm’r Hidell aye, and Comm’r Nielsen: aye

5 Windsong Way

Applicant: Gregg & Melissa Miles

Representative: Tish Campbell, Tish Landscape Design

Proposed: Pool patio, cabana, and landscaping

Meeting Documents & Exhibits: Staff memo, Request for Determination of Applicability application, and Revised Landscape Plan(2/28/23)

Excerpts from the Staff memo: The work area is fairly flat and maintained as lawn, landscaping, and impervious surface. The existing pool surround and fence appeared to be in fair to good condition. Staff observed a fair amount of yard waste in a clearing east of an existing putting green (100ft Buffer Zone) and north of the pool on a steep slope leading to the resource area (50ft and 100ft Buffer Zones); both areas likely encroach onto the abutting private property.

Tish Campbell, landscape designer representing Gregg & Melissa Miles, was present on the call. The revised Landscape Plan was shared to the screen. T. Campbell explained that there is an existing pool, concrete patio and fence on the site. She stated that there had been an issue with the irrigation staining the patio, work to try to correct that resulted in more problems and they wish to redo the whole patio. While doing this work the applicant would like to remove some of the lawn and create more patio and also construct a pool cabana. The increase in impervious area is approximately 750sf. To mitigate the increased impervious, they propose a stone drip edge around the pool cabana and also plant approximately 800sf of native planting area to infiltrate the area between the wetlands and the pool area.

T.Campbell stated that the applicants had agreed to have all the yard waste behind the pool removed before the project begins and will also speak to their landscapers to stop the practice. She added that the fence between the two patio areas would be removed and a new fence installed all the way around the landscaped areas to the garage area.

The ICO stated her appreciation for the willingness to remove the yard waste and indicated on the plan where she’d been particularly concerned as it was a steep area leading down to the wetland. Otherwise, mitigation and

infiltration questions had been resolved. Responding to a Commission question, T.Campbell confirmed that all of the plantings were native species. The Commission had no further comments.

Motion: Comm’r Hidell moved to issue a Negative Determination of Applicability for the proposed work at 5 Windsong Way, as shown on the submitted plans, and adopt the findings of fact a through c, and conditions 1 through 8 of the staff report.

Findings:

- a. This project meets the requirements of Part 1, Section 7.1 of the Town of Hingham Wetland Regulations governing procedures for a Request for Determination of Applicability.
- b. The work described is within an area subject to protection under the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations, and will not alter or adversely affect the area subject to protection under the Act or the Regulations.
- c. For the purpose of this filing, the Commission makes no finding as to the exact boundaries of wetland resource areas.

Conditions:

1. Prior to the issuance of a building permit, erosion and sediment controls shall be installed and inspected by an agent of the Commission; straw wattles and/or hay bales shall not be used as a form of erosion or sediment control.
2. Erosion and sediment controls shall remain in place until all disturbed or exposed areas have been stabilized with a final vegetative cover or the Commission has authorized their removal.
3. All demolition and excavated material shall be properly disposed of at an off-site location.
4. Any debris, which falls into any resource area, shall be removed immediately by hand and properly disposed of at an off-site location.
5. Rooftop runoff from the approved pool cabana shall be infiltrated on site, using drip edge stone trenches or an alternative method approved in advance by the Commission.
6. Prior to the issuance of a Certificate of Occupancy and/or final building sign off, mitigation area plantings shall be installed, and seeding completed, in accordance with the final approved landscape plan.
7. Prior to the issuance of a Certificate of Occupancy and/or final building sign off, all lawn waste, brush, leaves, or other materials dumped in any resource area, including the buffer zone, in particular near the putting green and on the steep slope north of the pool, shall be removed by hand and properly disposed of at an off-site location, and the practice discontinued, in accordance with Section 23.6 of the Hingham Wetland Regulations.
8. The Conservation Department shall be notified to any changes in plans prior to proceeding with said changed plans.

Second: Comm’r Nielsen

Roll Call: Comm’r Kelly: aye, Comm’r Roby: aye, Comm’r Hidell: aye, and Comm’r Nielsen: aye

Request for Extension of Order of Resource Area Delineation

0 Southeast Expressway – DEP 034-1350

Applicant: AW Perry

Representative: Joshua Green, Crocker Design Group, LLC

Meeting Documents & Exhibits: Staff memo & Request for Extension of ORAD

Excerpts from the Staff memo: No work has occurred on the property since the ORAD was issued, making it unlikely that the delineation changed dramatically in the last three years. The representative relayed the following pertinent information in their request: “Work has not started due to an unexpected, sudden, change in leadership as well as the onset of the pandemic. It took several years of master planning, internally and with the town, to arrive at the original conceptual layout for the property and the pandemic drastically changed the commercial property market forcing our client to reconsider the original plan and come up with a revised master plan for the property. Extending the ORAD will assist in moving the conceptual redesign forward; which will lead to the formal submission of an application to the Commission.”

