

The Falmouth Conservation Commission  
**MEETING MINUTES - WEDNESDAY, JUNE 24, 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 June 24, 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  
Mark Gurnee  
Steve Patton  
Kevin O'Brien, Alternate  
Peter Walsh, Alternate  
Pat Harris, Alternate

Jennifer Lincoln, Administrator  
Kevin Newton, Agent

Also present: Sam Patterson, Selectman

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.

## **VOTE MINUTES**

6/10/2019

Mr. Robbins: Move to adopt the minutes as written.

Ms. Gladfelter: Second.

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

## **REQUEST FOR A CONTINUANCE UNDER A NOTICE OF INTENT**

Les Chernauskas, 69 Paola Drive, East Falmouth, MA- For permission to raze an existing single family dwelling and to construct a new single family dwelling; to upgrade to a Title V septic system; to install drywells, a retaining wall, a rinse station, a wall and steps, and an elevated a/c unit.

Ms. Lincoln: The applicant has requested a continuance until July 1, 2020.

Ms. Harlow-Hawkes: At the request of the applicant I move to continue the hearing until July 1, 2020.

Ms. Gladfelter: Second.

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

Anastasios Parafestas, Trustee, 160 Penzance Road, Woods Hole, Falmouth, MA- For permission to install a 12' x 20' pool, stone pool terrace, stone retaining walls, stone steps, pool utilities, lighting, fencing, drainage, and all associated clearing, excavation, grading, irrigations, landscaping, and mitigation plantings.

The applicant has requested a continuance until July 15, 2020.

Ms. Harlow-Hawkes: At the request of the applicant I move to continue the hearing until July 15, 2020.

Ms. Gladfelter: Second.

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

## **REQUESTS FOR DETERMINATION OF APPLICABILITY**

Kevin and Karen Murphy, 53 Dale Drive, North Falmouth, MA – For permission to extend an existing deck by 19' over an existing concrete slab patio.

Mr. Newton: Jurisdiction: within 100 foot resource area buffer to BVW. This RDA is to extend the existing deck over an existing concrete slab patio. Deck will not move closer to the resource area.

The concrete will be saw cut and removed in order to install the new sono tubes. The work will either

be done using a mini-excavator or will be done by hand. Staff recommends a negative 2 (under the State and bylaw). Resource area boundaries are not confirmed by this RDA.

Ms. Harlow-Hawkes: Move to accept staff's recommendation.

Mr. Bird: Second.

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

Black Beach Harbor Head Civic Association, 0 Little Neck Bars Road, Map number 24 09 001 001 & 24 09 001 003, West Falmouth, MA – For permission to install a portable 6'x8' guard shack on Little Neck Bars Road just before the intersection to Chapoquoit Road.

Mr. Newton: Jurisdiction: within flood zone VE20. This RDA is to construct a portable guard shack within the road layout of Little Neck Bars Road. Little Neck Bars Road is a private road. The shack should be constructed on a trailer so that it is portable. The guard shack will be removed in the case of impending storms. Staff recommends a negative 2 (under the State and bylaw). Resource area boundaries are not confirmed by this RDA.

Ms. Gladfelter: Move to accept staff's recommendation.

Ms. Harlow-Hawkes: Second.

Mr. Robbins: Is this the first shed or an additional one?

Ms. Lincoln: The Board approved one on Associates Road and this shed will be similar to the other.

Ms. Harlow-Hawkes: Is this Town owned land? What about handicapped people?

Ms. Lincoln promoted Stephen Doyle, Association President, to a participant.

Mr. Doyle: We have always allowed handicapped access. It is left to the discretion of the guard. There has been a significant increase in the number of non-members coming in resulting in vandalism and other problems.

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

Robert and Shannon LeBlanc, 6 Lawrence Street, East Falmouth, MA – For permission to remove an existing chimney and rinse station and to construct and maintain a 27 square foot addition.

Mr. Newton: Jurisdiction: within flood zone AE12. This RDA is remove an existing chimney and rinse station and to construct a 27 SF addition. Addition will be located in flood zone only. No other resource areas are located within 100 feet of proposed addition. No mitigation is required. Staff recommends a negative 2 (under the State and bylaw). Resource area boundaries are not confirmed by this RDA.

