



CONSERVATION COMMISSION MEETING MINUTES– August 19, 2019

Present: Jacqueline Zane-Vice Chair, Bob Mosher, Bob Hidell, John Mooney and Crystal Kelly - Commissioners, Loni Fournier-Conservation Officer and Sylvia Schuler- Administrative Secretary

Absent: Laurie Freeman- Chair

The meeting was called to order at 7:06 PM.

Presentation of 2018-2019 Eagle Scout Projects

Approval of Minutes

The Commission agreed to the C.O.'s suggested edits to the draft minutes.

Motion: Commissioner Hidell moved to approve the draft minutes as amended from the July 29, 2019 meeting.

Second: Commissioner Mooney **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: *This discussion is continued from the 7/29/19 meeting in order to give the representative/applicant additional time to respond to Commission comments.*

- *Compensatory flood storage. At the last meeting, the Commission discussed the fact that there was an overall gain in flood storage volume of 200cf, but that storage was not provided at each elevation as the regulations require and instead, there was an increase in storage at lower elevations and a decrease in storage at higher elevations.*
- *Driveway and runoff. The applicant has indicated that a stone trench has now been installed. Since the constructed driveway is a slightly different shape and size than what was proposed, the location of the trench was changed from the approved plan to more effectively capture runoff.*
- *Staff also intends to verify that the remaining erosion controls have been removed from the site on 8/19/19.*
- *A revised as-built plan, showing the newly added stone trench, has yet to be submitted to the office.*

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

The C.O. explained that a revised As Built had been submitted, the mulch log was removed, and a stone trench had been installed in an appropriate location and that, unless the Commission had any further concerns regarding the Compensatory flood storage, a Certificate of Compliance could be issued. The Commission did not have any further concerns about the Compensatory flood storage and noted that the flood storage had been an improvement over the previous condition.

Motion: Commissioner Mosher moved to issue a Certificate of Compliance for 83 Free Street MA DEP 034-1302A.

Second: Commissioner Mooney **In Favor:** All **Opposed:** None

15 Howard Road - DEP 034-1300

Applicant: John Vermeulen

Representative: Joseph Hannon, Atlantic Coast Engineering, LLC

Excerpts from the staff memo:

An Order of Conditions was issued in November 2017 for the construction of a pile supported dock. The as-built plan largely adheres to the final approved plan, however two changes were made during construction. First, instead of a single staircase leading from an existing deck to a platform at the landward end of the dock, two staircases were constructed. The applicant has indicated that this design was chosen for three reasons: a safer configuration (easier to climb), improved access along the water, and ease of construction (limited workspace around the existing boulder seawall). Second, an additional 15ft x 20ft float was added, for a total of two seasonal floats; the first, measuring 10ft x 20ft, was approved as part of the original design. The applicant has indicated that the second float was added primarily for safety reasons. Brackets on the approved float and gangway, and the gangway itself, have already sustained damage due to wave action. The second float provides greater stability and reduces the chances of an accident, as well as additional damage to the dock.

The applicant reviewed the existing conditions of the neighboring docks and found that most had single or multiple floats in excess of 200sqft (total). Staff conducted a brief file review to assist the Commission with analyzing this information. It is worth noting that the Commission updated its performance standards for docks and piers in 2010; the language in the current version of the regulations reflects what was adopted at that time.

Address	DEP Number	OOB Issued	Approved Float Dimensions	COC Issued	Approx. Area Based on Aerial Imagery
23 Bel Air Road	34-0082	1980	20'x15'	1986	424sqft
25 Bel Air Road	34-0808	2005	30'x15'	2015	466sqft
27 Bel Air Road	34-0761	2004	30'x15'	2014	455sqft
29 Bel Air Road	34-0678	2002	30'x15'	2004	465sqft
31 Bel Air Road	34-0848	2006	30'x15'	2013	430sqft
7 Howard Road	34-0997	2009 (SOC)	48'x6', 24'x12' (Approx.)	2015	388sqft
11 Howard Road	34-1142	2013	10'x20'	2015	204sqft

Staff visited the site on 8/14/19. The addition of the second staircase should not have any negative resource area impacts, as it was constructed on top of the existing boulder seawall. In addition, the combination of the two staircases does provide pedestrian access along the top of the seawall, a.k.a. the waterfront, a goal of the state's Chapter 91 Program. Staff notes that the as-built plan appears to only reflect one of the two staircases, along with the connecting platform in-between them. A note on the plan indicates that two staircases were constructed. Staff recommends that the plan be updated to reflect the as-built conditions, preferably using AutoCAD or comparable computer software.

In terms of the additional float, Part 2, Section 23.4(c)(1) of the regulations make it clear that "when a dock, pier, or walkway is located at a private residence, [t]he Commission may allow at its discretion...only one float no greater than 10 feet by 20 feet...." The potential resource areas impacted by the additional float include Land Under the Ocean, Land Containing Shellfish, and Land Subject to Coastal Storm Flowage. The applicant was required to contribute to the Town's Shellfish Mitigation Fund as part of this project, however the contribution amount was based on the original design. The additional float is attached to the approved float via metal hardware and has been fitted with "legs" to prevent it from bottoming out at low tide (it is not pile supported).