Representative Josh Green from Crocker Design Group was present on the call and briefly explained that the ORAD was issued in April 2020, and which point AW Perry had a master plan for the property, however due to the impacts to commercial and industrial markets during the pandemic, the master plan needs to be reevaluated. The extension of the ORAD is step one of moving that plan forward. In response to a question from the chair, J.Green stated

that any changes to the plan are preliminary. The ICO commented that no work had taken place on the property that would potentially change the delineation in any way. She also noted that a peer review had been hired to help with the delineation and there were miles of flags. She advocated for extending the ORAD. The Commission was in agreement to grant the extension.

Motion: Comm'r Nielsen moved to issue a three-year Extension Permit for the Order of Resource Area Delineation issued to 0 SE Expressway (DEP 034-1350).

Second: Comm'r Roby

Roll Call: Comm'r Kelly: aye, Comm'r Nielsen: aye, Comm'r Hidell: aye, and Comm'r Roby: aye

Chair Kelly read the Notice of Intent statement.

Request for Extension of Order of Conditions

29 Canterbury Street (nka Jordan Way) – DEP 034-1292

Applicant: Canterbury Street, LLC

Representative: Gary James, James Engineering, Inc.

Meeting Documents & Exhibits: Staff memo & Request for Extension of ORAD

Excerpts from the Staff memo: The Order of Conditions for 29 Canterbury Street was issued in March 2018 for the construction of a six-lot subdivision, including one existing house, known as Patterson Pond Estates on Jordan Way. The Commission issued a two-year Extension Permit in February 2021 and the Order is set to expire on **March 8, 2023**. The representative provided the following construction update: "At this point in time the only site disturbance remaining is the construction of the dwelling at 5 Jordan Way. All of the remaining lots in the subdivision have been completed and the sites have been stabilized. As noted in our previous extension request, the roadway construction and all of the drainage improvements associated with the roadway have been substantially completed. All of the stormwater collection and treatment system from the subdivision to the outfall to Patterson Pond has been completed and is now functioning in accordance with the design. In addition, all of the stormwater improvements in Canterbury Street have been completed are functioning as designed and the revegetation has now survived a complete growing season. The only earth disturbing activity inside the wetlands buffer that remains to be completed, is the final grading and loam & seeding in the drainage easement above the outfall which will be completed with the construction of the dwelling at 5 Jordan Way. Because of the Covid-related material delivery delays, the development of the dwellings has proceeded more slowly than originally anticipated. We were originally hoping to complete the final roadway paving last fall. It appears now that it will occur this fall. The extension will extend the construction period for the roadway until February 2025 which will allow us the ability to complete the roadway at the end of the year or Spring 2024 at the latest."

Applicant John Woodin was present on the call and briefly explained that they are down to the last two lots for the Patterson Pond Estates. One, off of Weir Street and one, Lot 6a off of Jordan Way (#5). He anticipates that they would be starting excavation on 5 Jordan Way in the next 30 days and hopefully in the next 4-6 months they'll be applying to the town to accept the road, and having an As-Built done.

The ICO clarified that the applicant is requesting a 2 year extension and briefly explained that the proposed motion included in the staff memo would need to be amended.

Chair Kelly invited any members of the public to comment. No members of the public wished to speak.

Motion: Comm'r Hidell moved to issue a two-year Extension Permit for the Order of Conditions issued to 29 Canterbury Street (DEP 034-1292) as amended.

Second: Comm'r Nielsen

Roll Call: Comm'r Kelly: aye, Comm'r Roby: aye, Comm'r Nielsen: aye, and Comm'r Hidell: aye

Comm'r Freeman joined the meeting at this point (7:39 pm).

Notices of Intent

14 Seal Cove Road – DEP 034-1457, cont'd from 1/30/23

Applicant: Leonard and Karin Monfredo

Representative: Joseph Hannon, Atlantic Coast Engineering, LLC

Proposed: Boat lift and lighting for an existing dock

Meeting Documents & Exhibits: Staff memo, McGrath letter (3/5/23), C.Daly letter (3/6/23), Town Counsel Legal Memo (3/3/23), and Boat Lift Site Plan (2/27/23)

Excerpts from the Staff memo: This hearing is continued from the 1/30/23 Commission meeting. Since then, the representatives filed 1) a public records request for "all documents and communications" relating to the adoption or revision of Section 23.4 of the Hingham Wetland Regulations, 2) documents from the original filing for this project (DEP 034-1445) and the public records request, 3) a wetland delineation memo dated 2/7/23, and 4) a revised plan with a "Boat Lift Detail" clarifying that the "out to out" dimensions including framing beams at the top comply with the 20x10 bylaws." Items 3 and 4 have been posted to GIS. At the request of staff, Town Counsel also reviewed the legal memo submitted to the Commission on 1/23/23 and formalized their legal opinion of Section 23.4 of the HWR and its applicability to this project in the attached memo.