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

Ms. Harlow-Hawkes: Second.

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

John and Mary Loureiro, 44 Uncatena North, West Falmouth, MA – For permission to install a new Title V sewage disposal system with the associated utilities and no increase in design flow.

Mr. Newton: Jurisdiction: within 100-ft resource area buffer to a coastal bank. This RDA is to upgrade to a new Title V sewage disposal system with no increase in design flow. The system is proposed as far away from resource area as possible. No vegetation is proposed to be removed. The applicant has concurrently filed a Request for a Certificate of Compliance, which is currently under review by Conservation Staff. 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.

Ms. Gladfelter: Second.

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

Daniel and Laura Nungesser, 178 Edgewater Drive East, East Falmouth, MA – For permission to conduct minor maintenance to an existing, licensed pier.

Mr. Newton: Jurisdiction: within 100-ft resource area buffer to inland bank and land under water bodies. This RDA is to repair the uplifted pipes to the existing dock within the same footprint approved as shown in the Chapter 91 License. The applicant filed for similar RDA in 2004 and received approval. All work is proposed to be done by hand. 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.

Ms. Harlow-Hawkes: Second.

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

Mary Ellen Pimental, 339 Carriage Shop Road, East Falmouth, MA – For permission to install a new Title V septic system with associated grading and landscaping.

Mr. Newton: The applicant is requesting a continuance until July 1, 2020.

Ms. Harlow-Hawkes: At the request of the applicant I move to continue the hearing until July 1, 2020.

Ms. Gladfelter: Second.

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

Michael Sirard, 59 Old Menauhant Road, East Falmouth, MA – For permission to construct an attached garage addition, to construct a 53 square foot deck and reset the steps, to remove a portion of walkway and to install a subsurface sewage disposal system.

Mr. Newton: Jurisdiction: within 100-ft to coastal bank, BVW/freshwater wetland, salt marsh and land under the ocean and within flood zone AE 12. This RDA is to remove a portion of an existing walkway and to construct a garage addition and a new deck. RDA is also for permission to upgrade the subsurface sewage disposal system with an increase in design flow. Proposed system is 5 bedrooms (house is assessed as a 4 bedroom). The proposed system is located partially within the flood zone but away from all other resource areas. 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.

Ms. Harlow-Hawkes: Second.

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

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

Joanne and Gary Perwak, 233 Bay Shore Drive, North Falmouth, MA – For permission to raze an

existing single family dwelling and to construct a new single family dwelling with associated decks, a Title V septic system, a gravel driveway, utility installation, and all associated clearing, grading, and landscaping.

Ms. Lincoln promoted Michael McGrath to a participant.

Michael McGrath (Holmes & McGrath) The plan is colored to highlight certain areas in the 20,000-sq.ft plot. There is riprap all along Wild Harbor. Resource areas include land under the ocean, land containing shellfish, coastal beach, armored coastal bank. All work will be in the AE zone. The house will be demolished and the new Title 5 septic system will be installed as far as possible from Wild Harbor. There is a buffer zone A that is 50-ft from the coastal bank. A portion of the house lies within 100-ft of the coastal bank. We have reduced the impervious surface by 7-ft and mitigation is not required. One tree is to be removed and a new one we will be planted in resource area A. Dry wells will be installed for runoff. The Title 5 system replaces a cesspool and is located more than 100-ft from the resource areas. This is a greater protection to the wetlands than what is there now.

Ms. Lincoln: The large shrubs are not being removed. If they are removed we might want them replaced.

Mr. Newton: No questions or comments.

Mr. McGrath: Are you talking about the shrubs next to 12.9 and 12.7?

Ms. Lincoln: Yes. If they are removed will they add replacements?

Mr. McGrath: Yes. I will measure the footprint, the size and diameter of the stems and come up with new ones to match those.

Ms. Gladfelter: What is the diameter of the tree coming down?

Mr. McGrath: I will find out.

Ms. Gladfelter: I think they should put in 3 or 4 trees for the one to be removed. (to Ms. Harlow-Hawkes) What size should the trees be?

Ms. Harlow-Hawkes: Smaller and more trees would be better. Cedars do better when they are smaller to start.

Mr. McGrath: The tree is right in front of the proposed deck.

Ms. Gladfelter: It has multiple trunks.

