

The Falmouth Conservation Commission  
**MEETING MINUTES - WEDNESDAY, JULY 22, 2020, 7:00 P.M.**

In accordance with the Governor’s Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20, relating to the 2020 novel Coronavirus outbreak emergency, **the July 22, 2020 public meeting of the Falmouth Conservation Commission shall be physically closed to the public to avoid group congregation.**

Alternative public access to this meeting shall be provided in the following manner:

1. The meeting will be televised via Falmouth Community Television.
2. Real-time public comment can be addressed to the Conservation Commission utilizing the Zoom virtual meeting software for remote access. This application will allow users to view the meeting and send a comment or question to the Chair via the Chat function. Submitted text comments will be read into the record at the appropriate points in the meeting.
  - a. Zoom Login instructions:
    - i. Instructions and the meeting link for this specific meeting can be found at the following web address:  
<http://www.falmouthmass.us/1092/Conservation-Commission>
    - ii. Please plan on 10-15 minutes of preparation time to log in though it may be less if you have previously used Zoom on the device you will use to access this meeting.
3. Additionally public comments may be sent in advance of the meeting to [concom@falmouthma.gov](mailto:concom@falmouthma.gov) at **least 5 hours prior** to the beginning of the meeting. Documents and audio or video files may also be submitted via email. Submitted email comments and documents will be made a part of the meeting record and may be read into the record, summarized or displayed during the meeting at the discretion of the chair.
4. Applicants, their representatives and individuals with enforcement matters before the Conservation Commission may appear remotely and are not required to be physically present. Applicants, their representatives and individuals with enforcement matters before the Conservation Commission may contact the Conservation Department to arrange an alternative means of real time participation if unable to use the Zoom virtual meeting software. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to [concom@falmouthma.gov](mailto:concom@falmouthma.gov) so they may be displayed for remote public access viewing.

Present:        Jamie Mathews, Chair  
                  Russell Robbins, Vice-Chair  
                  Betsy Gladfelter  
                  Maurie Harlow-Hawkes  
                  Courtney Bird  
                  Steve Patton  
                  Kevin O’Brien  
                  Mark Gurnee, Alternate

Peter Walsh, Alternate  
Pat Harris, Alternate  
Jennifer Lincoln, Administrator  
Kevin Newton, Agent

Mr. Mathews opened the meeting at 7:00 p.m.

Mr. Mathews instructed the public on how to use the Chat function for questions or comments on any of the hearings. All submissions will be read into the record.

## **VOTE MINUTES**

7/15/2020

Ms. Gladfelter: Move to adopt the minutes as written.

Mr. Bird: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

## **REQUESTS FOR DETERMINATION OF APPLICABILITY**

Mark Factor, 207 Coonamessett Circle, Falmouth, MA – For permission to vista prune according to FWR 10.18(10)(b).

Mr. Newton: The applicant has requested a continuance until August 5, 2020.

Mr. Bird: At the request of the applicant I move to continue the hearing until August 5, 2020.

Mr. O'Brien: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

James P. and Janice E. Healey, 295 Edgewater Drive West, East Falmouth, MA – For permission to upgrade to a new Title V sewage disposal system and to remove 6 trees.

Mr. Newton: Jurisdiction: within 100-ft resource area buffer to salt marsh, coastal bank, and within flood zone AE12. This RDA is to remove an existing septic system and to install a new Title V sewage disposal system. There is no increase in design flow. A variance is requested for the SAS placement within 7 ft to a coastal bank. This is the only location on property where the SAS would not be within 100 ft of the salt marsh. 6 trees are proposed to be removed to install the system, none are proposed to be replaced. Staff recommends a negative 2 (under the State) and negative 3 (under the bylaw). Resource area boundaries are not confirmed by this RDA.

Mr. Bird: Move to accept staff's recommendation.

Mr. Robbins: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Town of Falmouth – Water Department (C/O Steven Rafferty), Thomas B Landers Rd Map 21-05-011-000, Falmouth, MA – For after-the-fact permission to remove fill from the West Thompson cranberry platform caused by a broken water main.

Mr. Newton: Jurisdiction: within 100-ft resource area buffer to BVW. This RDA is for after the fact approval to remove fill from the West Thompson cranberry platform. An accident resulted in approximately 60' x 35 wide 9" to 10" deep area of fill within the cranberry bog due to a broken water main. A mini excavator shall be stationed on the bog platform and a large excavator will be station on the bog berm in the parking area. Excavated material will be removed and disposed of at the Town's facility. Sediment control will be implemented to prevent sediment flow further into the bog. Work will be completed in 1-2 days total. Staff recommends a negative 2 (under the State) and a negative 3 ( under the bylaw). Resource area boundaries are not confirmed by this RDA.

Mr. Bird: Move to accept staff's recommendation.

Mr. O'Brien: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

## **REQUESTS FOR A HEARING UNDER A NOTICE OF INTENT**

Wendy Hill and Susan Condon, 268 Surf Drive, Falmouth, MA – For permission to install a tight tank wastewater holding tank and to abandon the existing cesspool.

Ms. Lincoln promoted Michael Borselli and Brian Wall to participants.

Mr. Mathews is recused from this hearing. He moved Alternate Pat Harris to the quorum. Ms. Harris stated that she has a legal relationship with Brian Wall on a different matter and wasn't aware Attorney Wall was on the agenda. She would like to be recused.

Mr. Mathews moved Alternate Mark Gurnee to the quorum.

Michael Borselli (Falmouth Engineering) The history of the property is also in the narrative but I will give a brief description of it. The building at 268 Surf Drive was damaged by an August hurricane in 1991. In July of 1992 an Order of Conditions (OOC) and DEP number were issued and the building was placed on pilings. An amended OOC was issued in 2011 calling for the use of the cesspool on the property to be for gray water only. Via a variance from the Board of Health an incinerating toilet could be placed on the property with the condition that the cesspool continue to be used for gray water and the incinerating toilet be used for toilet water. There is a letter in the record from the Board of Health granting permission for the toilet water to an incinerating toilet and the gray water to the cesspool. The co-owner and the applicant would like to substitute the incinerating toilet for a tight tank. All water would now go to the tight tank. Resource areas include land under ocean, coastal beach (barrier), coastal dune and land subject to coastal storm flowage. The tight tank is similar to other applicant's between the street layout and the structure. (audio problem) Excavated material will be hauled away. Ground water will be reached at some depth and the discharged water will flow into hay bales. The tight tank will be installed at the proper depth. The specs of the tight tank are outlined. It is heavy enough to (audio problem). The limit of work is next to the tank on both sides. The edges will be put back if altered and grasses will be planted. Prior to this hearing we applied to the Board of Health and they approved the project. This is a better situation to have all the water going into the tight tank. Zero discharge of any water is best. The narrative also outlines the wetland resources and the

performance standards. I received the staff report today and staff comments will be considered in standard use. Staff recommendations remain in consistency with other projects on Surf Drive. Brian Wall (Attorney representing the applicants) One of the reasons Mrs. Hill wants to go forward is because she uses the cabana as an Art Studio and the incinerating toilet gives off bad smells. She lives in Town and is using the cabana more. The abandonment of the existing cesspool is an overall improvement. All the “toilets” are permitted. I went through all your performance standards and I feel that the project shows compliance with each one. We will need a continuance. The Board’s decision on 410 Surf Drive (tight tank) was never resolved in a decision as the applicant withdrew the request.

Ms. Lincoln: Staff met with Mr. Borselli prior to the filing of the NOI and was clear what staff’s position would be. It must be consistent with the recommendation given to 410 Surf Drive – that installing a tight tank on a dune is an expanded use. Regulation 10.03 applies re expanded sewage solutions. We were very clear to Mr. Borselli about our feelings. The staff report states that 3(d) 10.03 mentions an expanded scope. The applicant was aware of this when the cabana was purchased a year ago.

Mr. Newton: I have nothing to add.

Ms. Gladfelter: I can see how the Board of Health may have thought it was equal or better for health reasons. Gray water isn’t bad for any area. The tight tank is not a good idea. Remember Menauhant Road – when things get abandoned, erosion wears it away. It is not environmentally better.

Mr. Bird: I have similar concerns. Flood maps project a 5-ft sea level rise by 2050. There may be no more Surf Drive. I understand the issue with the incinerating toilet but there are other alternatives.

Mr. O’Brien: My comment really doesn’t concern the application as such but we have received a letter from the applicant about her neighbor hooking up to her tight tank. That scared me – will it become a neighborhood dumping ground? The correspondence was concerning.

Mr. Gurnee: I have a different perspective. A tight tank is an impermeable object. I’m not too sure I agree about the 5-ft sea level rise by 2050. The incineration toilet could be pumped and abandoned. The new railroad bridge is within sea level rise and there is no problem and no health issues with that.

Ms. Harlow-Hawkes: I would like all previous records into the file. New incinerating and composting toilets are cheaper and more useful. There are two different realms here – environmental and mental health. I can see why the Board of Health is comfortable with it and we’re not. Read 10.03(3).

Mr. Walsh: I agree with Mr. Gurnee somewhat. The regulations for septic system upgrades and setback requirements refer to the enlargement of the existing building and/or the expanded scope of new use. This is not an enlarged building. It is expanded because of gray water and black water being handled together. It’s a judgment call whether it’s an expanded scope of use.

Mr. Robbins: I agree with both Mr. Gurnee and Mr. Walsh. Composting toilets are okay but I’d rather see both going to a tight tank.

Mr. Patton: A tight tank is a better alternative. After reading some comments I still believe that. I will look at the regulations again however.

Mr. Mathews: Anything from the public?

Ms. Lincoln: Not at this time.

Attorney Wall: We are asking for a continuance. Re Mr. O’Brien’s comments – there are different layers of neighbors. The cycle takes 5 hours to run. The neighbor in the letter is also

the co-owner of the property. There are two unrelated people who own the property. Two owners – one property. The regulation says enlarged or expanded in scope. Under Title 5 expansion means an addition of more bedrooms. The gray water is going into the ground water now.

Ms. Harlow-Hawkes: At the request of the applicant's representative I move to continue the hearing until August 5, 2020.

Ms. Gladfelter: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Ms. Gladfelter: The applicant should look at other technologies. The Board of Health looks at it as an improvement. The applicant could look at better, newer composting designs. A smaller tight tank just for gray water would also be good.

Frank and Donna Skelly, 369 Edgewater Drive West, East Falmouth, MA – For permission to raze an existing single family dwelling and to construct a new single family dwelling, to add a new Title V septic system, and to reconfigure the driveway.

Ms. Lincoln: Mr. Borselli remains as a participant and Robert Morin and Steve Damos (?) are promoted to participants.

Michael Borselli (Falmouth Engineering) There is a licensed dock. Resource areas include: land under ocean, coastal beach, salt marsh, low profile coastal bank, land subject to coastal storm flowage. In addition to the FEMA line on the plan there is a Falmouth V zone line. There are A & B zones for the wetland resource areas, including 50-ft no disturbance zone from the coastal bank and a 100-ft no disturbance zone from the salt marsh. The existing house is shown in red on the plan. Unique features are a wall and a depressed grass yard at elevation 2. The upper yard is at elevation 5. The depressed area will be filled so they are at the prevailing height. The existing house will be removed and an elevated house will be constructed at elevation 18-ft – 4-ft above VE14. The existing septic system will be eliminated and a new Title 5 system will be installed between the house and the street. It will be more than 100-ft from the salt marsh and almost as far from the coastal beach. There is a decrease in the overall impervious surface and no mitigation is required. The project will be better for the environment. In a hurricane this property is at very high risk of damage. A unique wall system will limit as much damage as possible. The elevator will be enclosed. There will be a concrete slab and the area can be closed with a series of doors/breakaway panels that are retractable. They are transparent and can be opened if needed. In the case of storm and waves they will retract. The applicant would like to close the doors and use the room for storage. I'd like to turn the hearing over to Rob and Steve at this time.

Robert Morin (Architect) The house will be 2500-sq.ft on three levels. All windows will be impact glass. A propane tank will be buried on site.

Ms. Lincoln: As the staff report states we would like the Board to stay consistent with past decisions in a Velocity zone. We have only allowed elevators and stairways to be enclosed and the house to rest on open pilings. We had a similar request on Old Dock Road and it was not allowed.

Mr. Borselli: They can be opened remotely or will open with wave action.

Ms. Lincoln: It's the same design that we saw not too long ago. The Board did not allow that type of enclosure. We must remain consistent. Will the hot tub remain?

Mr. Borselli: I'm not aware of plans to keep it. Is it okay to keep it if they want to?

Ms. Lincoln: It could go on the patio or deck or another concrete pad.

Mr. Borselli: If we want it on another pad we will come back.

Ms. Lincoln: Having the entire lower space enclosed is a problem.

Mr. Newton: Do you have to show a reserve area for the new septic system?

Mr. Borselli: No. When you are not increasing the number of bedrooms it can stay in the same location.

Mr. Walsh: In a previous project a cantilevered deck was constructed. Is that considered impervious surface?

Ms. Lincoln: The Board grappled with this question about 10 years ago. A cantilevered deck shades the vegetation below it because it's a couple feet off the ground. It started to become manipulated so we started taking an overall view.

Mr. Walsh: Did it count as impervious surface?

Ms. Lincoln: Yes, because we were supposed to count it as impervious surface. Look closely at the plan – only part of it is in the A & B zones. Is the coral colored area (audio problem)?

Mr. Walsh: The generator pad and other things are outside the A & B zones.

Mr. Borselli: There is nothing additional. It will be built in the footprint of the existing building.

Mr. Robbins: I'm curious about the breakaway panels. Are they garage doors or just glass?

Mr. Morin: They are 12, 14 and 9-foot garage doors. All doors can be opened at the same time.

Mr. Damos (?) This is a unique thing rather than a floating system. This is an electronic system that will be kept above ground. They are made of stainless steel. When water hits them, they open. The system would be wall-mounted in the kitchen and can be monitored and worked remotely. The doors will stay open until closed. If water goes to a lower level you can have them close remotely also.

Mr. Mathews: Do they open to the minimum height?

Mr. Morin: 2-ft above the 14-ft level.

Mr. Mathews: This is to create storage space. When they are opened all the stuff inside becomes a problem in a storm.

Ms. Lincoln: What happens when the power goes out?

Mr. Damos (?) The generator goes on.

Ms. Lincoln: Even though no one may be in the house?

Mr. Damos (?) Yes.

Mr. Patton: I like the garage doors – it's a good function. What is the purpose? What is behind them?

Mr. Borselli: There is a garage under. They would put a lawn mower, shovels, rakes, etc. there.

Mr. O'Brien: We've made these decisions in the past. Breakaway panels may lead to damaging materials let loose in the area. The applicant is admitting up front they the area will be used for storage. The material could end up harming other properties.

Mr. Borselli: If this were a vacant lot it would be different. But it's not. The existing house could be a giant breakaway panel in a hurricane. Everything in the house would be spread around the neighborhood. The amount of debris in this case is significantly different.

Mr. O'Brien: That's a good point.

Mr. Gurnee: I look at the doors as not a problem. It's a FEMA issue. They can open with power but there is always a chance they might not be functional.

Mr. Borselli: There is a generator. Like breakaway panels they would break away before the rest of the structure if not in the upright position.

Mr. Gurnee: The ability to break away is good. I don't mind storage under the house.

Mr. Morin: We have not considered breakaway panels.

Ms. Harlow-Hawkes: On 103 Nashawena, the house is on pilings. It has pavers underneath not concrete and only the elevator and stairs are enclosed. They have a generator but it is not fail-safe. They should put stuff in places with walls or the stuff will go everywhere. I won't vote for this. No breakaway panels or new ideas are allowed.

Mr. Borselli: If you compare and contrast them, the existing use has more debris than the new one will.

Ms. Harris: Maurie did a good job. The new house has to comply with the regulations.

Ms. Gladfelter: Responding to Kevin's comment and Mike's answer – I have no problem with the raze and rebuild being elevated. We are talking about doors right now. Mr. Borselli said they will use the area for storage. I have gone through two Category 4 hurricanes. Whatever you think might or could work may not. We don't know what will happen. I have concerns about the electronics. To Mike: Remember the pool project with the wall around it? I was concerned if you would take the bottom of the pool out so there would be no concrete. Is this an impermeable wall?

Mr. Borselli: I don't know, but will find out.

Mr. Bird: Betsy and Maurie pretty much said it all. A lot of thought has gone into this system. It's interesting. Like Maurie I'm concerned about the generator. Motors will lift the doors up and down. You can't have utilities below it. The storage is a problem. There is no automated system to remove and clear the storage out in a storm. That might solve the problem but failing that I'm opposed.

Mr. Mathews: Is anyone on the chat function?

Ms. Lincoln: No. Is there any way to switch the tank to under the driveway and out of the V zone?

Mr. Borselli: No but the tank will be above the grade of the driveway.

Ms. Lincoln: There is no increase in the design.

Mr. Borselli: Right.

Ms. Lincoln: The AC unit and generator will be on cantilevered decks.

Ms. Harlow-Hawkes: How much of a grade change is planned?

Mr. Borselli: It's now 7 ½-ft and we are proposing 8 ½ to 9-ft.

Ms. Harlow-Hawkes: The ground water is at 5-ft.

Mr. Borselli: That's why we had to change the grade. Do you want us to revise the plan?

Ms. Lincoln: If you revise the plan I expect to see the enclosed area.

Mr. Bird: I will make the plan revisions and submit it and the architectural on August 5<sup>th</sup>.

Ms. Lincoln: I would prefer that.

Ms. Harlow-Hawkes: The concrete slab under the building – is everyone happy with that?

Mr. O'Brien: No.

Mr. Robbins: We can condition that there not be a concrete floor.

Mr. Morin (audio problem).

Mr. Bird: I want to express my opinion that there should be no concrete slab there. You can design the plan without a slab,

Ms. Lincoln: Would you like a continuance until the 5<sup>th</sup> or 12<sup>th</sup> of August?

Ms. Gladfelter: At the request of the applicant I move to continue the hearing until August 12, 2020.

Mr. Bird: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

The 123 Penzance Road Nominee Trust, 123 Penzance Road, Woods Hole, Falmouth, MA – For permission to place approximately 300 cubic yards of sand to replenish, construct, and maintain a sacrificial dune that protects the coastal bank and existing cottage; and to request the placement of sand up to 200 cubic yards in perpetuity that will repair and maintain the sacrificial dune.

Ms. Lincoln: Please move Mr. Borselli back to an attendee and promote Michael McGrath to a participant.

Mr. Mathews: Selectmen Sam Patterson is an attendee.

Michael McGrath (Holmes & McGrath) showed photos of the property. There is a riprap bank on the property. In 1995 the Commission gave permission for a sacrificial dune at the base of the riprap. In 2010 the Commission re-authorized beach nourishment in the Velocity zone. Because of significant storms there has been erosion. Resource areas include: coastal beach, coastal dune and a coastal bank. The Commission authorized the work to continue. The property is a triangular shape with Buzzards Bay on one side. The plan shows the area of beach nourishment, the cross-section of the dunes and the remnants of the riprap. There has been no impact on the eel grass beds. Mr. McGrath displayed an eel grass survey the shows no change. This appropriate activity has been approved before and there has been no adverse effect. The nourishment will be to protect the existing bank.

Ms. Lincoln: My only comment is that the Commission does not permit anything in perpetuity. The applicant is not allowed to put 200-yds of sand there forever.

Mr. Robbins: (audio problem)

Mr. Patton: I agree with Russ.

Ms. Gladfelter: I agree with both. 200-yds of sand each year! It should be contingent on how the sand did over the winter.

Ms. Lincoln: A monitoring plan is needed.

Mr. Bird: Would using fiber rolls stabilize the dune a little more?

Mr. McGrath: You never use fiber rolls in front of a hard structure. They could become projectiles.

Mr. Bird: Fine.

Mr. McGrath: I acknowledge that we will have to come back for permission each time.

Mr. O'Brien: No questions or comments.

Mr. Gurnee: It looks good to me.

Ms. Harlow-Hawkes: No questions or comments.

Ms. Harris: (audio problem)

Mr. Walsh: No questions or comments.

Ms. Gladfelter: How will the sand be brought out to the beach? Will they drive along the beach at low tide?

Mr. McGrath: Yes. It will be brought to the site on 10-wheelers and spread with small bulldozers.

Ms. Gladfelter: How long have the loose boulders been there?

Mr. McGrath: (audio problem)

Ms. Gladfelter: It's been kind of protected. They form a boulder form below. (audio problem)

Mr. McGrath: Erosion does funny things.



Mr. Bird: Move to close the hearing and take it under advisement.

Ms. Harlow-Hawkes: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Mr. Mathews: Any public comment?

Ms. Lincoln: No.

Mark Parker, 272 Acapesket Road, Falmouth, MA – For permission to demolish an existing single-family dwelling and to construct a new single-family dwelling with all associated clearing, grading, and landscaping.

Ms. Lincoln promoted Michael Borselli and Bernice Waller to participants and Michael McGrath to attendee.

Michael Borselli (Falmouth Engineering) An OOC had been issue previously but the new project is significantly different than the original so a new NOI was needed. The lot is 31,000-sq.ft. Resource areas include: Green Pond, land under ocean, land containing shellfish, BVW, salt marsh, coastal bank, no disturbance zone B to bank and salt marsh, land subject to coastal storm flowage. None of the activities are in land subject to coastal storm flowage. There is an existing shared driveway. The house will be razed and re-constructed. There is a proposed deck and bluestone access steps. There will be a new driveway off the common driveway. The new driveway is out of your jurisdiction. The pavement of the old driveway will be saw cut and a significant amount of impervious surface will be removed – some in your jurisdiction. The house has a wrap-around deck. There is a Title 5 septic system within 100-ft of the coastal bank. A new Title 5 system will be installed outside of your jurisdiction. Dry wells and the limit of work are on the plan. The trees to be removed will be mitigated for in Bernice Waller's plan. There is a reduction of impervious surface in the A zone of 170-sq.ft and 258-sq.ft in the B zone. The abutting property to the north is owned by the applicant also.

Bernice Waller (Bernice Waller Landscapes) There will be restoration plantings between the resource areas and the lawn area. There is a line of black tupelo trees and cedar trees will be incorporated into the primary resource area buffer. The proposed plants are described on the plan as are the quantity and sizes of the trees. Any questions?

Ms. Lincoln (audio problem)

Ms. Waller (audio problem)

Mr. Newton: You're not doing anything with the vegetation on the bank?

Ms. Waller: Correct.

Ms. Harris: There are landscape walls in zone A?

Ms. Waller: Yes. It will help us to control the flow of the lawn area and the buffer to the coastal bank as well as provide a permanent feature that will prohibit the encroachment of the bank.

Ms. Lincoln: How high is the wall?

Ms. Waller: Wall is 2-ft to 8-ft from the coastal bank and is 22" high. There is no concrete foundation and it does not encroach above the top of the coastal bank.

Ms. Harris: What does staff think?

Ms. Lincoln: I would prefer they were not there.

Mr. Walsh: No questions or comments.

Mr. Robbins: No questions or comments.

Mr. Patton: No questions or comments.

Ms. Gladfelter: I'm not okay with the number of trees. 8 are being removed (100 caliper inches)

and 7 are being replaced (22"). We can talk about that in deliberation.

Ms. Waller: We're planting a combination of shrubs under the trees to make up for the tree size. We can't replace the trees one for one. The understory becomes a biomass layer.

Ms. Gladfelter: It's the function 20 to 30 years from now that concerns me. The shrubs will grow but the root mass won't be the same as tree root mass.

Mr. Bird: Would you be comfortable with a few more trees?

Ms. Gladfelter: We ask for either tree for tree or caliper per caliper.

Ms. Waller: We're proposing 9 trees.

Ms. Gladfelter: Okay.

Mr. Bird: That's fine.

Mr. O'Brien: No questions or comments.

Mr. Gurnee: No questions or comments.

Ms. Harlow-Hawkes: We need the wall detail. You are removing two 18", 1 10" and 1 15" oaks because they are too close to the house and proposing trees that are moving closer to the house.

It's not a good reason to cut. There is nothing wrong with the 15" oak and it's further away than where the tupelo will be planted.

Ms. Waller: The homeowner owns the property to the north and close to the street on the adjacent property. The trees are in the way of the PV (?) panels.

Ms. Harlow-Hawkes: What about the ones you're planting?

Ms. Waller: We're not proposing any trees there.

Ms. Harlow-Hawkes: The 15' oak is practically on the coastal bank.

Ms. Waller: Grading work will be done in the area and the tree is problematic. This house will be back from the coastal bank. The tree needs to be removed.

Ms. Harlow-Hawkes: We can discuss this also.

Mr. Mathews: Any public comment?

Ms. Lincoln: No.

Mr. Patton: Move to close the hearing and take it under advisement.

Ms. Harlow-Hawkes: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Ms. Lincoln: Please move Michael Borselli to attendee.

## **CONTINUED HEARINGS UNDER A NOTICE OF INTENT**

Scott Tynell, 163 Bay Road, North Falmouth, MA- For permission to conduct shellfish aquaculture within Rand's Canal and Megansett Harbor.

Ms. Lincoln: The applicant has requested a continuance until August 5, 2020.

Ms. Harlow-Hawkes: At the request of the applicant I move to continue the hearing until August 5, 2020.

Mr. Bird: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Charles Nickerson, Estate of Mary A. Nickerson, 89 Teaticket Path, Teaticket, MA – For permission to remove and replace 3 trees, to remove a small stone wall and install a larger retaining wall, to expand the current deck and remove a set of stairs, to raze an existing shed and reconstruct a new shed, to construct an earthen berm, to reconstruct and widen the existing licensed dock, and to install mitigation plantings.

Quorum: Jamie, Russ, Betsy, Maurie, Courtney, Mark, Steve, Kevin, Peter, Pat

Ms. Lincoln: Please promote Wayne Tavares to a participant.

Ms. Gladfelter: Do we have a DEP number?

Ms. Lincoln: Yes.

Wayne Tavares (Landscape Architect) At the last hearing graphic errors on the plan were discovered. My numbers for the float and ramp did not mimic the surveyor's and his were correct. The AE14 and AE 13 were corrected and have been confirmed with Jen and Kevin. I have had feedback from Eileen Pheeny (DMF) The step off will be on the northern side for public access. I need confirmation from the Building Inspector. There is an overland trail from the 2-ft contour up and over the other side. The salt marsh does not go under the deck. The deck will be at 3.65-ft mainly so the ramp can compare with the plan. We have lowered it and it harms nothing landward. We're providing public access. A juniper tree is to be removed as well as one pitch pine. We have kept 15-ft of ornamentals plantings. The ramp is staying the same. The big oak is on the plan because the owner will keep it and do some pruning on it. Another juniper will be pruned to encourage growth. It touches on the leaching pit. The existing septic system is the owner's prerogative to change – it is working fine. He doesn't want to switch to a new system and then a year later have to hook up to a new sewer system. There will be steps to convert to the patio. The deck will be cantilevered. The retaining wall will stay the same. We will replace the pitch pine with two amyanchers. We are removing (audio problem) and we have 23-sq.ft of overage. 69-sq.ft of mitigation is required and 72-sq.ft will be provided. We are removing a yew. Everything else is the same as before.

Ms. Lincoln: Is DMF aware that you lowered the height of the deck?

Mr. Tavares: Yes. Eileen called me and said it was not a problem because there is no salt marsh under the deck.

Mr. Newton: No questions or comments.

Mr. O'Brien: No questions or comments.

Mr. Gurnee: No questions or comments.

Ms. Harlow-Hawkes: No questions or comments.

Ms. Harris: No questions or comments.

Mr. Walsh: No questions or comments.

Mr. Robbins: No questions or comments.

Mr. Patton: No questions or comments.

Ms. Gladfelter: I'm glad the oak is going to stay.

Mr. Bird: No questions or comments.

Mr. Mathews: Any public comment?

Ms. Lincoln: No.

Mr. Bird: Move to close the hearing and take it under advisement.

Mr. Walsh: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

## REQUESTS TO AMEND THE EXISTING ORDER OF CONDITIONS

Robert Richards, 45 Little Neck Bars Road, Falmouth, MA – For permission to install an additional concrete slab area or to install a series of wood framed deck panels beneath the structure, and to install bayberry plants.

Ms. Lincoln promoted Michael Borselli to a participant and moved Wayne Tavares to attendee. Michael Borselli (Falmouth Engineering) An OOC was issued for a raze and reconstruct. Resource areas include a Velocity zone and a coastal dune. The existing house was razed and the new house is in accordance with FEMA standards and is on piles. I met with Jen on site to discuss a situation we hope to remedy. On the original plan the house is on piles and is open. A dune continues to migrate under the structure. The sand blows under and beyond the house migrating to the northeast. The bare ground under the house is shaded and is not a workable surface to use. We discussed a couple of options. Mr. Borselli shared photos of the area underneath the structure. One possibility is wooden panels – a sample was shown. The wind rushes through the area and the dune continues to flow. Looking west from the site you can see Buzzard’s Bay. The applicant would like to create a more manageable surface. Two alternatives: (1) Expand a concrete slab under the building for a working surface all around. This is preferable. Sand will continue to migrate. The pilings are large so it doesn’t add any impervious surface to the structure; (2) The wood panels would be fitted into a checkerboard surface. They will be removable in the case of a hurricane and stored. The concrete slab is better because there will be no additional impact to the resources. There is one other activity at the end of the existing driveway – a shaded area was disrupted when the water source was installed. It will be restored as described.

Ms. Lincoln: Can you address the fencing that was not permitted and the staircase that is new?

Mr. Borselli: There are three items that I became aware of after filing this amendment. The existing staircase was constructed in the mid-50’s. It was unstable and unsafe and was rebuilt in the same footprint. The base is retractable in case of a storm. It should have been reviewed first. Adjacent to the staircase there is a small stone patio. It has not been repaired or changed in any way. It has been there since the mid-50’s also. The snow fencing at the base of the dune was replaced and arranged differently. It will be seasonally installed to protect the coastal dune. It is now arranged in a saw-tooth way. The Conservation Restriction (CR) on the property encourages stabilizing dunes with snow fencing. They were approached by the 300 Committee to do this.

Ms. Lincoln: I spoke to the 300 Committee and they did not approve this. The patio was a patio at the original hearing. The applicant went ahead and put the patio and staircase in without a review by the ConCom. I’m not convinced that the patio was there since the 50’s. We do allow snow fences but it should have come before us. CR permitting agencies have the right to resolve these things.

Mr. Borselli: I’m reporting to you what I was told. I was told by the contractor that you approved the replacement of the stairs.

Ms. Lincoln: I would have liked Mr. Pinsonneault to come here and tell me himself.

Mr. Borselli: Me too.

Ms. Lincoln: It’s not just the wooden slabs (**audio problem**), the staircase and patio have to (**audio problem**).

Ms. Lincoln promoted Bob Richard to a participant.

Mr. Mathews: Should this come up under an enforcement order?

Ms. Lincoln: Or at the time of compliance. The OOC is still open.

Mr. Borselli: The patio was not rebuilt.

Bob Richards (applicant) We have tried to be great stewards of the property. I have not been a party to any conversations between Tim Pinsonneault and Jen but was told he had permission to replace the stairs. The patio has not been touched. We tried with plantings to help stabilize the dune but it can't be stabilized. Someone in our family has special needs and we would like a safe transit area under the house, i.e. a slab. I'm sorry about the confusion.

Ms. Lincoln: These are the only concerns of the staff.

Ms. Harlow-Hawkes: I asked about the expiration of the permit – June 14, 2017. There have been a couple of amendments. Does this expire in 7 days?

Mr. Borselli: I'm aware of the original date. The permit was active on March 10<sup>th</sup>. Any permit to expire would be extended from March 10<sup>th</sup> to June 17<sup>th</sup>. There is an automatic three month extension to remain until September 14<sup>th</sup>. They were allowed to ask for an extension.

Ms. Harlow-Hawkes: This doesn't come close to compliance. The planting is not done. You should have been asking for an extension because of what you haven't done, not an amendment. This is the DCPC and has a CR on it. It's a critical area to be protected. The dunes are eroding. A concrete slab will not allow the dune to grow. What will you do when the area around the concrete will erode? There is a small dune in front of the house. Add some sand and put pavers in it. There are letters in the file opposed to this request. This is a big change and we don't want to permit it now. I'm glad you're going to fix the altered area. I'm glad to see that Blueflax will be working there.

Mr. Borselli: There will be no footing required for the slab and it will be connected to the existing slab (audio problem).

Ms. Harlow-Hawkes: The original OOC permitted a small enclosure with stepping stones in the sand. Wooden slabs are moveable.

Ms. Harris: No questions or comments.

Mr. Walsh: No questions or comments.

Mr. Robbins: No questions or comments.

Mr. Patton: No chance for concrete (audio problem).

Ms. Gladfelter: I made a comment earlier re concrete slabs. I don't like the wooden solution either.

Mr. Bird: I agree with Maurie and Betsy.

Mr. O'Brien: No questions or comments.

Mr. Gurnee: No questions or comments.

Mr. Mathews: Any public comments?

Ms. Lincoln: Not on the chat function.

Mr. Borselli: Were there letters from neighbors?

Ms. Lincoln: Yes.

Mr. Borselli: I'm asking for a continuance until August 12<sup>th</sup>.

Ms. Lincoln: There is a letter from Rob Bowerman and one from (audio problem). I will get them to you.

Ms. Harlow-Hawkes: There is a cable that runs across from the Richard's property to an abutter's property up to Chapoquoit Road. It should be removed.

Mr. Borselli: It's the first I have heard of it.

Mr. Mathews: Will you look at it?

Mr. Borselli: Yes.

Mr. Bird: Will we discuss the snow fencing at the next hearing?

Ms. Lincoln: We can.

Mr. Patton: At the request of the applicant I move to continue the hearing until August 12, 2020.

Mr. Bird: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Jay and Lea Decoteau, 507 Central Avenue, East Falmouth, MA – For permission to acquire after-the-fact approval of an existing brick patio, to construct a shed, and to add approximately 1,074 square feet of mitigation plantings.

Ms. Lincoln: Please promote Matt Costa to a participant and move Michael Borselli to an attendee. Mr. Costa is having an audio problem. Please table the hearing. Mr. Robbins is unavailable at the moment.

Ms. Gladfelter: Move to table the hearing.

Mr. Bird: Second.

Mr. Mathews: Mathews, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Ms. Gladfelter: Move to untable the hearing.

Ms. Harlow-Hawkes: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Matt Costa (Cape & Islands Engineering) The amendment is to construct a shed and for the after-the-fact construction of part of a shed and a patio. We also want to work on a retaining wall and cover an existing deck that is not completed. The shed is under 200-ft and they didn't need a building permit so they thought that meant they could do it. They have stopped construction on the shed. The existing garage was built and attached to the patio (audio problem). The patio is closer to the resource area and mitigation is required. The shed is on the northern side of the property. It was also approved on the OOC to reinforce an area of lawn for parking. That should not be any closer to the resource area. 3 to 1 mitigation is required for retaining wall work (audio problem). They want to be in compliance with the OOC. The patio and shed require 3 to 1 mitigation. They can finish construction of the shed in about a day or two.

Ms. Lincoln: The patio is not moving any closer than the other patio?

Mr. Costa (audio problem)

Ms. Lincoln: Where will they put the mitigation?

Mr. Costa: In the existing lawn areas.

Ms. Lincoln: The mitigation cannot be near the footbridge. It's technically in the road layout.

Mr. Costa: The mitigation will be within the fence. We are providing a little more in that area.

Ms. Lincoln: As long as it's not considered mitigation.

Ms. Gladfelter: No questions or comments.

Mr. Bird: The shed is in a Velocity zone.

Mr. Costa: The entire site is a Velocity zone.

Mr. Bird (audio problem)

Mr. Costa (audio problem)

Mr. O'Brien: No questions or comments.  
Mr. Gurnee: No questions or comments.  
Ms. Harlow-Hawkes: You have already taken 200-ft. (audio problem)  
Mr. Costa: No additional space?  
Ms. Harlow-Hawkes: All we allow is 200-sq.ft.  
Mr. Costa (audio problem) The patio is not a structure.  
Ms. Harlow-Hawkes: (audio problem) They mowed a good chunk of the salt marsh.  
Mr. Costa: By compliance time it will grow back naturally.  
Ms. Harlow-Hawkes: Are they mowing it today?  
Mr. Costa: Yes.  
Ms. Harlow-Hawkes: They must plant a buffer there – no more mowing. The mitigation cannot be within 10-ft of a structure. You have it at 8 and 7-ft. Pull it down toward the salt marsh on the southwest side.  
Mr. Costa: A condition can be that we work with staff on re-locating the mitigation.  
Ms. Harlow-Hawkes: The patio is impervious and permanent.  
Ms. Harris: No questions or comments.  
Mr. Walsh: No questions or comments.  
Mr. Robbins: No questions or comments.  
Mr. Patton: No questions or comments.  
Ms. Lincoln: The amendment to the OOC should include a single rail fence.  
Mr. Costa: What?  
Mr. Mathews: A single rail fence – 10 or 12" off the ground – to prevent mowing.  
Mr. Costa: They will not be mowing woody shrubs.  
Ms. Harlow-Hawkes: You'd be surprised.  
Ms. Lincoln: They are not helping themselves.  
Mr. Costa: I hope the fencing will not go through the middle of the yard.  
Ms. Gladfelter: The fence will blend into the vegetation.  
Mr. Costa: Do they have choices over the material?  
Ms. Gladfelter: You can work with staff on that.

Ms. Gladfelter: Move to close the hearing and take it under advisement.

Mr. Walsh: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Joan Spalaris, 78 Squibnocket Drive, Falmouth, MA – For permission to permit an after-the-fact stone retaining wall addition, modification to entry way, and modification to driveway; to install native shrubs on a coastal bank; to delete Finding #2; and to delete Special Condition #5.

Ms. Lincoln: The applicant has withdrawn the request for an amendment.

Mr. Bird: Move to withdraw the request for an amendment.

Mr. O'Brien: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.

Mr. Mathews: Any on the chat function?

Ms. Lincoln: No



## VOTE ORDER OF CONDITIONS

Anastasios Parafestas, Trustee, 160 Penzance Road, Woods Hole, Falmouth, MA

Quorum: \_Jamie, Russ, Betsy, Maurie, Courtney, Steve, Kevin

Ms. Lincoln: The applicant wants a pool. Staff doesn't believe it meets the regulations.

Mr. Robbins: We make a positive motion, correct?

Ms. Lincoln: Yes. Then if you don't agree you vote no.

Mr. Robbins: **Move to adopt the Order of Conditions as discussed.**

Ms. Harlow-Hawkes: **Second.**

Ms. Lincoln: I think there should be some sort of discussion.

Mr. Robbins: Why?

Ms. Lincoln: There is a lot of information put into the record. Don't you want to say something about the seawall?

Ms. Gladfelter: The project doesn't meet our regulations. It's moving closer than the primary structure. There are a lot things to do, i.e. restoration that have nothing to do with this.

Mr. Bird: We didn't approve of the pool the first time. We have been hearing about this property since 2003. What's different about this? Does anyone remember Michael McGrath's argument about this?

Ms. Gladfelter: They made the pool a little smaller but they are taking away vegetation. I think the ornamentals are being given special foods.

Ms. Harlow-Hawkes: The seawall prevents run off but there can always be overwash and the nitrogen doesn't just rush along. The denitrifying system is good.

Ms. Gladfelter: The Ruck system takes care of the nitrogen in the house but not the nitrogen outside.

Mr. Mathews: **Mathews, no; Robbins, no; Gladfelter, no; Harlow-Hawkes, no; Bird, no; Patton, no; O'Brien, no. The Order of Conditions is declined.**

Margaret and Alvydas Mikulskis, Mikulskis Realty Trust – 2019, 9 Darylane, North Falmouth, MA

Quorum: \_Russ, Betsy, Maurie, Courtney, Mark, Steve, Kevin, Peter

Ms. Lincoln: They are building up the grade in the back yard and adding a wall. It's a unique project but staff has no concerns.

Ms. Gladfelter: It's an interesting project. They are building up a coastal bank.

Mr. Bird: Move to adopt the Order of Conditions as discussed.

Ms. Harlow-Hawkes: Second.

Mr. Mathews: Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye; Gurnee, aye;

Patton, aye; O'Brien, aye; Walsh, aye. Unanimous, so moved.

Mr. Bird: Move to adjourn.

Ms. Harlow-Hawkes: Second.

Mr. Mathews: Mathews, aye; Robbins, aye; Gladfelter, aye; Harlow-Hawkes, aye; Bird, aye;

Gurnee, aye; Patton, aye; O'Brien, aye; Walsh, aye; Harris, aye. Unanimous, so moved.



The meeting adjourned at 10:30 p.m.

Respectfully submitted,

Susan Cronin, Recording Secretary

*Board will consider any matters not reasonably anticipated by the Chair.*