While the proposed scope of work remains unchanged, the lighting component warrants further discussion. 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 specific performance standard is needed before an Order of Conditions could be issued. (See draft condition #31.) 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. Chair Kelly stated that this Notice of Intent, the prior Notice of Intent, as well as the application of the Commission's bylaws and regulations on the proposal, had been reviewed carefully by the Commission multiple times. She added that they'd worked with the applicants on a design that would be compliant with the regulations, looked at the impacts that the proposed boatlift would have within the Commission's jurisdiction, feels that the discussions were thorough, and that the remaining item for the Commission to discuss is the placement of the lights and how the proposal of lights relates to the regulations.

A. Brodsky briefly reviewed timeframe of the applications, as well as a detailed list, including dates, of the submittal of documents. He noted that the staff memo recommended that the Commission find that the project meets the requirements for an issuance of an order under the Wetlands Protection Act and the Hingham Wetlands Bylaw and Town Counsel has confirmed that there is no prohibition of boatlifts in the Hingham regulations. A. Brodsky stated that they think that the current lighting design conforms to the regulations but acknowledged that there are lights across from one another. He stated that if the Commission would like them to modify the lights in any way, he suggested that that could be done by special condition.

The ICO stated that she had reviewed filings for docks and piers and that this seems to be the only one she could find that had a lighting component. She stated that an argument could be made that having lights 4ft across from one another does not meet the Commission's regulations. Chair Kelly commented that the language of the regulations speaks of the 12ft minimum distance but not about placement, stated that the 4ft distance as discussed would not be compliant, and suggested that the lights could perhaps alternate sides down the dock, allowing it to achieve that minimum 12ft, but be in a useful configuration. A. Brodsky stated that would be perfectly acceptable to the applicant.

Comm'r Hidell asked for confirmation that the lights would be downward facing and asked how they would be activated. Applicant Len Monfredo replied that they would follow the bylaw and be on a switch. Brief discussion followed with Comm'r Hidell advocating for the benefits of a motion activated switch. Comm'r Nielsen stated that, having been there when the regulations were written, she feels that having lights alternating or on a single side of the pier, would meet the intention which was for a single set of lights, not a double set of lights. The ICO clarified that the lights are currently on a timer, which is not allowed. Brief discussion followed regarding the impact of the existing lighting to abutters; the Commission was in agreement that 12ft apart, downward facing lights, and a motion activated switch should correct the problems. A. Brodsky stated that it was acceptable to his client.

Chair Kelly stated as part of the public hearing, she wanted to recognize that the Commission received two letters from abutters that would be placed into the public record for this project; a letter from Chris Daly and a letter from Ed McGrath. Chair Kelly invited any members of the public to comment related to 14 Seal Cove Road. No members of the public wished to speak.

The ICO and Commission discussed the draft conditions and considered the need for language edits, specificity for type of lighting switch, and potential navigational lighting. The Commission and ICO concluded to add a separate condition related to the submittal of a revised lighting plan (*condition #26*).

Motion: Comm'r Hidell moved to waive the By-Law fee and the Town's share of the state fee, and issue an Order of Conditions for the proposed work at 14 Seal Cove Road (DEP 034-1457), as shown on the submitted plans, and adopt the findings of fact a through d, and special conditions 21 through 39 of the staff report as amended.

(Conditions below reflect the addition of a condition as discussed in the meeting)

Findings:

- a. The project meets the requirements for issuance of an Order of Conditions under the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations.
- b. The work described is within an area subject to protection under the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations, and will not alter or adversely affect the area subject to protection under the Act or the Regulations.
- c. The location and use of the boat lift are dependent upon the existing dock and therefore are a part thereof. As such, the entire dock structure must not exceed the maximum dimensions for docks and piers at private residences (Section 23.4(c)(1) of the Town of Hingham Wetland Regulations). In its approved configuration, the entire dock structure, inclusive of the existing dock and gangway, and the approved float and boat lift, complies with Section 23.4(c)(1).
- d. For the purpose of this filing, the Commission makes no finding as to the exact boundaries of wetland resource areas.

Special conditions:

21. The applicant shall notify the Commission, in writing, of the name, address, and telephone number(s) of the project supervisor or contractor who shall be responsible for ensuring compliance with this Order and by telephone or writing, of the commencement of work on the site, at least 48 hours in advance of said work.
22. This Order shall be included in all construction contracts and subcontracts dealing with the work and shall supersede all other contract requirements.
23. Prior to the start of any excavation or construction, there shall be a pre-construction conference on the site between the project supervisor or contractor responsible for the work, the Town's Harbormaster, and an agent of the Commission to ensure that the requirements of this Order are understood.
24. Prior to the start of any excavation or construction, copies of all applicable federal, state, and local permits, certifications, and approvals shall be submitted to the Commission.
25. Prior to the start of any excavation or construction, and in consultation with the Town's Harbormaster, who also functions as the Town's Shellfish Constable, the applicant shall contribute a sum of money to the Shellfish Mitigation Fund in accordance with the formula for contribution established by the Town's Harbormaster.
26. Prior to the start of any excavation or construction, a revised lighting layout plan shall be submitted to the Commission for review and approval. The lighting layout plan must reflect lights that are a minimum of 12 feet apart, downward facing, and activated by a motion switch. The requirements of this condition shall expressly exclude any navigation lighting as may be required by the Harbormaster.
27. The project supervisor or contractor responsible for the work shall have a copy of this Order available on the site at all times.
28. Any debris, which falls into any resource area, shall be removed immediately by hand and properly disposed of at an off-site location.
29. All work shall be planned to avoid grounding of any barge or heavy equipment on the resource areas.
30. Only non-chromated copper arsenate (CCA) material shall be used in the construction of the approved float and boat lift. Lead caps are not permitted. No creosote treated materials shall be used. Wood preservative, if used, must be dry before the treated wood is used in construction.
31. All pilings shall be driven, not washed or jetted.
32. All lighting on the existing residential dock shall be modified in accordance with the revised lighting layout plan, submitted per condition #26.
33. The existing residential dock shall be signed with the original DEP permit number (DEP #034-0925) and information regarding public access, in accordance with Section 23.4(c)(6) and Section 23.4(c)(7) of the Town of Hingham Wetland Regulations and Chapter 91 Waterways project requirements. Additionally, the approved float and boat lift shall be signed with the current DEP permit number (DEP #034-1457) in accordance with Section 23.4(c)(7) of the Town of Hingham Wetland Regulations.

34. The approved float must be kept at least 18in above the resource areas, measured at low tide, through the use of pilings or skids. Plank spacing shall be a minimum of ¾in.
35. Issuance of these conditions does not in any way imply or certify that the site or downstream areas will not be subject to flooding, storm damage, or any other form of damage due to wetness.
36. Before executing any change from the plan of record, the applicant must have the Commission's written approval. Any errors found in the plans or information submitted by the applicant shall be considered as changes. Approval from other Town Agents or Inspectors does not relieve the applicant from obtaining approval from the Commission.
37. As soon as work has been completed and prior to the first boating season, the applicant shall submit a storage plan for the approved float to the Commission for review and approval.
38. The applicant shall apply for a Certificate of Compliance as soon as work has been completed and prior to the expiration of this Order. If work cannot be completed prior to the expiration of this Order, the applicant shall contact the Commission in writing to apply for an extension at least thirty days prior to the expiration date.
39. The applicant shall submit an "as built" plan to the Commission upon completion of this project. The plan shall be signed by the professional engineer of record, who shall certify that the work has been done in accordance with the approved plans and this Order. This plan must be submitted prior to the issuance of a Certificate of Compliance by the Commission.

Second: Comm'r Roby

Roll Call: Comm'r Kelly: aye, Comm'r Hidell: aye, Comm'r Freeman: nay, Comm'r Roby: aye, and Comm'r Nielsen: nay

6 Village Lane – DEP 034-1456, cont'd from 2/13/23

Applicant: Sachindra & Melanie Nimboorkar

Representative: Joseph Hannon, Atlantic Coast Engineering, LLC

Proposed: Deck and hardscaping

Meeting Documents & Exhibits: Staff memo, Notice of Intent application, Flood Storage Memo(2/23/23), Mitigation Plan(1/19/23), and Riverfront Analysis Memo(2/3/23)

Excerpts from the Staff memo: Extensive staff memo in office file

Representative Jed Hannon from Atlantic Coast Engineering, Cameron Larson from Environmental Consulting and Restoration, and applicant Melanie Nimboorkar were present on the call. J. Hannon gave a brief overview of the property and recent history. The wetland resources that affect this property are Bordering Vegetated Wetland (BVW), Riverfront Area, the buffers from those, and Bordering Land Subject to Flooding. The proposed work, and work already done, are within the 100ft buffer of the BVW. He explained that the property owners moved here in the last two years and were unfamiliar with the Wetlands Protection Act and the Hingham bylaws, the Conservation Officer became aware, and his company was called in after work had already been done. J. Hannon shared his screen with the Proposed Mitigation Plan and pointed out the work that had already been done within the buffer area; including removal of an above ground pool, installation of a retaining wall with steps, and a crushed stone patio area. He explained that mitigation is proposed to offset the work that had already been done in the riverfront area, and also for the proposed work which includes a deck (there is an existing deck) as well as impervious work underneath.

C. Larson reviewed the mitigation planting plan shared to the screen, stating that it had been designed to account for the after-the-fact completed work as well as the proposed work shown on the plan. He pointed out the mitigation calculation table on the plan as well as the highlighted areas distinguishing the different buffer zones and impervious and pervious areas. He stated that using the Commission's buffer zone mitigation policy, they calculated a total mitigation requirement of 890sf. C. Larson pointed out an area at the back of the property for the proposed mitigation. He explained that the wetlands extend into the yard and existing lawn; the proposed mitigation area is within this area and partly in the buffer; and therefore the mitigation includes species suitable for a wetland environment with the intent to restore a natural buffer to that area.

The ICO expressed her appreciation for the work with J. Hannon to calculate and resolve the compensatory flood storage issue; she stated that she could not entirely explain why there was a gain in flood storage since 1985 however, accuracy in equipment and software development over the last 40 years could play a role in that; the plan in 1985 was hand drawn. She feels the compensatory flood storage issue has been resolved.

The ICO stated that there were two remaining issues for discussion. One, is the amount of degraded area in the Riverfront Area. She noted that degraded area is not related to pervious or impervious and that according to the regulations, degraded area is an area without topsoil. She gave an example of lawn having topsoil whereas a pervious patio would not. She stated she'd researched to try to find out if the degraded area pre-2020 was higher than 5000sf and had concluded that it was not, which means that 5000sf remains the upper limit. She did some further rough calculations based on what had already been improved on the property, had roughly calculated that those improvements could be modified to bring the property back into compliance, and then not exceed the 5000sf limit per the regulations.

The ICO noted the second item for discussion; in the process of doing the research via the aerial imagery, she noticed that there had been quite a bit of vegetation removal recently. She stated that it might be difficult to determine how many trees were removed within the Commission's jurisdiction, but it would be fairly easy to determine disturbed areas that need to be restored to natural vegetation rather than lawn.

The ICO stated that, as far as the proposed improvements, she feels the representatives have done a good job reviewing the Commission's Buffer Zone mitigation policy and making that compliant. She feels that it's meeting the regulations and the mitigation policy but it's the Riverfront Area and vegetation removal that are key points for discussion.

The Commission was in agreement that there'd been substantial vegetation removal that would need to be addressed there would need to be an effort to replant some substantial trees back in the area where they'd been removed. The ICO stated that the tree removal seemed to have occurred early in 2021 and the Commission's tree removal policy was in place as of November 2019.

The ICO read aloud the state regulation in regards to Riverfront Area and degradation and summarized that in this location the degradation is from 'impervious surfaces from existing structures or pavement' and 'absence of topsoil'. The Commission would not be assessing the degradation from an erosion perspective or any other conditions that might be present in a floodplain. She added that this is strictly Riverfront Area which both the state and local regulations like to see 100ft from the river, the inner riparian, be naturally vegetated. On this property it's not naturally vegetated for the full inner riparian, but the Commission can look at the soil conditions being intact or degraded. She noted that there is lawn in the majority of the inner riparian which indicates that there is some topsoil at least. The Commission agreed and Chair Kelly summarized that the manmade improvements to the area would constitute degraded area.

The property owner, Melanie Nimboorkar, commented on the tree removals. She explained that when they'd first moved in, they'd learned from a neighbor that the prior owners had not maintained the trees and during a windstorm, one of the trees broke and destroyed the neighbor's car. She stated that the trees were tall pine trees that gave them many sleepless night during windstorms. She explained that they were unaware that they had to request permission to have trees removed, it was done from a safety perspective. She added that they would be more than happy to replace with however many trees the Commission requires and had actually planned to add trees. The Commission expressed their appreciation of M.Nimboorkar's concern regarding the white pines and also her willingness to plant replacement trees.

The ICO stated that the preliminary discussion had provided good feedback from the Commission and the property owner. She suggested that she and the representatives and property owner could do further research and discuss the tree removals before the next meeting. She asked if the Commission would want to see more calculations or revisions to the plan, to get the property at or below the 5000sf of degraded area. She pointed out in the staff memo that the biggest chunk that could take away from that is the additional driveway that was added, and also the area of crushed stone in the firepit area. The ICO noted that the current degraded area is at 5880sf and that that calculation had been provided by the representatives. The Commission reviewed the site plan to consider the potential areas. Brief discussion followed regarding the driveway. M.Nimboorkar explained that they did have the driveway expanded. They had assumed that when they contacted people to do the work that the contractor would know whether something needed permitting or not, and nobody said anything. They'd widened the driveway because of wanting a carport and having 3 kids one of whom is a basketball player and needing a place to practice. She added that she wished someone had said something before this, but it's there now and they would do what is needed to make it better. Chair Kelly explained that the issue is it's a state regulation the Commission has to uphold and right now, what is existing combined with what is proposed, the property exceeds the allowable disturbance by 880sf, and the Commission is looking at what can be done to make it compliant with state law.

C. Larson provided comments on the degradation and Riverfront Area. He agreed with the ICO that lawn would not be considered degraded but added that it doesn't necessarily benefit the riverfront. He noted that the activities had all occurred in areas that were previously lawn. The patio area is crushed stone and remains pervious and they are proposing to remove lawn that would require maintenance. With the retaining wall, they raised it and it has all crushed stone above it and allows for water percolation and essentially slows water in the direction of the river. He suggested that these are not necessarily bad things that were done in the Riverfront Area and stated that other forms of mitigation can include, not only plantings, but slowing water in the direction of the river. He agreed that they are exceeding the degraded area but suggested that some of the activities are providing an improvement to the Riverfront Area. In his opinion, to start to remove things and bring them back to lawn, is not going to improve the riverfront.

The ICO and Commission discussed the regulations, 'new development' versus 'redevelopment' in the Riverfront Area, and interpretation. The ICO stated that she could reach out to the South eastern office of DEP to discuss with them. Chair Kelly stated that the Commission has to comply with state law, but asking DEP for its input on this older structure and the various elements would be fine; there could also be discussion between staff, applicant, and the representatives before the Commission regroups.

Comm'r Nielsen offered one more comment. She acknowledged the misfortune of contractors not being informed on state regulations, but suggested the Commission think of how it would have considered the proposal had it come to them before any work had been done. She suggested that the Commission might not have permitted crushed stone and described the riparian conditions along the Weir River.

The ICO stated that it's a difficult conversation to have and an unfortunate chain of events. Her frustration lies with the contractors who didn't know better, and while it feels tense and accusatory, that is not the case, and that she and the Commission will work with the applicant and representatives to resolve it as quickly and easily, yet in compliance with the regulations, as possible.

Comm'r Hidell spoke of his frustration with some of the DEP language.

Brief discussion followed regarding continuing the hearing with the applicant and Commission in agreement to continue to the March 27th meeting. No members of the public had a comment.

Motion: Comm'r Nielsen moved to continue the Notice of Intent hearing for 6 Village Lane (DEP 034-1456) to March 27, 2023.

Second: Comm'r Freeman

Roll Call: Comm'r Kelly: aye, Comm'r Hidell: aye, Comm'r Freeman: aye, Comm'r Roby: aye, and Comm'r Nielsen: aye

213 & 215 Cushing Street – DEP 034-1459, cont'd from 2/13/23, cont'd to 4/10/23

Applicant: James Bristol, WV Cushing, LLC

Representative: Chris Mulrey, Crocker Design Group, LLC

Meeting Documents & Exhibits: none

Prior to the posting of the agenda, the applicant had submitted a request to continue the hearing to the Commission's 4/10/23 meeting. Chair Kelly asked for any members of the public to please hold any comments until 4/10/23.

Motion: Comm'r Freeman moved to continue 213-215 Cushing Street, MA DEP 034-1459, to 4/10/23.

Second: Comm'r Hidell

Roll Call: Comm'r Kelly: aye, Comm'r Roby: aye, Comm'r Hidell: aye, Comm'r Nielsen: aye, and Comm'r Freeman: aye

166 Downer Avenue – DEP 034-1462, cont'd from 2/13/23, cont'd to 3/27/23

Applicant: Robert & Lisa Delmonico

Representative: Paul Seaberg, Grady Consulting, LLC

Proposed: Single family home

Meeting Documents & Exhibits: none

Prior to the posting of the agenda, the applicant had submitted a request to continue the hearing to the Commission's 3/27/23 meeting. Chair Kelly asked for any members of the public to please hold any comments until 3/27/23.

Motion: Comm'r Hidell moved to continue 166 Downer Avenue, MA DEP 034-1462, to 3/27/23.

Second: Comm'r Freeman

Roll Call: Comm'r Kelly: aye, Comm'r Nielsen: aye, Comm'r Roby: aye, Comm'r Freeman: aye, and Comm'r Hidell: aye

302 North Street – DEP 034-1463

Applicant: Frank Bridgeman

Representative: Brendan Sullivan, Merrill Engineers and Land Surveyors, Inc

Proposed: Demolition and construction of a single family home

Meeting Documents & Exhibits: Staff memo, Notice of Intent application, Response to Comments(2/27/23) and Revised Site Plan(2/27/23)

Excerpts from the Staff memo: Staff visited the site on 2/22/23. The resource area was flagged by a professional wetlands scientist in December 2021. All of the flags were still present and staff agrees with their placement. Staff recommends the confirmation of flags 10 and 11 only, simply because the remaining flags are located on adjacent properties. The work area is fairly flat and maintained as lawn, landscaping, and impervious area (a portion of the existing house and driveway). A small amount of yard waste was observed near the edge of the existing lawn, directly behind the existing house.

Representative Brendan Sullivan of Merrill Engineers and Land Surveyors, and the applicant, Frank Bridgeman, were present on the call. B. Sullivan shared his screen with the plan, and gave an overview of the proposal, noting that rather than a complete teardown, they will be maintaining a good majority of the house and rebuilding from that. He pointed out the wetland resource areas; Bordering Vegetated Wetland in the rear of the lot and offsite to the east as well as Riverfront Area to the Town Brook. He pointed out the buffer zones to each of the resource areas. The property is also within the floodplain associated with Town Brook and the FEMA flood elevation is 16.7 ft. B.Sullivan stated that the existing structure is at 16.5 elevation and the new structure first floor will be 17.7 elevation. They propose flood vents in the main dwelling as well as in the garage. The garage slab will be about 14.5 elevation. The driveway and smaller existing garage are proposed to stay where they are. B.Sullivan stated that they incorporated some stormwater infiltration on the east side of the house, the flood storage area will actually be increased on the site by 192cf, and they have proposed some mitigation planting areas in the lawn area adjacent to the tree line.

The ICO stated that the representatives had addressed all her initial questions quickly and provided responses and a revised plan. Responding to a question about what portion of the house will remain, F. Bridgeman stated that the existing original house sits perpendicular to the street, that other additions were done later, and he had been working with the Historic Districts Commission (HDC) and have ended up moving the original house, turning it parallel to the street. He described the various foundations of the different portions. He added that they got everything into compliance with Conservation as well as the approval of the HDC. Responding to a comment from the ICO, F.Bridgeman stated that the portion of the house being preserved and rotated will be on a flood compliant foundation and added that the entire building will be brought up to floodplain compliance.

Responding to an ICO question, B. Sullivan explained that since the existing structure is a not compliant solid mass with no flood waters getting in at all, and **all** of the proposed building will be flood compliant, it results in a gain in flood storage.

The ICO gave a brief explanation of draft finding c. ; only two flags were actually on this property, the remainder were off property. She added that mitigation, flood compliance and riverfront area standards are all being met with this proposal.

The Commission was in agreement that the proposal was well put together.

The Chair noted that there were no members of the public, other than the applicant and representative, present on the call.

Motion: Comm’r Nielsen moved to issue an Order of Conditions for the proposed work at 302 North Street (DEP 034-1463), as shown on the submitted plans, and adopt the findings of fact a through c, and special conditions 21 through 48 of the staff report.

Findings:

- a. The project meets the submittal requirements for issuance of an Order of Conditions under the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations.
- b. The work described is within an area subject to protection under the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations, and will not alter or adversely affect the area subject to protection under the Act or the Regulations.

- c. For the purpose of this filing, the Commission confirms the delineation of Bordering Vegetated Wetland flags 10 and 11, but makes no finding as to the exact boundaries of other wetland resource areas.

Special Conditions:

21. The applicant shall notify the Commission, in writing, of the name, address, and telephone number(s) of the project supervisor or contractor who shall be responsible for ensuring compliance with this Order and by telephone or writing, of the commencement of work on the site, at least 48 hours in advance of said work.
22. This Order shall be included in all construction contracts and subcontracts dealing with the work and shall supersede all other contract requirements.
23. Prior to the start of any excavation or construction, there shall be a pre-construction conference on the site between the project supervisor or contractor responsible for the work and an agent of the Commission to ensure that the requirements of this Order are understood.
24. Prior to the start of any excavation or construction, erosion and sediment controls shall be installed, as shown on the final approved plan, and inspected by an agent of the Commission; straw wattles and/or hay bales shall not be used as a form of erosion and sediment control. Extra erosion controls shall be available on site and stored in an unexposed location or covered.
25. Erosion and sediment controls shall remain in place until all disturbed or exposed areas have been stabilized with a final vegetative cover or the Commission has authorized their removal.
26. The project supervisor or contractor responsible for the work shall have a copy of this Order available on the site at all times.
27. During all phases of construction, all disturbed or exposed areas shall be brought to a finished grade and either a) loamed and seeded for permanent stabilization, or b) stabilized in another way approved by the Commission.
28. All demolition and excavated material shall be properly disposed of at an off-site location.
29. Any on site dumpsters shall not be located within 100 feet of the Bordering Vegetated Wetland.
30. Any debris, which falls into any resource area, shall be removed immediately by hand and properly disposed of at an off-site location.
31. All lawn waste, brush, leaves, or other materials dumped in any resource area, including the Buffer Zone, shall be removed by hand and properly disposed of at an off-site location, and the practice discontinued, in accordance with Section 23.6 of the Hingham Wetland Regulations.
32. There shall be no stockpiling of soil or other materials within 50 feet of the Bordering Vegetated Wetland. All stockpiles that are not used for more than five days shall be covered and surrounded by erosion and sediment controls; straw wattles and/or hay bales shall not be used as a form of erosion and sediment control.
33. Any dewatering activities on the project in which water will be released into any resource area or storm drain shall make use of a stilling pond or similar device to remove sediment before the water is released. Prior to construction, plans for the stilling pond or similar device shall be submitted to the Commission for review and approval.
34. No vehicle or other machinery refueling, lubrication or maintenance, including concrete washout, or storage of fuel or maintenance chemicals, shall take place within 100 feet of the Bordering Vegetated Wetland.
35. At the end of each workday, the project supervisor or contractor responsible for the work shall mechanically or manually sweep sediments from all paved surfaces, unless tracking and sediment is not evident.
36. The infiltration area shall be roped off during construction to prevent vehicles and equipment from compacting soils.
37. Rooftop runoff from the approved single family home, including the attached garage, shall be infiltrated on site using infiltration chambers, as shown on the final approved plan, or an alternative method approved in advance by the Commission.
38. The area under the approved deck shall be treated with a minimum of three inches of $\frac{3}{4}$ "-1 $\frac{1}{2}$ " crushed stone and there shall be spacing between the deck boards or planks to allow passage of runoff.
39. The area under the approved deck shall not be enclosed and shall remain open and free of all obstructions with no storage of materials permitted, to allow for the passage of floodwaters.
40. The mitigation area plantings shall be installed, and seeding completed, in accordance with the final approved plan.
41. Issuance of these conditions does not in any way imply or certify that the site or downstream areas will not be subject to flooding, storm damage, or any other form of damage due to wetness.

42. Before executing any change from the plan(s) of record, the applicant must have the Commission's written approval. Any errors found in the plans or information submitted by the applicant shall be considered as changes. Approval from other Town Agents or Inspectors does not relieve the applicant from obtaining approval from the Commission.
43. It is the sole responsibility of the owner of record to maintain the approved infiltration system and related components at all times. The property owner is also responsible for retaining records of the maintenance and cleaning for review by the Commission. This condition shall apply in **perpetuity** and shall not expire with the issuance of a Certificate of Compliance.
44. Prior to the issuance of a Certificate of Compliance, an Elevation Certificate shall be prepared and submitted to the Commission for review.
45. Prior to the issuance of a Certificate of Compliance, the mitigation area plantings shall survive at least two full growing seasons with a minimum of 75% survival rate. If a 75% survival rate is not achieved, replacement plantings of the same species shall be made by the applicant.
46. The applicant shall submit an "as built" plan to the Commission upon completion of this project. The plan shall be signed by the professional engineer of record, who shall certify that the work has been done in accordance with the approved plans and this Order. This plan must be submitted prior to the issuance of a Certificate of Compliance by the Commission.
47. The applicant shall apply for a Certificate of Compliance as soon as work has been completed and prior to the expiration of this Order. If work cannot be completed prior to the expiration of this Order, the applicant shall contact the Commission in writing to apply for an extension at least thirty days prior to the expiration date.
48. The mitigation planting areas shall be maintained with native plantings or shall be allowed to naturally revegetate with native species following planting and remain as naturally vegetated, and shall not be mown or otherwise maintained. This condition shall apply in **perpetuity** and shall not expire with the issuance of a Certificate of Compliance.

Second: Comm'r Hidell

Roll Call: Comm'r Kelly: aye, Comm'r Freeman: aye, Comm'r Roby: aye, Comm'r Hidell: aye, and Comm'r Nielsen: aye,

Other Business:

- a. Climate Action Planning Committee update from Commissioner Hidell
The ICO shared the Appendix A of the CAPC draft plan to the screen and Comm'r Hidell stated that the effort of the CAPC is carbon reduction and the plan was broken into categories; key components that have the ability to reduce the carbon footprint of the Town of Hingham and the draft plan provides suggestions of actions that the town could take. Comm'r Hidell briefly reviewed examples of this and also touched on environmental equity. The ICO briefly commented that there is a section in the Appendix A where the Conservation Commission is invoked and the CAPC is seeking comments from the Commission on this section by 3/15/23. Comments could be compiled through the ConCom office and forwarded to CAPC.
- b. Division of Marine Fisheries (DMF) stream channel maintenance report and new DEP/DMF policy regarding stream management The ICO reminded the Commission of stream channel work they had permitted a few years prior, noting that a required report had been provided with their packet. She described the new policy that was also provided in the packet, giving general guidance on how such work should proceed.
- c. Future of remote meetings and pending bill to extend option until 2025
The ICO updated the Commission on the status of remote meetings, noting that the matter is still not settled.

Adjourn

Motion: Comm'r Hidell moved to adjourn the meeting at 9:12 pm.

Second: Comm'r Freeman

Roll Call: Comm'r Kelly: aye, Comm'r Nielsen: aye, Comm'r Hidell: aye, Comm'r Freeman: aye, and Comm'r Roby: 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.