Mr. Mathews: Just do smaller ones.

Ms. Gladfelter: The number of trees should be equal to the trunks that are there. They could be added to the clumps that are out there already.

Mr. Walsh: No questions or comments.

Mr. O'Brien: No questions or comments.

Mr. Robbins: No questions or comments.

Ms. Harlow-Hawkes: No more questions or comments.

Mr. Bird: Why is the tree coming out?

Mr. McGrath: The tree will overhang the proposed deck.

Ms. Harris: No questions or comments.

Mr. Gurnee: No questions or comments.

Mr. Patton: No questions or comments.

Mr. Mathews: Anyone on the Chat function:

Ms. Lincoln: No.

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

Mr. Robbins: Second.

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

Margaret and Alvydas Mikulskis, Mikulskis Realty Trust – 2019, 9 Darylane, North Falmouth, MA  
– For permission to construct and maintain a concrete wall and steps, to reconfigure an existing

patio, to relocate the existing septic system, to remove existing stairs and stone riprap, to install fill and all associated demolition, excavation, grading, and landscaping.

Ms. Lincoln: Mr. McGrath is still with us.

Michael McGrath (Holmes & McGrath) You have a plan of existing conditions. Resource areas include: Rands Canal, AE elevation 15, land under the ocean, land containing shellfish, coastal beach, salt marsh, coastal bank, land subject to coastal storm flowage, two man-made coastal banks wrapping around the 50-ft resource area A and 50-ft resource area B that is 100-ft from the coastal bank. The house will be taken down and a new one will be constructed. The existing house was built in the 1980's. There is a stone riprap and a wall at the edge. The area was filled in to protect the house from flood waters. The riprap and stairs will be removed and clean fill will be brought in to restore the original land form. The house has not been subject to being hit by flooding. The septic system will be moved further away from the wetlands. 960-yds of fill will be brought in. There is a reduction in impervious surface and no mitigation is required. It meets your performance standards.

Ms. Lincoln: You are bringing in 960-cu.yds of fill. The top of the wall is elevation 15 ½ ft. What is the elevation of the deck?

Mr. McGrath: I know it is a substantial amount of fill.

Ms. Lincoln: You have to stabilize the fill so it does not go to the resource areas. How will you do that?

Mr. McGrath: We'll put an erosion control blanket on the downhill fill slope that will be maintained until the plantings take over.

Ms. Lincoln: You are altering the landscape from a long time ago. Shrub materials will be needed on the side slopes.

Mr. McGrath: A good grass layer will be placed and then shrubs will be planted in the grass.

Ms. Lincoln: I want to see the grass and shrubs on the plan before you do the work.

Mr. Newton: No questions or comments.

Mr. Mathews: There is a comment on Chat from the applicant that they plan to put boulders on the side slopes.

Mr. McGrath: There will be an erosion control blanket, grass planted and then the boulders.

Ms. Lincoln: I want to see the placement of the boulders on the plan. I don't want them to turn into walls.

Mr. Patton: I couldn't follow the fill information. You will fill up to 16 ½ ft? It will be graded out to meet the existing side wall grades?

Mr. McGrath: There is a walkout and the gap elevation is 8 to 9 ½ ft. We will take out the retaining walls and the stairs. So that the flood plain will not reach the house, the grade at the house will be about 16-ft.

Mr. Patton: I understand.

Ms. Lincoln: You will have success because the concrete wall is at the edge of the deck.

Mr. Patton: There will be 7-ft of fill to the 16-ft contour.

Mr. Gurnee: You should show the planting plan for the area.

Mr. McGrath: There will be erosion control blankets and maybe landscape blankets.

Mr. Gurnee: Hopefully the fill will not be sand?

Mr. McGrath: Once the area is planted it should have some resistance. There will be heavy vegetation between Rand's Canal and the house.

Ms. Harlow-Hawkes: A jute mat would stabilize it. They should not be putting in a line of boulders.

Mr. Walsh: No questions or comments.

Mr. Robbins: No questions or comments.

Ms. Gladfelter: It would take 15 to 20 ten-wheelers to bring in that much fill. Where is the access?

Mr. McGrath: The house faces north. On the westerly side there is lawn all the way back. There is access on the left side.

Ms. Gladfelter: Is the access on the plan? There is a row of arborvitae on that side. If the vegetation is destroyed will it be replaced?

Mr. McGrath: They can get by the arborvitae. I will identify the route of the trucks on the plan.

Ms. Gladfelter: There are nice trees on the slopes and one is labeled for protection. Please document where the trees are and how they make it through construction.

Mr. McGrath: On the northwest of the existing house there is a 28" caliper tree that is to be protected. There is also a 22" caliper tree to be protected. We will put in a snow fence and hay bales north of the preserved trees so the equipment doesn't harm them.

Ms. Gladfelter: We want to be sure that those trees make it.

Mr. McGrath: You can condition it.

Ms. Gladfelter: Yes. The soils shouldn't be pure sand. Make sure it's compacted so it doesn't slump down in the future.

Mr. McGrath: Sand can be compacted. The best mixture is sand with a small amount of fill. When water hits bare sand, it goes away quickly. There will be some layer of sub-soil and sand fill mix. This will increase the resistance from a storm event. The house faces north and is not looking at an open ocean.

Ms. Gladfelter: Make sure it's a project that lasts.

Mr. O'Brien: No questions or comments.

Ms. Harris: No questions or comments.

Mr. Bird: It's logical to specify that it be compacted so it doesn't slump. Then it should be covered with loam or seeded.

Mr. McGrath: Erosion control measures will be employed on the downhill slopes. The flat areas should be fine.

Mr. Mathews: Anyone on the Chat function?

Ms. Lincoln: No. Do you need time to revise your plan?

Mr. McGrath: Yes, I would like to continue the hearing until July 15, 2020.

Ms. Gladfelter: At the request of the applicant's representative I move to continue the hearing until July 15, 2020..

Mr. Bird: Second.

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

New Silver Beach Association, Inc., 0 Moses Road, Parcel/Lot Number 000, 93A-93E, 96, 97, 98, North Falmouth, MA – For permission to perform maintenance including minor grading, raking, screening, and cleaning of the existing coastal beach above mean high water.

Ms. Lincoln moved Mr. McGrath to an attendee and promoted Michael Borselli to a participant. Michael Borselli (Falmouth Engineering) The majority of the beach area belongs to the New Silver Beach Association - (left side of the channel to the docks and east of the jetty to a groin). Resource areas include: area of beach, land under the ocean, coastal beach, dune system. There is a series of privately owned beach on a strip of land. Letters were presented to the Select Board on May 18, 2020 for a license for that beach. The Select Board voted on allowing the licensing subject to Conservation Commission approval. I will present the document. We performed the same maintenance several years ago. The same activities will be employed. There is one other section to be done on another plan that is further to the east that also includes the activities. I reviewed the staff report and all of the documentation in it could be handled by findings and special conditions incorporated into the new Order of Conditions (OOC). There is one question about what I meant by the "removal of debris". When the raking and cleaning is done there will be litter and that's what I mean. We understand the importance of the rack line and there will be the same condition re the maintenance of 10% of the rack line. Construction access will be via the roads and there will be fencing to protect the dunes. As for the placement of the life guard chairs, I understand your

concerns.

Ms. Lincoln: The last time you asked for a maintenance plan the OOC was not followed. The plan needs to be revised to show that the life guard chairs are on Town land. That was not mentioned at the Select Board meeting. They need to be re-located on Association property. They cannot remain where they are without permission from the Select Board and must be removed before they start work. You can't use the type of machine for screening that takes the cobble out of the beach. You must respect the rack line and ConCom's regulations re the percentage of seaweed to remain on the beach. This provides food for shorebirds that gives them strength for their migration to the Caribbean. The Association is hand raking the beach without an OOC and no permission from the Town and 5 others. How will you cross the properties?

Mr. Borselli: We will stake the area. The 5 others did not respond on time so we won't do that section.

Ms. Lincoln: We will require a revised plan re the life guard chairs. It's upsetting that this is denying access to a Town beach. Can you have a plan by the end of the week and we can continue the hearing until July 1, 2020?

Mr. Borselli: We do have permission for the Heiler lot – it was just late.

Ms. Lincoln: Fine.

Mr. Borselli: I will come up with a chair location.

Ms. Lincoln: There will be standard conditions. All you're removing is trash, no beach material?

Mr. Borselli: Right. You can condition it.

Ms. Lincoln: We need to approve the person first before the work begins. Do you have an individual in mind? I'd like to know they know what they're doing.

Mr. Borselli: I have a contractor in mind.

Mr. Newton: Everything has been addressed.

Mr. Mathews: Are you clear on the process?

Ms. Lincoln: No, but Mr. Borselli will get me the information.

Mr. Borselli: The contractor I have in mind does the Town beaches.

Ms. Harris: Will you need an amendment to the NOI because lot 95 is not included?

Mr. Borselli: I can write a letter defining him as a participant.

Ms. Harris: Lot 95 has to be highlighted in the OOC.

Mr. Borselli: I will do that.

Mr. Robbins: No questions or comments.

Mr. Gurnee: No questions or comments.

Mr. O'Brien: No questions or comments.

Mr. Walsh: No questions or comments.

Mr. Patton: No questions or comments.

Mr. Bird: No questions or comments.

Ms. Gladfelter: How does the machine get from Overview Ave. to Silver Beach Ave.?

Mr. Borselli: Silver Beach Ave. has a paved access. There is no need to travel from Overview Ave.

Ms. Gladfelter: There is a stretch of houses that beaches are not being cleaned.

Mr. Borselli: We asked them but they were not responsive.

Ms. Gladfelter: None of the people in those houses gave permission?

Mr. Borselli: Correct. We don't need their permission.

Ms. Gladfelter: That part of the beach will not be cleaned?

Mr. Borselli: Right.

Ms. Gladfelter: If they come to us and ask, we want it done a certain way.

Mr. Mathews: Anyone on the Chat function?

Ms. Lincoln: No.

Ms. Gladfelter: At the request of the applicant's representative I move to continue the hearing until

July 1, 2020.

Mr. Bird: Second.

Mr. Mathews: Mathews, aye; Gladfelter, aye; Bird, aye; Maurie Harlow-Hawkes, aye; Walsh, aye; Robbins, aye; Gurnee, aye; Patton, aye; O'Brien, 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.

Ms. Lincoln moved Mr. Borselli to an attendee and promoted Wayne Tavares and Charles Nickerson to participants.

Wayne Tavares (Tavares Landscape) Mr. Tavares presented photos of the proposed project – a boat ramp, dock, rear deck and stairs. The licensed dock that has been moved by ice will be at a new height. The rear deck and stairs will be removed. The size of the dock is not doubled but will be widened (28.5”) and upgraded in the same shape. I owe you a revised plan for that. The ornamental plants will be removed and mitigation will be planted. A large oak and two leaning pine trees will be removed and replaced with three trees. Mitigation will be planted within the coastal bank area. Where the land slopes there is a lot of runoff and a grass berm will be constructed. Junipers are holding the bank. We would like to cut 1/3 to 40% off the top of them – just pruning. There is also viburnum, bayberry and inkberry. There is a 22” oak that will stay and the dead oak will be removed. The existing shed will be removed and a smaller shed will be located in the A zone 3-ft from the property line. An existing fence will be moved. The steps to the deck will be taken out and there will be no change in size. There is a side slope problem and a stone wall will be built. The whole project is basically an upgrade – the dock will be brought back to where it should be, move the wall up to the B zone, 3 arborvitae removed, 2 maples added, a new entrance and a walkway abandoned. The front area needs new plantings. It has ornamentals. There are hydrangeas around the deck. There is a cesspool. We do not have a DEP number or a letter from DMF re the dock. It is now too low for public access. There will be steps up to the dock and down on the other side. There is no velocity zone in Perch Pond. The float at the end of the dock will be changed to a latitudinal position. The ornamentals will be removed and replaced with natives. Amylanchers are suggested over Tupelos. The deck will have flo-thru decking.

Ms. Lincoln: There is no DEP number or DMF letter. The V zone issue is on your plan – VE 14. The whole property is in the A zone. There is flo-thru decking on the cross-section and proposed steps to the salt marsh. I don't see flo-thru on the plan. The float on your plan goes out straight and our plan has an L. We haven't seen this plan before. What is the date on the plan you just shared? We're looking at a different plan. The cross-section with the VE 14 needs to be changed. Why are you taking down the oak near the Juniper?

Mr. Tavares: It will be pushing over the wall we're proposing. It's way over-sized.

Ms. Lincoln: How will you replace it?

Mr. Tavares: 3 Amylanchers will be planted. The oak is 18-20 inches.

Ms. Lincoln: You're replacing it with 3 Serviceberries?

Mr. Tavares: Yes. We will be cutting back the Juniper to about 2-ft from 4-ft.

Ms. Lincoln: It's in a buffer to the coastal bank. I don't know how the Board will take that.

Mr. Tavares: According to horticultural rules this is what should be done. Cutting them back will help them to come back.

Ms. Lincoln: You will only do that once?

Mr. Tavares: Right.

Ms. Lincoln: You are removing vegetation on the coastal bank to put in mitigation?

Mr. Tavares: Yes, there are all ornamentals there now.

Ms. Lincoln: You don't remove vegetation and use the area for mitigation.

Mr. Tavares: That's ridiculous. We're taking out ornamentals in favor of natives. It won't hurt the bank.

Ms. Lincoln: This Board has never allowed the removal of invasives and allowed it to be replaced with mitigation.

Mr. Tavares: What is appropriate? Leave the ornamentals?

Ms. Lincoln: You're removing 40% of the Juniper and taking a large oak out.

Mr. Tavares: It is encroaching on structures that are needed – the wall coming up the ramp.

Ms. Lincoln: What scale are you using?

Mr. Tavares: 20 scale.

Ms. Lincoln: The center of the oak is 25-ft?

Mr. Tavares: Yes.

Mr. Newton: No questions or comments.

Ms. Harlow-Hawkes: The cesspool has to be included. Restoration is allowed when invasives are removed, not mitigation.

Mr. Tavares: A new septic system may be in the future but they are hoping to hook up to sewers that are reported to be coming to their area soon. The effluent of overflow is 15-ft downward.

Ms. Harlow-Hawkes: Upgrading the septic system is most important.

Mr. Tavares: They don't want to do that if the sewer is coming through. We can have a discussion about it but there's no guarantee.

Mr. Robbins: No questions or comments.

Mr. Bird: I second Maurie's thought to upgrade the septic system. You don't know when the sewers could come through. The system could fail. You should incorporate a new septic system in the NOI. You can replace the invasives on the bank with natives, but it's not considered mitigation.

Mr. Patton: No questions or comments.

Ms. Harris: No questions or comments.

Mr. Walsh: The Teaticket Path neighborhood is the next priority for the Town – the next stage of Town of Falmouth sewerage. That's what the Town is saying now.

Mr. Gurnee: The oak should be allowed to be removed, but planting two Tupelos is not good. I agree with Jen re the mitigation.

Mr. O'Brien: No questions or comments.

Ms. Gladfelter: The oak is 20". What is the caliper inch of the two pines?

Mr. Tavares: 8 and 6 inches.

Ms. Gladfelter: That's 34 caliper inches being removed. We say you have to replace them tree for tree or caliper inch per caliper inch. Think about which trees and where they will go. You need to go to the Select Board for a license from them and a discussion about Chapter 91. You need a letter from DMF. The dock will be 1 ½ times the original width.

Mr. Tavares: The reason I was at the Select Board meeting is because of an omission 20 years ago. This has Select Board approval. With DMF it's an either or situation. We have to raise the dock for public access and light penetration to the salt marsh. There is no salt marsh. There are steps up and down the other side. The dock is too close to the property line. Do I see ZBA or the Building Inspector re the stairs? It will be a longer dock and 4.2-ft wide. It will be the appropriate height. Ice damage has pulled out the end of the dock. I need feedback from DMF.

Ms. Gladfelter: And the access will be?

Mr. Tavares: It's on the plan. I will have a discussion with the Building Inspector anticipating that we will get approval. It has to follow the footprint of before. I do need feedback from DMF.

Ms. Gladfelter: I see the stairs going up one side and not down the other.

Mr. Tavares: There are steps down the other side. You step off to the right and go down.

Ms. Lincoln: You don't have to go back to the Select Board but you're widening the dock. Have you reached out to them?

Mr. Tavares: If we are following the same footprint I didn't think I had to but I can go back to them and will ask them.

Mr. Mathews: Any public comment?

Ms. Lincoln: No. Mr. Tavares will revise the plan.

Ms. Gladfelter: At the request of the applicant's representative I move to continue the hearing until July 22, 2020.

Ms. Harlow-Hawkes: Second.

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

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

Dana Brown, 17 White Pine Lane, East Falmouth, MA – For permission to raze an existing single family dwelling and to reconstruct a new single family dwelling and new Title V septic system.

Ms. Lincoln: The applicant has requested a continuance until July 15, 2020.

Ms. Gladfelter: At the request of the applicant I move to continue the hearing until July 15, 2020.

Mr. Bird: Second.

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

Anastasios Parafestas, Trustee, 160 Penzance Road, Woods Hole, Falmouth, MA- For permission to install a 12' x 20' pool, stone pool terrace, stone retaining walls, stone steps, pool utilities, lighting, fencing, drainage, and all associated clearing, excavation, grading, irrigations, landscaping, and mitigation plantings.

The hearing is continued until July 15, 2020.

Les Chernauskas, 69 Paola Drive, East Falmouth, MA- For permission to raze an existing single family dwelling and to construct a new single family dwelling; to upgrade to a Title V septic system; to install drywells, a retaining wall, a rinse station, a wall and steps, and an elevated a/c unit.

The hearing is continued until July 1, 2020.

Lucie Greer, 77 Bar Neck Road, Woods Hole, Falmouth, MA – For permission to reconstruct an existing deck, replace an existing post and rail fence, and to conduct invasive species management on a coastal dune.

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

Ms. Lincoln moved Mr. Tavarie to attendee and promoted Catrin Higgins and Michal McGrath to participants.

Caitrin Higgins (Wilkinson Ecological) I heard all your comments. (1) clarified the note on the rosa ragosa; (2) struck out # 7 re bayberry height; (3) the possibility of creating view corridors – the applicant wants to keep the plan as is and move forward.

Ms. Lincoln: No questions or comments.

Mr. Newton: No questions or comments.

There were no further questions or comments from the quorum.

Mr. Mathews: Any public comments?

Ms. Lincoln: No.

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

Mr. Bird: Second.

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

## **REQUESTS TO EXTEND THE EXISTING ORDER OF CONDITIONS**

Michael G. & Cynthia C. George, 108 Gansett Rd, Woods Hole, MA- (DEP# 25-4310)-Request three-year extension.

Ms. Lincoln: The applicant requests a three-year extension. Staff doesn't normally agree with a 3-year extension, but this is a property legacy. It's the old Wang Estate. Staff believes it is an appropriate request.

Mr. Mathews: Have they started the project?

Ms. Lincoln: I don't think so.

There were no questions or comments from the Board members.

Ms. Gladfelter: Move to grant a three-year extension.

Mr. Robbins: Second.

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

## **CONTINUED HEARINGS UNDER ENFORCEMENT ORDER**

Andreas & Joan Spalaris, 78 Squibnocket Drive, East Falmouth, MA- Violations of approved Order of Conditions / settlement agreement (DEP# 25-3466 & DEP# 25-4277)

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

Ms. Lincoln promoted Arlene Wilson to a participant. The last hearing was continued to advertise a second DEP number. There is a long history with the applicant. The applicant requested compliance and during the site visit a large stone retaining wall and a larger landing at the door were discovered. Because these were not part of the Order of Conditions, compliance could not be granted until the OOC was cleared. They were advised that the wall must be taken down and the disintegrated hay bale line must be removed. Has that been done yet?

Arlene Wilson (Engineer) No.

Ms. Lincoln: We had a robust discussion at the last hearing. I understand that there has been a death in the family and more time may be needed.

Ms. Harlow-Hawkes: The wall must go.

Ms. Lincoln: They did submit a request to amend the OOC today in the hopes of keeping the wall. This can go forward until July 15, 2020.

Ms. Wilson: Their intention was to remove the stone slab, finish up the plantings in the OOC, remove the hay bale line (but they may need to replace the hay bale for planting). Then Mr. Spalaris passed away very suddenly and, as it happens, the finances were tied up. The request for an extension of the OOC is pending and with the Governor's emergency order still in effect they could get three or four more months on that. The planting could be done in the fall.

Ms. