



CONSERVATION COMMISSION MEETING MINUTES– July 29, 2019

Present: Laurie Freeman- Chair, Jacqueline Zane-Vice Chair, Bob Mosher, Bob Hidell, and John Mooney - Commissioners, Loni Fournier- Conservation Officer, Heather Charles Lis –Assistant Conservation Officer and Sylvia Schuler- Administrative Secretary

Absent: None

The meeting was called to order at 7:04 PM.

Presentation by John Logan, PhD, Division of Marine Fisheries, re: Dock Impacts and BMPs

Approval of Minutes

Chair Freeman stated that the minutes were accurate as drafted, but one business item outcome had since changed. She updated the Commission that Commissioner Hidell would be the sole representative to the Master Plan Committee, rather than being shared between the two of them.

Motion: Commissioner Zane moved to approve the draft minutes from the July 8, 2019 meeting.

Second: Commissioner Mosher

In Favor: All

Opposed: None

Certificates of Compliance

83 Free Street - DEP 034-1302A

Applicant: Rob Thompson, Thompson Builders, Inc.

Representative: Rick Grady, Grady Consulting, Inc.

Excerpts from the staff memo: An Order of Conditions was issued in November 2017 for several additions and porches to an existing single family house as well as associated site grading. An Amended Order of Conditions was issued in December 2017 to increase the size of an addition and covered porch. Several minor field changes were subsequently approved, including adding a split rail fence at the rear, moving an existing stone wall, removing two additional trees, and pruning, but not removing, a large willow tree at the rear. Staff visited the site on 6/26/19. The as-built largely adheres to the final approved plan for the structure, however there are several discrepancies outside of this area where additional information is needed.

- *Compensatory Flood Storage.*
- *Drywells sizing.*
- *Driveway and runoff.*
- *Landscaping/lawn/seeding.*
- *Erosion controls.*

The Order included a perpetual condition that “The area encompassing the willow tree and yard waste piles shall be revegetated with native wetlands plant species; no new lawn will be established in this area.” The Order also included a condition that only the tree approved by the Commission shall be removed. As noted earlier, the willow tree was pruned and not removed, and staff approved the removal of two maples as a field change. The yard waste has been removed and new native plantings were installed in this area and at the bottom of the slope to the rear and appear to be healthy, and the area is stable.

Meeting Documents & Exhibits: Staff memo and revised plan ‘Certificate of Compliance As-Built Plan’ dated June 28, 2019

Rob Thompson, the applicant, was present. The C.O. reviewed items for the Commission; the plantings included with the original submittal were not installed (they were not proposed as mitigation), the ground in the back was mostly seeded but will need additional seeding in the fall, and the mulch log was slated to be removed that day. R. Thompson confirmed that for all but ten feet of the mulch log, the netting was off and removed.

The C.O. pointed out for the Commission’s consideration the two potentially most impactful items that were different than what was originally proposed; compensatory flood storage and driveway mitigation.

In regards to the compensatory flood storage, the C.O. explained that the overall volume of flood storage is still greater than what was originally on site, however, the increase happens at mostly the lower elevation and not the higher elevation and per the regulations it should happen at every elevation. The C.O. added that an abutter had contacted the office multiple times throughout the construction with concerns regarding the fill brought in to get the house out of the floodplain and how that would affect flooding. Commissioner Hidell asked R. Thompson how far up the water had come with all the rain. He stated that the wetland is at elevation 22 and the highest the water ever reached was elevation 23. He added that his is the lowest lot and that the

corner of the house is elevation 29. R. Thompson explained that about 150 ft behind the house is the Crooked Meadow River and that a large area behind the house is at elevation 22 and gravitates over to the neighbor's house. Brief discussion followed regarding the flooding with R. Thompson explaining that the flooding is parallel to the back and spreads out to the right and when the flooding is at elevation 23 the entire back of the lot and the neighbor's lot is flooded.

Commissioner Hidell stated that he didn't know if upper storage could be carved out at this stage and that he would leave it alone and monitor for erosion. The Asst. C.O. stated that strictly speaking it does not meet the regulations as constructed and that it might be helpful to get a statement from the engineer explaining his opinion on how it would flood.

The C.O. stated that there was an overall gain in compensatory flood storage. R. Thompson clarified that they provided for 200 cubic ft more that existed previously. Brief discussion followed with Commissioner Hidell stating that he did not know what they could do to improve it and discussion over the benefit of an additional culvert under Free Street. Commissioner Hidell commented that the lower flood storage had been able to deal with the amount of rain we have had and to change it could have unknown consequences. Commissioner Freeman asked how staff would like to see it resolved. The C.O. stated that to meet the regulations the applicant could remove fill at a higher elevation, excavate it and reseed. R. Thompson stated that they had received a Letter of Map Amendment LOMA on the property. The C.O. asked if it was a conditional LOMA or a final. She added that the LOMA was only based on the structure whereas they were dealing with the storage capacity of the floodplain.

Commissioner Hidell reiterated that he had no issue with it and that he preferred to leave it alone and see how it works; with increased amounts of rainfall falling in shorter periods of time, there is sediment settling and becoming more stable and he doesn't encourage digging it up. The C.O. stated her concern that if the Commission issues a COC, there will be very little leverage to make the property owner come back and adjust the storage. Commissioner Hidell stated he understood that, but the site is fairly stable despite all the rain that's fallen. Commissioner Freeman summarized that they could either ask the applicant to adjust the flood storage, they could wait to see if what has been provided is sufficient or they could simply approve. Brief discussion continued about the compensatory flood storage, the regulations and what has been done on this site. Commissioner Hidell stated that the applicant had not made the flooding situation on the property worse; by providing 200 cubic feet more storage than was there before. The C.O. explained that there are no opportunities on the COC form to present findings to clarify why the Commission is accepting this but the meeting minutes will record the discussion. Commissioner Freeman commented that in this particular instance the compensatory flood storage that was provided, fulfils the meaning and intention of the regulations.

The C.O. explained that the second aspect that was built differently than proposed was the driveway. Originally a smaller gravel driveway, the Commission had approved a larger asphalt driveway and mitigation was proposed in the form of a stone trench; the mitigation was not installed. The C.O. pointed out the applicant's waiver request in the staff memo.

The Asst. C.O. provided some data; the driveway comes, at its closest point, to about 74 ft of the wetlands and there is a 14 % slope so it's fairly steep. If it's sufficient or not she's not certain, but added that it is never preferable to see mitigation go away; she would expect that there would be some slowing down of the runoff and treatment of pollutants with that length of vegetation but she doesn't have data to back up or say what would be preferable here. She feels there is still a logistical opportunity to put a trench in to catch runoff; the driveway pitches to a place where a trench could be easily added. R. Thompson stated that the driveway pitches 6 % to the right and the water runs that way then over a slight slope into a swale that allows what little water there is to slowly go back into the wetland area. R. Thompson suggested that with water coming off the driveway into a trench at the bottom of the driveway, the trench would get silted up with snow, sand and roots of trees and shrubs. He added that he didn't think it was thought through enough when they presented it. Responding to a question, R. Thompson stated that the swale is a well seeded grassed slope. The Asst. C.O. agreed and added there's a roughness to the grass that would slow down the water. Commissioner Hidell asked if a 6 inch gravel strip along the edge of the driveway where the water first enters the lawn would work and the Asst. C.O. described the originally proposed stone trench; 2 ft wide and 2 ft deep trench filled with crushed stone.

Commissioner Freeman expressed her frustration that the Commission has spent a half an hour reevaluating an Order of Conditions for which a lot of time was already spent. She stated her concern that the Commission sets the guidelines and applicants choose not to follow certain conditions if they're inconvenient, over budget or for whatever reason. The Commission is spending all this time in discussion about a Certificate of Compliance, when, if the applicants had followed the Order of Conditions, there would be no need for it; changes in the plans should have been addressed earlier.

Commissioner Freeman summarized that the compensatory flood storage question has been answered; that arguments had been made that the site's flood storage has been left better than it was. The question is whether a trench is needed; a trench that was already agreed to and already part of the plan; Commissioner Freeman added that she has not heard a compelling reason why the Order of Conditions is in error.

R. Thompson stated that the pitch of the driveway doesn't go to where the trench was proposed: if a trench went in, it would need to be elsewhere. Commissioner Freeman asked if it had been engineered incorrectly and the C.O. suggested that it had been built differently when the driveway was constructed. The Asst. C.O. added that the driveway was built in a slightly different shape and if the Commission wanted a trench to be installed it would need to be in a different location. R. Thompson stated that the trench would have to be at a 90 degree angle from where it was proposed. Responding to a question from Commissioner Freeman, the C.O. responded that the Order of Conditions had been issued in 2018. Commissioner Hidell asked if the dimensions of the trench had been decided by the Commission and R. Thompson replied that no, it had been designed by his engineer.

Commissioner Freeman stated that the office staff is flexible and able to work out things with applicants before it even comes to the Commission and so, with this before the Commission, she presumes that staff thinks it significant. The C.O. stated that the trench was not brought to the attention of the office before staff did the inspection for the COC. She does not recall ever being approached and consulted before the plan for the proposed trench was nixed; often if there are changes during construction, they can be field changes which are noted in the file and on the plan. The driveway was constructed differently than proposed and so the trench would need to be in a different location. Commissioner Freeman asked the C.O. if she felt it was needed as originally planned and the C.O. responded that it is the same distance, 50-70 ft, on a slope, and the same surface material, grass, that existed in the former design and the engineer had proposed a trench.

Commissioner Mosher commented that the driveway had been pitched and no one told the Commission that it was being changed. It's possible that there was a valid reason for that, which they should have come to the Commission with, and which the Commission still doesn't know; if the Commission had that reasoning, then they might be able to make an intelligent decision. The C.O. stated that R. Thompson had brought up the presence of the swale running between the properties. Commissioner Mosher asked if the engineer had confirmed that it was at least as good as what was proposed and R. Thompson stated that they had sent a letter noting the change a couple weeks ago but there were no calculations in the documents. The Commission agreed to wait for more information from the engineer regarding the driveway changes before issuing a Certification of Compliance.

Motion: Commissioner Zane moved to continue discussion of 83 Free Street MA DEP 034-1302A to the August 19, 2019 meeting.

Second: Commissioner Mosher

In Favor: All

Opposed: None

Hingham Harbor - DEP 034-0988, DEP 034-0197, and DEP 034-0468

Applicant: Town of Hingham, Harbormaster's office

Representative: Christine Player, Foth CLE Engineering

Excerpts from the staff memo:

DEP 034-0197 – An Order of Conditions was issued in July 1985 for dredging a 23.5ac area of Hingham Harbor, removing approximately 145,000cy of material. The representative located and submitted a post dredge sounding plan, which indicates that material was removed from the approved location. Given the amount of time that has passed since the dredging occurred, the subsequent dredging efforts that occurred in the same location, and the fact that there are no outstanding conditions, staff recommends issuing a Certificate of Compliance. The applicant, the Town of Hingham Harbormaster's Office, is also requesting waiver from the \$100 Bylaw fee associated with this request for a Certificate of Compliance; staff recommends waiving the fee.

Meeting Documents & Exhibits: Staff memo

Harbormaster Ken Corson and Christine Player of Foth-CLE Engineering were present. C. Player explained that while in the process of filing for an Amended Order of Conditions, they were also filing for Certificates of Compliance for the past three dredging cycles; 1985-1986, 1996-1998, and 2009-2010. She stated that they provided post dredge survey information for all three dredge cycles that documents that the area had been dredged to authorized depths. She added that the 1996 Order of Conditions had not been recorded and she had received from the Conservation office a True Attest copy for recording.

Motion: Commissioner Zane moved to issue a Certificate of Compliance for MA DEP 034-0197 and waive the Bylaw fee.

Second: Commissioner Mooney

In Favor: All

Opposed: None

DEP 034-0468 – An Order of Conditions was issued in September 1996 for dredging approximately 145,000cy of material from Hingham Harbor in three phases, over three years. The Order required the contractor, in two separate conditions, to provide pre- and post-dredge reports or survey results for each year of the project. The project file contains two post-dredge reports (1996-97 and 1997-98) and one post-dredge plan (1998). Based on the information in the project file, it appears as though the amount of material removed was close to what was approved and all of the material was removed from the approved location. Given the amount of time that has passed since the dredging occurred and the subsequent dredging efforts that occurred in the same location, staff recommends issuing a Certificate of Compliance. The applicant, the Town of Hingham Harbormaster's Office, is also requesting waiver from the \$100 Bylaw fee associated with this request for a Certificate of Compliance; staff recommends waiving the fee.

Meeting Documents & Exhibits: Staff memo

Motion: Commissioner Zane moved to issue a Certificate of Compliance for MA DEP 034-0468 and waive the Bylaw fee.

Second: Commissioner Mooney

In Favor: All

Opposed: None

DEP 034-0988 – An Order of Conditions was issued in February 2009 for dredging approximately 92,250cy of material from a 25.5ac area of Hingham Harbor. There were no conditions in the Order relative to monitoring, reporting, or submitting a post-dredge plan. However, the representative located and submitted a post dredge survey plan, which indicates that material was removed from the approved location. Given the amount of time that has passed since the dredging occurred, and the fact that there are no outstanding conditions, staff recommends issuing a Certificate of Compliance. The applicant, the Town of Hingham Harbormaster's Office, is also requesting waiver from the \$100 Bylaw fee associated with this request for a Certificate of Compliance; staff recommends waiving the fee.

Meeting Documents & Exhibits: Staff memo

Motion: Commissioner Zane moved to issue a Certificate of Compliance for MA DEP 034-0988 and waive the Bylaw fee.

Second: Commissioner Mooney

In Favor: All

Opposed: None

Request for Determination of Applicability

232 Leavitt Street

Applicant: Zahi Harakeh

Proposed: Tree removals, site grading, installation of playset, shed, patio and fence.

Excerpts from the staff memo: This hearing is continued from 7/8/19 to give the applicant time to provide additional details on the dimensions and materials of a proposed patio and fence. The Commission also requested additional information about the proposed tree removals, specifically asking the applicant to have the trees re-evaluated by an arborist.

The applicant submitted an amended narrative and plan for the proposed patio and fence on 7/8/19. The patio would be partially within the 50ft buffer zone, however it would be adjacent to the rear of the existing house, in a level area that is currently maintained lawn. If the Commission is willing to allow the patio, staff recommends requiring that the patio be constructed with permeable materials, to avoid increasing impervious area in close proximity to the wetlands. The fence would enclose the existing yard, and proposed play area, and would also extend along the drainage easement. The southeast end of the fence along the easement would be within the 50ft buffer zone and would be installed inside an area that is currently naturally vegetated, although tree removals and fill are proposed in this area. Staff does not recommend allowing fencing beyond the current edge of the existing lawn within the 50ft buffer zone. Within the naturally vegetated area, trees are proposed for removal, however staff has previously recommended only allowing the removal of hazardous trees or those in very close proximity to the house, and requiring mitigation plantings in this area. The applicant did verbally agree to leave trees in the easement, though the plans have not been updated to reflect this. If the fence was installed at the edge of the existing lawn, or even at the edge of the trenched area, it may also negate the need to fill the trenched area inside the 50ft buffer zone, as the trench would then be outside the fence.

As of 7/24/19 staff has not received any additional information from the applicant. If additional information is presented at the hearing and the Commission is satisfied with all of the proposed work and mitigation, the Commission could issue a Negative Determination of Applicability, with conditions, as follows.

Meeting Documents & Exhibits: Staff memo and packet submitted to Commission by the applicant with additional photos and work.

Z. Harakeh stated that two certified arborists, Jay Maloof from Specialized Rigging and Tree Care and Bob Madden from Madden Tree, came to his property and agreed that most of the trees as unhealthy or hazardous. J. Maloof put ribbons on most but not all of the trees. The trees in the 50 ft buffer deemed hazardous because of their proximity to the house and/or they were leaning or had issues with the structural integrity and they also noted that proximity to the septic tank is not good.

The arborists had also suggested to remove the trees on the drainage easement as the roots could affect pipes underneath in the future and remove some of the trees leaning to sun. The arborist had also recommended that the two pines by the pool and driveway were structurally unsound.

Z. Harakeh then described the trees within the 100 ft buffer. He stated that most of them had been flagged for removal as many had machine damage to the roots and are close to the leaching field. Z. Harakeh had contacted the septic company and found out just where the leaching field was and had the trees roots are extending into the leaching area. They would be leveling the land in that area with the rest of the lawn which would compromise the roots. The arborists noted that keeping the pine trees, especially in the area of the playground would be hazardous with the potential of tree limbs falling.

Commissioner Hidell asked where the septic system was in relation to the house. Z. Harakeh described the location and explained that it's where he would like to put the patio.

Commissioner Freeman recalled that Z. Harakeh had agreed to leave the trees in the easement. He responded that he hadn't been too concerned about removing them however it was the arborists' recommendation to remove the small trees as they could be problematic in the future. Commissioner Freeman asked for a general count of the number of bigger trees and Z. Harakeh gave a rough guess that there were 10-15 big trees.

Moving on to the proposed patio, Z. Harakeh described the area behind the house where he would like to put a patio, either 33 by 21 ft or 33 by 26 ft depending on configuration, made up of concrete pavers, which he further described as a permeable surface allowing good drainage. The patio would be on top of the septic system and he had confirmed with Rosano-Davis that it was okay to do so provided the inlet and outlets were accessible.

Z. Harakeh described the proposed fence and explained the goal is to enclose the back yard. He would have a double door gate entrance by the driveway and it would be either chain link or vinyl and meet up with his neighbors and at the back it would be chain link with two doors for access to the woods. Discussion followed regarding the placement of the fence in relation to the trench, easement restrictions and where the trench is being filled. The C.O. clarified that the easement is 20 ft wide. Commissioner Hidell commented that it is a functional easement with a good sized pipe. After discussion, Commissioner Hidell conclude that it was being proposed that the fence would go along the house side of the easement.

The C.O. stated that she was curious to know the arborists' opinion, were the large trees removed, would the remaining young trees grow straighter due to the new light available to them. Z. Harakeh stated that the house was also shading them. The C.O. expressed her hesitation to act on things that may be a future problem.

The Commission decided that it should be DPW who decides if the trees in the easement are problematic for their infrastructure. The C.O. questioned that for the number of trees proposed for removal, is there enough room on the property to replace them. She noted that the applicant had previously stated that he wished for the playset to be on a level surface and visible for safety reasons, and asked if he had considered another option; reducing the size of the approximately 750 sf patio to allow the playset to be placed on a level area close to the house.

The Asst. C.O. asked about the fence along the far property line. Commissioner Hidell stated that they can't make that decision tonight and that Z. Harakeh must talk to DPW. Z. Harakeh. stated that someone had come from DPW and that the trees removals were discussed and okay but the installation of a fence was not discussed. The Asst. C.O. stated that she doesn't like to dispute what a certified arborist might say but felt a distinction could be made between what is now hazardous versus what may be hazardous in the future. Brief discussion followed regarding the potential tree removals. Commissioner Freeman suggested that Z. Harakeh work out with staff a compromise that doesn't involve clearcutting.

The Commission discussed mitigation asking the applicant to work with staff. Z. Harakeh asked about the difference in the draft condition regarding mitigation from the first staff memo to the second staff memo and the C.O. explained that for the first staff memo she had based the mitigation condition on a like project from memory, however upon second review of that project, she had realized that the ratio and type of mitigation was not accurate and updated the condition accordingly.

Motion: Commissioner Mooney moved to continue discussion of 232 Leavitt Street to August 19, 2019.

Second: Commissioner Mosher

In Favor: All

Opposed: None

Chair Freeman read the Public Hearing Notice of Intent.

Request for Amended Order of Conditions

Hingham Harbor - DEP 034-1332

Applicant: Town of Hingham, Harbormaster's office

Representative: Christine Player, Foth-CLE Engineering

Excerpts from the staff memo: In January 2019, an Order of Conditions was issued for maintenance dredging within the Hingham Harbor Mooring Basin, near the Route 3A Rotary, in order to provide safe navigation within the Harbor. The approved dredging will remove approximately 61,650 cubic yards of material, via mechanical means, which will be disposed of offshore at the Massachusetts Bay Disposal Site (pending federal approval). The applicant, the Town of Hingham Harbormaster's Office, is requesting an Amended Order of Conditions to remove an additional 11,102 cubic yards (+/-) of material from the Marina Dock Basin, which is adjacent to the Mooring Basin and supports existing floats at the Bare Cove and Hingham Harbor Marina facilities. The dredging will restore a depth -6.0 feet MLLW, with an allowable 1 foot overdredge to -7.0 feet MLLW, within the existing 99,602 square foot (+/-) area of the Dock Basin. The Dock Basin has been dredged prior to this proposal, with the most recent effort taking place in 1997-98. It is anticipated that the dredged material will be approved to be disposed of offshore at the Massachusetts Bay Disposal Site.

A disposal alternatives analysis was provided with the request for an Amended Order of Conditions. Based on the physical nature of the historic and surrounding dredge material, sediments are anticipated to consist of a silt and clays, with a fines content exceeding 96% and are therefore considered unsuitable for beach nourishment and re-use as landscaping or roadway sub-base. Nearshore and unconfined offshore disposal options are also limited due to the nature of the material. Finally, upland disposal would be labor intensive and cost prohibitive, in addition to other safety and nuisance concerns like traffic congestion and odors, given the volume of material that would need to be processed.

It is anticipated that the expanded project will remain on schedule and receive all local, state, and federal permits in time for the work to be conducted during fall 2019–winter 2020. Dredging operations will be limited to a four month period between October 1st and February 1st to protect spawning, larval and juvenile development of winter flounder and shellfish.

The applicant, the Town of Hingham Harbormaster's Office, is also requesting waiver from the \$200 Town By-Law fee associated with this request for an Amended Order of Conditions.

Meeting Documents & Exhibits: Staff memo

Harbormaster Ken Corson and Christine Player, Foth-CLE Engineering, were present. C. Player summarized the proposal. She stated that the area of the additional marina basin which include both Bare Cove Marina and Hingham Harbor Marina totaling 2.3 acres compared to the mooring size which is 30 acres. They are currently pursuing permission from the state for the additional dredging material to be accepted for disposal. She stated that the resource areas include 'land under ocean', a very small area of intertidal dredging related to the top of the slope cut, and there are impacts to a little over ¼ of an acre of mapped shellfish areas. They propose to incorporate this project with the dredging of the mooring basin which is permitted between October 1st and January 31st. Commissioner Hidell asked if it was only the basin being dredged or did it include channels. C. Player stated that it would include just a little of a federal channel and the Army Core of Engineers had given the nod.

Commissioner Freeman invited any comments from the public.

Dana Baxter from Hingham Harbor Marina, 26 Summer Street, asked if they had to file for a new Chapter 91 license and C. Player explained that the current Chapter 91 license is still valid. The Chapter 91 license is good for 10 yrs; it had been issued in 2009 and, with the permit extension act, the term was extended to 2023. The C.O. explained that there are two separate permitting levels. A Chapter 91 license is exclusively handled by the state and that for a dredging project there is no requirement for recording of the Chapter 91 license at the registry of deeds nor any close out process.

With no further comments from the public, Commission Freeman closed the hearing to public comment.

Motion: Commissioner Zane moved to waive the Town By-Law fee and issue an Amended Order of Conditions for the proposed work at the Hingham Harbor Mooring Basin and Marina Dock Basin (DEP 034-1332), as shown on the submitted plans, and adopt the findings of fact a through c of the staff report.

Findings:

- a. The project meets the requirements for issuance of an Amended 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 Marina Dock Basin is located within an area identified as being suitable for shellfish. As such, the sum of money contributed to the shellfish mitigation fund shall be increased to include the work within the Marina Dock Basin.

Second: Commissioner Hidell

In Favor: All

Opposed: None

Notices of Intent

85 Tower Road DEP 034-1343

Applicant: Gerard Rankin

Representative: Gary James, James Engineering, Inc.

Proposed: Construction of new single family home, driveway, and septic system

Excerpts from the staff memo: This hearing is continued from 7/8/19 to give the representative time to address issues with the wetland delineation in the field and on the plans. A revised plan and wetlands report were submitted showing new flagging for a BVW/stream to the northeast of the site, however old flagging is still being shown for a separate BVW/stream near the southerly property line. Staff has requested documentation on when this delineation was done and depending on the age, the delineation may need to be confirmed by a wetlands consultant. Once this is completed, staff can verify the wetland resource area delineations. Staff also sent a number of comments to the representative and applicant related to erosion controls, construction access, temporary and permanent stabilization methods, construction sequencing, alternative locations for the septic system, moving a stormwater discharge outlet further from wetlands, stormwater management questions, the number of trees proposed for removal in buffer zones, and plans for landscaping, plantings, and restoration.

It is important to note that the project is exempt from the Massachusetts Stormwater Standards under the Wetlands Protection Act. However it does trigger compliance with the standards under Site Plan Review with the Planning Board. The project is currently also under review with the Planning Board and the Board of Health. The Planning Board has hired a peer review engineer, who is reviewing the standards in detail along with other items in the Planning Board's jurisdiction. The project will in front of the Planning Board on 8/5/19 and the next date for the Board of Health has yet to be determined.

Staff recommends continuing the hearing to allow time for the representative to address the wetland delineation issues and other comments, and staff to confirm the delineation.

Meeting Documents & Exhibits: Staff memo & plan sheet 1 of 1, Erosion Control Plan for 85 Tower Road Hingham, MA dated 7/22/19

Applicant Gerry Rankin and representative, Gary James, were present. G. James informed the Commission that ECR, LLC had flagged the wetlands a long time back, and that in Feb 2019, Independent Environmental Consultants (IEC), had reflagged the wetlands on the northern side but was unaware of the wetlands on the southern side. G. James stated that the old wetland flags were all gone, but he reestablished that and IEC will return on Wednesday to confirm it.

G. James stated that the activity within the limits of the buffer include grading associated with the driveway and septic. They'll be taking out the old foundation from the burned dwelling and building the driveway over it. There's an existing gravel driveway that accesses the foundation. G. James stated that the outfall can be moved as suggested in the staff memo.

Commissioner Hidell asked how high the retaining wall was and G. James stated that it was about 18 inches. Commissioner Hidell confirmed that two walls on the plans are existing.

G. James explained that he was unable to do test pits up around the foundation as he can't access the location with equipment. He pointed out the multiple areas of ledge on the site. He described the test pits they were able to do as coming back with a class 1 soil, a loamy sand.

G. James stated that for activity within the buffer zone it's primarily the driveway grading and added that they are still in the review process from the Planning Board. The C.O. asked G. James to expand on construction access as that will be closer to the

resource area than anything else. G. James stated that the existing gravel drive will be the primary access to get started. They'll take the foundation out and use fill from onsite to fill it. They'll eventually close off the access road and loam and seed it.

Commissioner Freeman invited any comments from the public.

Jim Clarke, 79 Tower Road, asked what the purpose of the hearing was and is the Commission going to take a position. Commissioner Freeman responded that the applicant was here with an application for permission to build a single family home at 85 Tower Road. She added that the Commission is waiting for new information before taking a position.

J. Clarke asked what would happen to the foundation. G. Rankin stated that the entirety of the old foundation including the chimney would be removed from the site. J. Clarke asked if they would be removing the material from the creation of the new foundation. G. James stated that the material from the new foundation would be used to create the driveway access. G. James stated that the site is balanced and that by the time they're done the only material they might need to bring in will be sand fill for the septic and whatever fill requirements or aggregate for the foundations. J. Clarke expressed his interest in the material created from the removal of the old foundation being utilized elsewhere; perhaps on an adjacent site.

With no further comments from the public, Commission Freeman closed the hearing to public comment.

Motion: Commissioner Mooney moved to continue the hearing for 85 Tower Road (DEP 034-1343) to August 19, 2019.

Second: Commissioner Mosher

In Favor: All

Opposed: None

41 Brewster Road DEP 034-1344

Applicant: Gerard Rankin

Representative: Gary James, James Engineering, Inc.

Proposed: Construction of new single family home and septic system

Excerpts from the staff memo: The applicant is proposing to demolish an existing single-family house, attached garage, deck, and driveway and construct a new single-family house, driveway, walkway, and associated utilities. The existing septic system would be repaired and the leaching facilities would be raised to achieve the required separation to groundwater, with a new stone wall added around the fill. Removal of one maple tree is proposed due to damage from carpenter ants. The Eel River, a perennial stream, runs across the adjacent rear (northern) lot and has an associated BVW. Most of the proposed work is within the outer riparian zone, except for a portion of the septic system work and driveway. A portion of the proposed house and the tree removal are also within the 100ft buffer zone to the BVW. Note that most of the lot to the north is also within the 100-year floodplain (Flood Zone AE) based on current FEMA flood zone maps. The mapped floodplain is shown on the plans, as opposed to using site-specific topography, however the nearest elevation at the rear of the lot (82ft) is two feet above the base flood elevation (80ft), so staff does not believe floodplain extends onto this lot.

Staff visited the site on 7/22/19. The lot is relatively flat, with a scattering of ornamental shrubs and trees and established lawn. The only significant vegetation within the Commission's jurisdiction is within the edge of the wooded area that begins near the rear property line, and the large maple in the rear yard. The carpenter ant damage was obvious on the maple's trunk. Beyond the rear property line, the terrain is uneven, but gradually slopes downward to the Eel River.

Meeting Documents & Exhibits: Staff memo and plan set titled Septic Repair Subsurface Disposal System, dated 7/25/19

Applicant Gerry Rankin and representative Gary James were present. G. James summarized the wetland resource areas; the buffer zone of a bordering vegetated wetland and riverfront area (Eel River). He summarized aspects of the proposal including; 450 sf increase of impervious, the driveway is reduced, they will collect 1800 sf of the roof impervious that will run into an infiltration chamber, the entire septic will be both outside the buffer and the riverfront area, and the new single family house will have a new full foundation.

G. James described the Eel River in this section as having essentially stone walls on both sides; there's a lot of activity and it's beat up. G. James stated that for mitigation in association with the riverfront, they will clean out the prior owners' yard waste (that continues to be dumped by the prior owners' landscaping company), cut off access and remove an existing shed.

G. James stated that overall, the entire outer riparian area within the confines of the lot is modified or disturbed. Commissioner Hidell confirmed with G. James that the drainage easement goes to the Eel River. Commissioner Zane confirmed with G. James that currently none of the existing house is within the buffer. G. James explained that the back of the proposed house extends 212 sf into the 100 ft buffer, set back 89.5 ft from wetlands, and the area is currently lawn. The Commission spent some time looking at the plans.

The Asst. C.O. stated there had been quite a bit of back and forth between staff and G. James and they had resolved a lot of the questions and concerns but now the main issue in front of the Commission is allowing for work within a resource area. She reviewed some aspects of the Riverfront Area performance standards: one being consideration of 'is there any alternative' such as moving or reconfiguring the house further from the resource area. Discussion followed about the size of the lot and the septic

system. Commissioner Freeman stated that it seems the only option would be to downsize the structure. Brief discussion followed regarding the house design. G. Rankin responded by explaining that prior to purchasing the house he visited to figure out how to select a design with 4 bedrooms, taking into consideration the width of the lot, and moving the garage to the front of the lot; he suggested that less of the house is close to the wetlands than was previously.

In regards to stormwater, the Asst. C.O. acknowledged that the applicant had proposed mitigation not only for the increase in impervious but also for a portion of the existing house, but asked if there was any opportunity for further stormwater mitigation, for example, a stone infiltration trench along the eastern side of the driveway. Discussion followed amongst all and G. James and G. Rankin agreed that it wouldn't hurt. G. Rankin asked if a cobblestone entryway at the street would be acceptable in place of a trench and it was agreed that if he chose to do that instead of a trench as conditioned in the order, he could contact the office and it could be noted as a field change.

The Asst. C.O. spoke of the restoration aspect of the performance standards, and suggested that rather than putting down wood chips as the applicant had proposed, that to seed the areas instead and fence it off so that it's not mowed would be an improvement. The applicant had also offered planting of eastern hemlocks placed in the restoration area and the C.O. noted that it amounts to a 260 sf restoration area whereas there is 744 sf increase in house impervious. She suggested that the Commission could consider asking for more than is proposed. The C.O. interjected and stated that more trees would be great but that she would be most interested in a fence being placed along the entire back of the property line, rather than just 30 ft, at the edge of the woods or edge of the grass; she clarified that there should be no removal of trees to install the fence. The applicant needs to submit a revised plan to the Conservation office prior to construction.

G. James clarified that the quantity of fill was noted on the plan; 250 cubic yards.

Commissioner Freeman invited any comments from the public. With no comments from the public, Commissioner Freeman closed the hearing to public comment. Commissioner Hidell moved to close the hearing to public comment and was seconded by Commissioner Mooney. All were in favor.

Motion: Commissioner Hidell moved to issue an Order of Conditions for the proposed work at 41 Brewster Road (DEP 034-1344), as shown on the submitted plans, and adopt the findings of fact a through c, and special conditions 1 through 25 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 makes no finding as to the exact boundaries of the wetland resource areas on site.*

Conditions:

1. *The applicant shall notify the Hingham Conservation 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 shall notify the Commission, by telephone or writing, at least 48 hours prior to commencement of work on the site.*
2. *This document shall be included in all construction contracts and subcontracts dealing with the work and shall supersede all other contract requirements.*
3. *The project supervisor or contractor in charge of the work shall have a copy of this Order available on the site at all times.*
4. *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.*
5. *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 will not be used as a form of erosion or sediment control.*
6. *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.*
7. *Prior to the start of any excavation or construction, a revised WPA Form 3 and NOI Wetland Fee Transmittal Form shall be submitted, correcting Section B. Buffer Zone & Resource Area Impacts and Section B. Fees, respectively.*
8. *Prior to the start of any excavation or construction, a revised plan shall be submitted to the Commission for review and approval. The revised plan shall include a silt sock detail, an updated note 2, related to the wetland flagging, an updated callout that indicates native reseeding and/or natural regrowth instead of a wood chip covering, a fence that extends across the entire rear property line, and a stone trench adjacent to the driveway to serve as stormwater mitigation.*

9. *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.*
10. *Any debris, which falls into any resource area, shall be removed immediately by hand.*
11. *All lawn waste, brush, leaves, or other materials dumped in any resource area, including the buffer zone, shall be removed, and the practice discontinued, in accordance with Section 23.6 of the Hingham Wetland Regulations.*
12. *Any on site dumpsters shall not be located within the 100-foot buffer zone.*
13. *There shall be no stockpiling of soil or other materials within the 100-foot buffer zone.*
14. *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.*
15. *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.*
16. *No vehicle or other machinery, refueling, lubrication or maintenance, including concrete washout, shall take place within the 100-foot buffer zone.*
17. *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.*
18. *Restoration of lawn and yard waste dumping areas shall be completed and mitigation plantings shall be installed in accordance with the final approved plans. All mitigation plantings shall be native species; no cultivars, non-native species, or invasive species shall be allowed.*
19. *Stormwater management infrastructure and best management practices (BMPs) shall be installed in accordance with the final approved plans.*
20. *The use of de-icing chemicals, except for calcium magnesium acetate, a.k.a. CMA, or other alternative approved by the Commission, shall be prohibited on this property because of its proximity to the Eel River, which is a state-designated Coldwater Fish Resource, and the importance of the surrounding resource areas to the groundwater supply and water quality. This condition shall apply in **perpetuity** and shall not expire with the issuance of a Certificate of Compliance.*
21. *The use of pesticides, herbicides, and fertilizers shall be prohibited on this property because of its proximity to the Eel River, which is a state-designated Coldwater Fish Resource, and the importance of the surrounding resource areas to the groundwater supply and water quality. This condition shall apply in **perpetuity** and shall not expire with the issuance of a Certificate of Compliance.*
22. *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.*
23. *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.*
24. *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.*
25. *In accordance with 310 CMR 10.58(5)(f), further alteration within the restoration area is prohibited, except as may be required to maintain the area in its restored condition. This condition shall apply in **perpetuity** and shall not expire with the issuance of a Certificate of Compliance.*

Second: Commissioner Mooney

In Favor: All

Opposed: None

Other Business

a. 231 Otis Street and possible enforcement action

The C.O. reviewed the recent history of 231 Otis Street and that the applicant had received a Positive Determination for an 'after the fact' RDA filing for timbers that were added to the top of the seawall. As a follow up to a Positive Determination, the applicant had two options; one, to file a Notice of Intent or two, to remove the timbers, neither of which has happened. The C.O. explained that there had been some correspondence between the property owners and the staff regarding this issue and their options but there has been no response based on the timbers. Therefore, she was bringing it to the Commission to decide what to do as a next step. The last letter was sent on May 29, 2019; there was some correspondence since then but it was specifically related to another issue on the property. Mr. Madigan, 231 Otis Street was present.

The C.O. explained that the Commission had three options; to issue an Enforcement Order, issue fines for not complying, or do nothing. Mr. Madigan was invited to speak to the Commission. He stated he was unsure

what a Notice of Intent involved, that they hadn't proceeded with the other items that were included with the Request for Determination of Applicability and thought that the timbers were okay; but he is willing to pursue a Notice of Intent. He stated that the timbers are not affixed to the wall itself, that they're held in place by a board staked to the ground behind and that its purpose is to contain the flower bed. The C.O. pointed out to him that she is referring to the new timbers on top of the seawall that are cemented or otherwise mortared to the wall at the very back of his property; what he was describing was along the right side of the property where there had been some existing railroad ties. He stated that there are no mechanical fasteners attached to the wall, they're rested on the wall with a back brace.

Commissioner Freeman repeated for R. Madigan, his option to file a Notice of Intent. The C.O. felt it important to highlight that the Commission had disapproved the timbers in the first place because they don't comply with the local regulations. She added that it would be a waste of time and money for Mr. Madigan to submit a Notice of Intent, assuming the Commission would have the same interpretation of the local regulations, because the outcome would be the same regardless if it is an RDA or an NOI application. Commissioner Freeman agreed. Commissioner Hidell repeated very clearly for R. Madigan that the local regulations, as the Commission interprets them, do not allow him to do what he did. Commissioner Hidell added that it needs to be undone.

R. Madigan stated that he hadn't understood how it was in violation. There was further discussion about the sequence of the applicant's appearances before the Commission, R. Madigan's modification of the seawall with timbers and discussion regarding the specific regulation (regarding AE Zones); new or proposed expansions of coastal engineering structures are prohibited unless such structures are of a loose, sloped, stone design. R. Madigan stated that it doesn't have an impact on the water flow and Commissioner Freeman stated that the Commission had had a different finding on that. The C.O. read aloud again the regulation and summarized that the Commission had interpreted raising the wall with timbers as an expansion of the structure.

Discussion followed regarding the flower bed that abuts the seawall with R. Madigan stating that he was looking for some way to support the garden as the seawall is nearly flush to the ground. Commissioner Hidell confirmed with R. Madigan that the timbers are currently on the seawall and stated that if he picked the timbers up and moved them back away from the stonewall then he thinks it would no longer be an expansion of a structure. Commissioner Freeman questioned that someone could build a new structure just not expand an existing structure. Brief discussion followed regarding the wording of the regulations with the C.O. clarifying that new structures are included in the regulation and are also prohibited unless of a loose, sloped, stone design. Discussion continued and R. Madigan made comparisons to projects that his neighbors have undertaken and distributed photos of the area which the Commission examined and asked R. Madigan for more details.

The C.O. reviewed the permitting for the abutting property and the neighbor's post-Negative Determination request for a fence to keep their children safe. The fence, with both a gap under the fence and not a fine mesh in order to allow water flow, had been approved by the C.O. as an addition to their Negative Determination. The C.O. explained that she had worked with the neighbor specifically to prevent a barrier for children, not a barrier to water.

Commissioner Freeman stated that the Commission will take it under advisement, specified that the decision has already been made, it's just a question of how to proceed from here. She explained that the Commission doesn't try to obstruct people trying to maximize enjoyment and benefit of their properties. Commissioner Freeman stated that Mr. Madigan had made his case, that he was bolstering a flower garden. R. Madigan stated that it just keeps the spring tide in particular from coming over and limits the amount of garden getting washed away. It has holes in it, the water comes well over.

The C.O. explained that she had one more item in regards to this property for the Commission to take under advisement. She had also had correspondence with R. Madigan about the restoration of the passageway to how it was in 2016 when the condition in the Order of Conditions was first put in place. They have since 'restored' a section of fence, leveled and seeded the grass patch. The abutter, Sturtevant English at 121 Otis Street had contacted his lawyer and was seeking enforcement action in regards to further plantings by R. Madigan, namely 4 arborvitae trees. The C.O. explained that she'd spent a lot of time comparing photos and calculating trees, etc. and had determined that there had been a tree in a similar place on the 'finger' of landscaping that existed in 2016. The C.O. showed slides of the area to the Commission. R. Madigan stated he'd dug out the remains of the mulberry that was in the 'finger'.

Commissioner Freeman stated that she was okay with what the C.O. had enforced so far and felt there was no more role for the Commission. Commissioner Mosher reviewed that the Commission had received a complaint about the flower mound and they'd removed it. Commissioner Mosher asked whether a formal complaint had been received regarding the trees. The C.O. confirmed it had. Discussion followed regarding when the complaint was received and whether it was appropriate for the Commission to act on it at the meeting. Commissioner Freeman encouraged that with all parties present, the issue be discussed. Commissioner Hidell

summarized the landscaping conditions between 2016 and 2018, restating that the flower mound had been addressed. He further stated that he agreed with Commissioner Freeman and felt the issue should be handled between the private parties.

The Commission chose not to discuss the remaining two business items on the agenda due to the late hour.

- b. Discussion of Commission policy on tree removal and coastal engineering structures
- c. Discussion of changes to Wetland Regulations: Part 2, Section 23.) Pruning/Tree Replacement/Site Restoration

Commissioner Freeman adjourned the meeting at 10:45 pm.

Submitted, _____
Sylvia Schuler, Administrative Secretary

Approved on August 19, 2019

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