Staff anticipates that the applicant and their representative and contractor will be present at the meeting. If the Commission is satisfied with the information presented, a Certificate of Compliance could be issued; otherwise the Commission could provide direction to the applicant and continue the discussion to 9/9/19, or refuse to issue a Certificate of Compliance.

Meeting Documents & Exhibits: Staff memo, As Built plan dated 7/29/19, 2 photos submitted of broken components, and a letter submitted by Sitec Environmental.

Applicants John Vermeulen and Susan Wood, representative Joseph Hannon, P.E. of Atlantic Coast Engineering, and builder Geoff Lake from Legacy Land and Marine Development, were present for the hearing. J. Hannon explained that they were before the Commission with a Request for Certificate of Compliance for a residential pier project and stated that it is substantially compliant with a few deviations.

J. Hannon stated that one deviation was the stairs on the landward side. One set of stairs was approved but two sets were installed and that it was due to existing topography. G. Lake explained that the plan as designed, with the elevation of the pier at 18+ ft over mean low water, would have brought the stairs right to the existing stone riprap and almost limit the public from getting through. He explained that it was decided to build two sets of stairs going down, perpendicular to the pier run, on either side and landing on the 'flat of stone' so the public could go up, over, and then down the stairs; they are compliant with allowing the public access. J. Hannon added that the stairs are built in compliance with OSHA.

J. Hannon stated that the second deviation was an added seasonal float and stated that it was a safety issue due to boat traffic and wave action. He also referred to two photos distributed to the Commission that showed damage to two components that occurred.

J. Vermeulen stated that he had been delighted with the initial plans until they stood on the 10' by 20' dock. From the beginning, they found the dock hard to stand on; he almost fell off twice. Within the first 2-3 weeks after it was built, there was damage. He described standing on the dock, admiring the work done by G. Lake, and behind him all of a sudden a wave came and almost knocked him off and, another time, looking at his cell phone and almost getting knocked off. He told his wife and she and neighbors agreed that it wasn't safe to be on.

For safety reasons, the applicants had asked G. Lake what they could do about it. J. Vermeulen apologized that he didn't realize that the initial plan permitted only a single floating dock; he'd read it months and months ago. They'd discussed different possibilities, particularly after two things happened; one, not terribly big waves were enough to break off one of the special stays, designed by the original engineers, around one of the pylons and the second had to do with the audible movement of the floating dock and gangway bending back and forth; enough that within a couple of weeks it snapped one of the 6" long welds. He apologized for not contacting the Conservation Office. He explained that they'd added the 15' by 20' attached dock which has two legs on it to keep it from ever bottoming out and stated that it has made a world of difference; one can now stand on it even with the big wakes in the channel and stated that they could never go back to a 10' by 20' float. He commented that location in the harbor should be a consideration for floats and noted that every other float near his is larger than 10' by 20'. He stated that the smallest of the floats,

which he measured, is actually 15' by 20'. He reiterated that it is just not safe, with the initial design, and they came up with a solution that works really well for him.

J. Vermeulen further described the pylon damage (shown in the 2nd photo) and the movement that caused it, and indicated that now, with the added float, the movement is much less. He stated that he would have liked to have known beforehand, for cost reasons, that the smaller float wouldn't work, but now, for safety, in that area, it needs to be a bigger float. Commissioner Hidell commented that the regulations only allow a 10' by 20' float and presumed that is why it was designed to be that size and noted that the applicant had not amended the petition.

Commissioner Zane asked what had been done in the past with the large floats in the area. The C.O. stated that all the older larger floats in the chart included in the staff memo, were allowed before the regulations were amended in 2010. Her sense is that there was no size limitation of any component of a dock; the length, width, number or size of floats until in 2009 something fairly significant was proposed and she believes that the Commission was inspired to examine their regulations and amend them accordingly. The C.O. added that there has been no need for follow up or action on the other floats because the other docks were permitted and, that as far as she knows, the Commission has not approved any floats larger than 10' by 20' since 2010. Commissioner Mosher stated that under the regulations the Commission can't.

Commissioner Zane asked what options there are when something has been done that's clearly not allowed by the regulations. The C.O. stated that the Commission could approve a COC regardless of the regulations, give direction to the applicant on what to do to receive the COC whether that's telling the applicant to remove one of the two floats or ask the applicant to supply engineering input, or have the applicant request an Amended Order of Conditions. The C.O. stated that the added advantage of an Amended Order is that it gives the Commission the ability to add findings and conditions relative to the Commission's thought process if approving a second float; it would be recorded at the Registry of Deeds and have the ability to stand on its own without necessarily setting a precedent. Or lastly, she explained that the Commission can refuse to issue until the plans are in compliance.

Commissioner Hidell asked if they had done any wave action analysis from an engineering point of view, to which J. Hannon replied that they had not, but that they could do both a wind and wave study. Responding to further questions from the Commission, G. Lake stated that the legs on the additional float were two 4" by 6" posts of ACQ (*Alkaline Copper Quaternary*) lumber and were measured to match the height of the 10' by 20' float when resting on the float stops, and so the base of the post sitting on the ground is 4" by 6". The space between the bottom of the float and the bottom of the post is 20 inches. The decking on the float is 2" by 6" ACQ 2.5 (*Alkaline Copper Quaternary*) wood, made for human contact, and the space between the boards was set at ¼ inch when installed and has expanded to 3/8th of an inch.

Commissioner Mooney stated that he believed the 15' by 20' unauthorized float needs to be removed and he would refuse to issue the Certificate of Compliance. J. Vermeulen made the comment that there is no way that he's going to go back to the 10' by 20' float because it just isn't safe. He stated that neither his grandchild, his wife, nor he are going back on the float because he almost fell a couple of times. He added that he can understand the Commission's thoughts as it isn't in compliance, but he needs a solution. He further described the two parts that broke and suggested should the float come undone it could cause serious damage. Commissioner Zane asked if there could be any factor, other than the size, that could be the reason why these things broke.

G. Lake stated that with the exposure (almost directly facing north) and the float being small enough to be buoyant, the pile guides are made to have 2" clear on all sides and when the float would come up it would jam, even though there are rollers; it would hit so hard on a big wake from a boat. He also described during a sustained northwest wind that the float could come up and jam and then turn with a sustained wind. He added that it's one thing when it's windy, you'd know not to go out there, but on a calm sunny day, and a big wake comes, it can do the same thing. That is what he saw happen, when it does jam as heavy as that, it's a jolt and you can lose your balance because it can be a 25 -30 degree pitch.

J. Hannon asked when the regulations were revised in 2010, was there a wave and wake study and how had the float size been determined. The Commission responded that it was a previous commission.

Commissioner Mosher stated that if they want to do something they would have to get the regulation changed; he added that he understands that they're looking for a solution but that the Commission doesn't give solutions and has regulations to enforce; and suggested that the engineer needs to come up with a solution. He added that it's possible that the engineer says that there is no solution and he's done all these wave studies and it has to be like this, in which case there's a different issue. J. Vermeulen stated that's a real problem because commonsense should be a part of it.

J. Vermeulen stated that he hadn't realized that he couldn't put another float on there, and he'd called up Rod Gaskell from Sitec, and told him that he'd been on the float, and not only did a couple things break but even before that, he almost fell off a couple of times, and that he wasn't going to bring his grandchild on it and that where they are is not a safe place. J. Vermeulen said that R. Gaskell told him that 10' by 20' was fine, at which point J. Vermeulen got another engineer. J. Vermeulen stated that this is just commonsense and he doesn't know what to do about it but he's not going to use that dock and he's not going to let anyone else on that dock because he's liable for this. He added that he had been on that dock, before the added attachment, with his cellphone, looking at the shore, calm as can be, and then all of a sudden the wake from one of those great big cruisers which was half a mile away, finally hit the dock and bam, he almost fell off. J. Vermeulen reiterated his belief in commonsense.

Commissioner Hidell commented that there are some places where docks just shouldn't be built and perhaps that should have been the advice, but setting that aside because it's already been built, he added that commonsense is governed by a number of

issues. One can be commonsense governed by the issues important to Conservation Commissions, another can be from a life safety standpoint which J. Vermeulen has identified, but the bylaw is very clear on this and the Commission's obligation, commonsense aside, is to comply with the bylaw, and with that said, the Commission cannot issue a Certificate of Compliance. The Commission told J. Vermeulen that the additional dock has to be removed because it is not in compliance and that the Commission is open to listen to his engineer's suggestions for something that complies with the regulations whether it's a change in orientation of the 10' by 20' dock, a different shape, elderly railings, etc...

J. Vermeulen asked if the Commission can permit certain changes depending on the different topography and argued that should the parts break on the float and need fixing, it could entail barges, etc., and if it breaks loose it could damage another boat and that could mess up the environment. He understands from other people that there are exceptions made to the rules given the environmental situation and that he's willing to jump through whatever hoops to end up with a safe structure.

Commissioner Zane stated that there are certain areas within the regulation where exceptions are built in but that this is a situation the Commission has a very clear prohibition against permitting anything greater than 10' by 20' for a float.

J. Hannon asked if they were to conduct a wind and wave study have it peer reviewed, and the conclusion is that a 10' by 20' is not safe for a seasonal float with four piles and needs to be a lot larger, is there a variance path or how would they change the out of date or inaccurate regulation.

Brief discussion followed with the C.O. clarifying that the regulation under discussion is not in the Town Bylaw, that it is in the Conservation Commission's regulations which are under their control. She added that the regulations are currently under review and the only requirement is that the Commission's discussions be open to the public.

Commissioner Hidell suggested that the applicants review the presentation by Dr. Logan from the State that had recently been presented to the Commission and possibly even contact Dr. Logan and see if there is something that could be recommended for their situation.

Commissioner Zane asked about sequencing; could they continue the hearing, discuss a proposal to amend the regulations, possibly amend the regulations if they are in agreement that it's the right thing to do, then have another hearing on this matter. She questioned if the regulation, if modified, apply to this, the application having been filed beforehand. The C.O. suggested that the Commission could follow it all through and be logical and if the regulation is altered as a result of the research, not necessarily apply the 2010 regulations to this. She added that she wasn't sure of timing as reviewing the regulations takes time and added that whether the hearing gets continued for a long time or if the applicant withdraws and resubmits is a formality.

Commissioner Zane stated that the Commission will need to do research as well, but there is obviously a reason why the Commission in 2010 thought that 10' by 20' was the right number. There are conflicting engineer views on it and the Commission will have to do research. Commissioner Mosher confirmed with J. Vermeulen that he'd had another engineer who said that 10' by 20' was fine. J. Vermeulen responded affirmatively but added that it was the smallest one that's ever been in their area and he'd disagreed with the engineer. J. Vermeulen suggested that based on 10' by 20' design, no one did their due diligence, and if one is designing a float, one has to take into consideration where it is; he stated that there is a marked difference of conditions in different locations on the water. Commissioner Mosher confirmed that J. Vermuelen had an engineer that told him 10' by 20' was fine. J. Vermeulen stated that it was R. Gaskell who was supporting his design.

S. Wood spoke up and stated that what they didn't do was get R. Gaskell onto the 10' by 20' float. She suggested that if they had, he would have totally understood and explained to them the process to go forward. She explained that they have been under a lot of stress to get the dock done as they'll be out of the country for a year and have renters coming. When they got the dock and realized that they couldn't even stand on it, this solution came up and they put the additional float on. She stated that it had been many years of planning, and she's happy that they can swim on it and sit with their friends. She added that she suspected that the regulations came about due to a dock proposed years ago that was larger than any dock in the history of Hingham Harbor. She doesn't know if the 10' by 20' was random, all she knows was that it was a real attempt to make things controlled. It was not site specific, it was more to ensure that it didn't happen again. She expressed her appreciation for the Commission's time, reiterated that they are under a lot of pressure, and repeated that they have renters coming who need a dock they can use. They will return in August 2020 and will be available by internet in the meantime.

J. Hannon stated that they could have the wind and wave action study completed in a month, submit the results and give the Commission time to review it and have a peer review of it. Commissioner Hidell stated that the results of the study are for the engineer to use, to design against what is discovered. Once they've done that, the Commission will be glad to look at it but the Commission won't make a decision on it until there is a proposal to modify the dock and pier regulations as they stand. Speaking for himself, Commissioner Hidell stated that the Commission has been looking at the regulations for about a year, none of them were on the Commission when the changes were made to the regulations, this Commission inherited it, understands the limitations of it and also understands the science of it; what he would like to see, is how the engineer would propose to modify the regulation, to some extent and under certain specific conditions, that allows the Commission to resolve the issue the applicant has.

J. Hannon repeated that they would be open to a peer review, and J. Vermeulen suggested that the Commission would be welcome to come for a site visit. Brief discussion followed and the Commission and applicant settled on a continuance to October 21, 2019. J. Vermeulen gave kudos to G. Lake, that with his experience, he had upgraded so much of the original plans, for example the timbers in the middle were designed to be 2" by 6", they break all the time, and so now they're a little bit bigger timbers and it's

a minor change but it just makes sense. Commissioner Mosher asked G. Lake if, when he'd suggested adding the 15' by 20' float, was he aware of the regulation. G. Lake stated that he was not, that he had been in solution mode, trying to come up with a solution for J. Vermeulen's concern. G. Lake continued and said that he'd had the permits and had been provided a packet but had noticed that there were other floats right in the local area with these connections on them and they were much calmer and not getting rocked or beaten up. He knew he couldn't put pilings in but he wasn't aware of the restriction of size in the regulations, he thought the 10' by 20' size was simply in the design.

Motion: Commissioner Kelly moved to continue consideration of 15 Howard Road to the October 21st, 2019 meeting.

Second: Commissioner Hidell

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 7/29/19 to give the applicant time to address Commission comments and work with staff regarding tree removals and plan revisions. Since then, staff has met with the applicant on site and reviewed a reduced scope of work. The number of trees proposed to be removed has been significantly reduced, as well as the amount of fill. The proposed playset has been moved to an area of existing lawn closer to the proposed patio, which has also been reduced in size, and an existing structure next to the house will be improved to take the place of the proposed shed. Therefore, most of the trees in the 100ft buffer zone will remain and no fill will be installed in this area. Only one mature, but unhealthy tree will be removed in the 100ft buffer zone.

In the 50ft buffer zone, several additional trees will be saved and approximately 20 trees will now be removed, however only 10 of those trees are six inches or greater in caliper. Of those 10 trees, three are in very close proximity to the house and growing towards the house, and two of the proposed removals are unhealthy pine trees located on the opposite side of an existing pool, in close proximity to the pool and surrounding fence. Fill is still proposed in the trenched area inside the 50ft buffer zone. The applicant does not intend to expand their lawn within the 50ft buffer zone and is amenable to mitigation plantings within this filled area. A draft condition related to mitigation plantings for the tree removals is included below.

The proposed fence location has not changed since the last hearing, a portion of which will extend into the 50ft buffer zone. As of 8/15/19, the applicant had not yet heard from the DPW regarding the proposed fence location within the drainage easement, however they understand it would be installed at their own risk at this point.

Staff anticipates that a revised plan will be submitted prior to the Commission meeting.

Meeting Documents & Exhibits: Staff memo and revised plan dated 8/16/19 submitted to office

Zahi Harakeh was present, distributed copies of his revised plan (received earlier in the Conservation office), and summarized the more recent changes to his plan. The scope of the plan has been significantly reduced; the number of trees (over 6 inches in diameter) proposed for removal within the 50 ft zone is now 8 trees and in the 100 ft zone there is now only one tree to be removed (over 6 inches in diameter). The naturally vegetated area originally proposed for clearing and installation of a playground will now remain untouched. The playground would now be placed in the flat lawn area between the patio and the leaching field. The shed will be constructed up against the house where an existing unfinished structure exists. He noted that the patio was reduced to a 33 by 18 ft concrete paver patio. In regards to the fence, there were no revisions, but someone from DPW had come out and was okay with the fence location but had just suggested to keep it away from the pipe to avoid potential damage with the fence installation. The only area that would need some fill is the trench area in the 50 ft zone and he would be doing some planting and trees there as mitigation. The Commission confirmed that Z. Harakeh agreed to the conditions listed in the staff memo. He did and received clarification on the timing of the plantings; the permit is good for 3 years.

Motion: Commissioner Mosher moved to issue a Negative Determination of Applicability for the work proposed at 232 Leavitt Street, 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 the wetland resource areas on site.

Special Conditions:

1. Prior to the start of work, erosion and sediment controls shall be installed 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.

2. Prior to the start of work, all trees to be removed shall be clearly marked and inspected by an agent of the Commission. All ribbons and markings shall be removed from the trees that will not be removed.
3. Prior to the start of work, a planting plan shall be submitted to the Commission for review and approval. The plan shall include five (5) trees and 10 shrubs as mitigation for trees removed within the 50ft buffer zone. Locations closest to the resource area shall be prioritized for planting. All mitigation plantings shall be native species; no cultivars, non-native species, or invasive species shall be allowed.
4. Erosion and sediment controls shall be maintained and remain in place until all disturbed or exposed areas have been stabilized with a final vegetative cover or the Commission has authorized their removal.
5. All tree debris shall be properly disposed of at an off-site location; no chipped or mulched material shall remain on the property.
6. Fill shall not extend beyond the fencing or 50ft buffer zone. Finished grades shall not exceed the raised portion of the drainage easement. There shall be no expansion of lawn within the 50ft buffer zone.
7. The patio shall be constructed with permeable concrete pavers or another permeable surface.
8. The Conservation Department shall be notified to any changes in plans prior to proceeding with said changed plans.

Second: Commissioner Mooney

In Favor: All

Opposed: None

12 Eastgate Lane

Applicant: John Fee

Proposed: Addition

Excerpts from the staff memo: The applicant is proposing to construct an approximately 328sf bathroom addition, a 96sf bedroom expansion, and a new front stoop at an existing single-family house. The bathroom addition and almost all of the bedroom expansion would be within the Outer Riparian Zone of the Weir River. Approximately half of this lot is within Riverfront Area. At the closest point, the additions would be within approximately 170ft of the river. Another developed lot is positioned between this lot and the river, with a single-family house and lawn situated between the proposed work area and any naturally vegetated areas.

Staff visited the site on 8/7/19. The existing conditions in the work area include lawn and landscape beds. One large Norway maple is proposed to be removed for the addition, as well as 7 or 8 ornamental shrubs. The maple did not appear to be in decline. The Inland Bank was not flagged; instead a surveyor determined the boundary of Riverfront Area using available topography data. Based on this assertion and aerial imagery, staff generally agrees with the delineation of Riverfront Area, though recommends making no finding regarding the boundaries since they were not flagged and are off property. There may also be a narrow Bordering Vegetated Wetland associated with the river, however if so, the associated buffer zone would not extend to the work area.

Under the Riverfront Area performance standards, the proposed work would be considered new development. No alternatives analysis was provided as required. The Commission could potentially address this directly with the applicant. The amount of total alteration in Riverfront Area, less than 425sf, is significantly below the threshold of permissible alteration, which in this case is 5,000sf or 10% of the Riverfront Area within the lot, whichever is greater. Although much of the Inner Riparian Zone in the vicinity is not naturally vegetated, there is no Inner Riparian Zone on this lot. The remainder of the Outer Riparian Zone on the lot consists of front lawn or a fenced rear lawn with clusters of trees and a shed. Staff recommends requiring a tree replanting within the Riverfront Area as mitigation for the removal of an existing, mature tree. Finally, the standards require stormwater management for new development. Given the size of the additions, the distance to resource areas, and the relatively flat topography in the vicinity, staff feels that rooftop runoff could be directed to lawn areas. However, staff notes that there appears to be sump pump discharge exiting from a pipe near the front corner of the property into a dirt swale and from there, around a cul-de-sac to a catch basin. Rooftop runoff should not be directed to this pipe or swale to avoid erosion and an increase in the rate/volume of water entering the catch basin.

Staff does not believe the proposed work will have a negative impact on the resource areas, provided that erosion controls are installed and maintained throughout construction, and the applicant complies with the other recommended conditions below.

Meeting Documents & Exhibits: Staff memo and 'Plot Plan of Land' dated May 31, 2019

Applicant John Fee was present and explained that he and his wife are proposing a small addition of 425 sq ft. He said that, at the C.O.'s suggestion, Perkins Engineering had added the 200 ft Riverfront buffer delineation and that the line was determined by Hoyt Land Surveying who had provided an email describing how they determined the line.

Commenting on 'alternatives', J. Fee stated that all four bedrooms of the house and plumbing are located on one end of the house, they are expanding one of the bedrooms and adding a master bath in order to perpetuate the future of their one floor living. He added that they didn't really have another location on the lot where they could do the work they needed to.

When asked about the pipe referred to in the staff memo, J. Fee explained that Eastgate Lane runs downhill, his house is at the lowest point and with heavy rains the groundwater gets high and they would get water in the basement. He explained that about 7 years ago, he had a basement system with three sump pumps installed; depending on the severity of the water, they work; he added that he's willing to work with the town to try to remedy that.

In terms of the runoff from the roofs for this project, he'd spoken to the builder and they could do splash pads or whatever is necessary. Commissioner Zane asked if there were any draft conditions related to the runoff and the C.O. responded that given the size of the addition, and the location within the resource area, staff did not feel it necessary to recommend drywells.

The C.O. asked if he was willing to replace the tree and he said that yes, they would replace it. He stated that there will only be a partial foundation but had been advised that the tree would likely not survive with the root disturbance. He would replace it with whatever tree the Commission recommended.

Motion: Commissioner Mooney moved to issue a Negative Determination of Applicability for the work proposed at 12 Eastgate Lane, as shown on the submitted plans, and adopt the findings of fact a through c, and conditions 1 through 6 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 the wetland resource areas on site.

Special Conditions:

1. Prior to the start of work, erosion and sediment controls shall be installed 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.
2. Erosion and sediment controls shall be maintained and 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. Rooftop runoff for the new additions shall be directed to downspouts with splash pads for scour protection, and then to adjacent lawn areas. Alternatively, rooftop runoff may be infiltrated on site with prior approval from the Commission.
4. One tree shall be planted within the Riverfront Area as mitigation for the removal of an existing tree. The tree shall be a native species approved in advance by the Commission.
5. Any debris, which falls into any resource area, shall be removed immediately by hand.
6. The Conservation Department shall be notified to any changes in plans prior to proceeding with said changed plans.

Second: Commissioner Mosher

In Favor: All

Opposed: None

28 George Washington Boulevard

Applicant: National Grid

Representative: Amanda Houle, Environmental Scientist, Tighe&Bond

Proposed: Gas line installation

Excerpts from the staff memo: The applicant is proposing to install a new, approximately 256 linear foot (lf) underground gas main from George Washington Boulevard to the driveway of the Hingham District Court, and two new services (15lf and 54lf) from the gas main to the courthouse. A portion of the work would be within the Outer Riparian Zone of the Riverfront Area associated with the Weir River, in the portion known as Porters Cove, which is across George Washington Boulevard from the site. There is also Salt Marsh associated with the Weir River, but work is not within the buffer zone of this resource area. Other resource areas are located to the east and south of the proposed work, either on the property or in the vicinity, and include the Bank to a quarry pond, Bordering Vegetated Wetlands and Salt Marsh. At its closest point, the end of the gas line would be approximately 104ft from these resource areas, specifically from Bank.

Staff visited the site on 8/8/19. The existing conditions include pavement (roadway and driveway) and lawn associated with the courthouse. The driveway rises from the roadway and then is relatively flat in the proposed work area. Wetland resource areas were field delineated by a wetlands consultant. Staff verified that the delineation is accurate in the vicinity of the proposed work; staff recommends making no finding relative the full extent of the delineation.

The majority of the proposed work could be considered an exempt minor activity within the Riverfront Area, in accordance with 310 CMR 10.02(2)(b)(2)(i): "Installation of underground utilities (e.g., electric, gas, water) within existing paved or unpaved roadways and private roadways/driveways, provided that all work is conducted within the roadway or driveway and that all trenches are closed at the completion of each workday." The portion of the work within lawn areas would not be exempt, however if these areas are returned to lawn or vegetated areas following completion of the work and there is no increase in impervious surfaces, then the disturbance to Riverfront Area could be considered temporary. Alternatively, the Commission could require compliance with performance standards for new development. Assuming that there are no practicable alternatives, staff feels the proposed work would meet these standards.

Staff does not believe the proposed work will have a negative impact on the resource areas, provided that erosion controls are installed and maintained throughout construction, and the applicant complies with the other recommended conditions below.

Meeting Documents & Exhibits: Staff memo and 'Figure 4 Site Plan, Gas Line Installation Project' dated July 2019

Amanda Houle, Senior Environmental Scientist from Tighe&Bond, was present, summarized the proposal and described it as a de minimus project. The trenches would be closed at the end of each day. They are exempt under the Wetlands Protection Act and are seeking approval under the bylaw. She explained that there is currently existing lawn and that area will be revegetated when the work is done. They have also provided for silt sacks in the catch basins. The C.O. asked her what would be an expected time frame for construction and A. Houle responded that they are usually able to do 100 linear feet in one day and therefore it should be complete well within a week.

Motion: Commissioner Mooney moved to issue a Negative Determination of Applicability for the work proposed at 28 George Washington Boulevard, as shown on the submitted plans, and adopt the findings of fact a through c, and conditions 1 through 6 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 the wetland resource areas on site.

Special Conditions:

1. Prior to the start of work, erosion and sediment controls shall be installed 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. Catch basins within 100 feet of the limit of work shall be protected with a silt sack or equivalent.
2. Erosion and sediment controls shall be maintained and 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 trenches shall be closed at the completion of each workday.
4. Existing lawn shall be returned to lawn or other vegetated surfaces following completion of work. There shall be no increase in pavement or other impervious surfaces on site.
5. Any debris, which falls into any resource area, shall be removed immediately by hand.
6. The Conservation Department shall be notified to any changes in plans prior to proceeding with said changed plans.

Second: Commissioner Hidell

In Favor: All

Opposed: None

Vice Chair Zane read the Public Hearing Notice of Intent.

Request for Amended Order of Conditions

25 Howland Lane - DEP 034-1325

Applicant: Anja and David Ullrich

Proposed: Filling and grading

Excerpts from the staff memo: In November 2018, the Commission issued an Order of Conditions for the construction of a 28ft x 28ft garage addition on a slab foundation and an associated paved driveway. The work is located within the 100ft buffer zone to a bordering vegetated wetland associated with Cushing Pond, which is located immediately off the rear of the property. The total proposed disturbance within the 100ft buffer zone was 2,300sf and the limit of work was 51ft from the BVW at its closest point, with the addition being 56ft at its closest point. Three trees were removed to facilitate constructing the addition. Rooftop runoff from the addition has been directed to a subsurface drywell.

Staff conducted a site visit in June 2019 and noted that during construction, a large amount of unapproved fill (35cy), consisting of large boulders, soil, and mulch, was delivered to the site and used to create a wide, level walking surface around the eastern and northern sides of the approved addition. Staff has been working with the applicant and their representative since that time to stabilize the site and take other measures to reduce or eliminate any negative impacts to the resource areas. The fill is largely located within the 100ft buffer zone and was added to an area that was maintained as lawn and landscaping. Acting on staff's recommendation, the representative constructed tree wells to preserve several mature trees that would have otherwise not survived the impacts of the fill.

Part 2, Section 23.6(a) of the Regulations states, "No fill shall be placed in any Resource Area or any buffer zone so as to alter the flow of surface water in a way that the Conservation Commission feels will adversely affect the wetland values of the Resource Area(s)." Staff does not believe the fill will adversely affect the resource areas in the long term. In the short term, it is critical that the 12in mulch log in place at the toe of slope be maintained to prevent erosion and sedimentation until the exposed slope is permanently stabilized. Staff recommends that the exposed slope be seeded or planted with a shade-tolerant groundcover.

Meeting Documents & Exhibits: Staff memo

Applicant David Ullrich was present and explained that this was a request for a stabilized area behind an addition and referred to the photos in the staff memo. He stated that they had installed the tree wells as recommended by staff to preserve the

trees in the side area. Responding to a question, D. Ullrich stated that the wood was 2 by 4 pressure treated and bolted through to the ground with 1 ft of clearance or more around the tree, and going down to within an inch or two of the grade prior to construction.

Regarding erosion controls, the C.O. stated that the original erosion control had been covered by the fill, and the mulch log in place now was added after the fill and is stable. She doesn't feel that anything significant will happen erosion-wise but that she is most concerned about the health of the three trees in the photos.

The C.O. stated that the slope needs to be stabilized with some sort of vegetation. D. Ullrich stated that they will make sure it gets planted with something appropriate for the shady location. The C.O. stated that there is no guarantee that the tree wells will help, but it was the best attempt to help them survive, now it's just wait and see if they survive.

Commissioner Zane invited any comments from the public. With no comments from the public, Commission Zane closed the hearing to public comment.

Motion: Commissioner Hidell moved to issue an Amended Order of Conditions for the additional work that was completed at 25 Howland Lane, as shown on the submitted plans, and adopt the findings of fact a and b, and conditions 38 and 39 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.

Conditions:

38. The constructed tree wells shall remain in place for the life of the existing trees that they are built around. Should any of the trees fail to survive or otherwise need to be removed, due to storm damage, disease, etc., the tree well may, but is not required to, be removed.
39. Prior to the issuance of a Certificate of Compliance, the exposed slope on the eastern and northern sides of the constructed addition shall be seeded or planted with a shade-tolerant groundcover.

Second: Commissioner Mosher

In Favor: All

Opposed: None

Notices of Intent

85 Tower Road DEP 034-1343, continued to 9/9/19

Applicant: Gerard Rankin

Representative: Gary James, James Engineering, Inc.

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

4 Knoll Road DEP 034-1345

Applicant: Justin & Marie Vogel

Representative: Brad Holmes, ECR, LLC

Proposed: Additions, driveway relocation, and landscaping

Excerpts from the staff memo: The applicant is proposing to construct an approximately 26ft x 22ft garage and living space addition, a front porch, a rear screened porch, a relocated driveway to access the new garage, and an associated retaining wall and drainage swale. All work is associated with an existing single-family house. A portion of the driveway, retaining wall, and swale would be within the 50ft buffer zone to a Bordering Vegetated Wetland, as well as fill associated with changing the grades in this area. The total proposed work in the 50ft buffer zone would be ~530sf. A buffer zone mitigation planting area, with native shrubs and trees, is proposed, as well as relocating an existing shed out of the 50ft buffer zone. The mitigation area would be 1,060sf for a 2:1 ratio of mitigation. The remaining work would be within the 100ft buffer zone, except for the end of the driveway nearest to the street. The total new impervious area in the 100ft buffer zone would be 1,963sf, which includes the following: 548sf addition, 1,000sf driveway, 240sf screened porch, and 75sf front porch. Of this, 150sf of impervious is within the 50ft buffer zone.

Staff visited the site on 8/8/19. The property slopes from the road to the right rear of the property, where it drops more steeply to a fence along the rear lawn. The land continues to slope downwards and immediately beyond the fence is a densely vegetated area consisting of wooded uplands and then wetlands, predominantly a wet meadow. Wetland resource areas were field delineated by a wetlands consultant. Staff verified that the delineation is accurate. A stream channel, presumably intermittent, is located within the BVW just off the property, however this was not delineated since work is beyond this buffer zone. Existing conditions are similar in each work area and include lawn, small landscape beds, and a few scattered landscape shrubs. The front and rear porches would be in relatively flat areas, while the remaining work would be in sloped areas.

The Hingham Wetlands Protection By-Law states in Section 2 (2B), "Except as authorized by the Commission, no activity or alteration shall be permitted within a fifty (50') foot Buffer strip between any wetland resource...and any proposed site disturbance. Prohibited

activities shall include, but are not limited to, the following: (1) new construction of any buildings, decks, in-ground and above-ground swimming pools, sheds and/or driveways of any nature or type (excepting water dependent structures expressly approved by the Commission); (2) alteration, reconstruction or relocation of existing buildings, sheds and/or driveways of any nature or type; and (3) activities which involve or result in the removal, filling or altering of land within the buffer strip, including vegetation removal and grading." As noted earlier, a mitigation planting area (2:1) is proposed within the 50ft buffer zone and an existing shed will be relocated from this area into the 100ft buffer zone. A mix of native tree and shrub species are proposed and an appropriate construction and monitoring sequence was provided. Staff notes that a portion of the mitigation area already consists of 6 to 7 native trees, though there is minimal understory growth around these trees. No additional mitigation plantings are proposed for work in the 100ft buffer zone. Rooftop runoff for the living space/garage addition is proposed to be infiltrated in two drywells. Driveway runoff is proposed to be directed to a stone swale, which would extend from the middle of the end of the driveway down a steep slope and into the mitigation area. Staff has requested that the drainage design/details be stamped by a professional engineer. No specific details have been provided on the proposed retaining wall.

Staff asked whether any consideration was given to decreasing the amount of driveway in the 50ft buffer zone, or to decreasing the overall size by reconfiguring the garage to have the driveway access at the front versus side. The current driveway accesses the front of the house. The representative indicated that access straight off the street would involve significant site excavation work and more site disturbance in the 100ft buffer zone.

Meeting Documents & Exhibits: Staff memo and plan set titled Plot Plan 4 Knoll Road (Shts 1-2) with a revised date 8/13/19 and a separate mitigation plan on the same Plot Plan 4 Knoll Road with a revised date of 8/13/19

Brad Holmes from Environmental Consulting and Restoration, was present for the hearing and described the wetland resource areas stating that the 50ft and 100 ft buffer zones from a bordering vegetated wetland encompass almost the entire site. He summarized the proposal, the main component of which is a large addition located outside the 50 ft buffer. He further described two smaller additions of porches as well as changes to the driveway to allow for access to the garage underneath the addition. There are two drywells proposed to accommodate roof run off from the house.

He stated that a small portion of the driveway would be within the 50 ft buffer and that they had looked at alternatives but the alternative would require significant excavation and more disturbance to the site within the 100 ft buffer zone. He described a 'stone swale' proposed to collect and process any water collected in the driveway. There would also be a retaining wall necessary because of the grade. Because they are proposing work partially inside the 50 ft buffer they are offering to offset that with a 2:1 ratio of mitigation planting. The total area of proposed work within the 50 ft buffer is 530 sf and of that, 150 sf is impervious. He pointed out the proposed mitigation planting area where there is currently maintained yard. An existing shed in that area will be relocated outside of the 50 ft buffer to a new location just inside the 100 ft buffer.

The C.O. described the back and forth work with the applicant and staff and that she felt everything had been addressed.

Commissioner Zane invited any comments from the public. With no comments from the public, Commission Zane closed the hearing to public comment.

Motion: Commissioner Mooney moved to issue an Order of Conditions for the proposed work at 4 Knoll Road (DEP 034-1345), as shown on the submitted plans, and adopt the findings of fact a and b, and special conditions 1 through 20 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.

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. 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.
8. Any debris, which falls into any resource area, shall be removed immediately by hand.
9. Any on site dumpsters shall not be located within 100 feet of any resource area
10. There shall be no stockpiling of soil or other materials within 50 feet of any resource area.
11. 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.
12. 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.
13. No vehicle or other machinery, refueling, lubrication or maintenance, including concrete washout, shall take place within 100 feet of any resource area.
14. Rooftop runoff from the living space/garage addition shall be infiltrated on site using drywells in accordance with the final approved plan. Alternative methods of infiltration may be allowed with prior approval from the Commission.
15. The new driveway shall be pitched so that runoff from driveway is directed to a stone swale in accordance with the final approved plan, not to the street. Alternative methods of infiltration may be allowed with prior approval from the Commission.
16. Mitigation plantings shall be installed, and the mitigation area shall be constructed, in accordance with the final approved plan and supporting documents. The restoration area shall be left as naturally vegetated and shall not be maintained as lawn or landscaped area. This condition shall apply in **perpetuity** and shall not expire with the issuance of a Certificate of Compliance.
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. 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.
19. 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.
20. 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.

Second: Commissioner Kelly

In Favor: All

Opposed: None

Commissioner Zane adjourned the meeting at 8:40 pm.

Submitted, _____
Sylvia Schuler, Administrative Secretary

Approved on September 9, 2019

Meetings are recorded. To obtain a copy of the recording, please contact the Conservation Office.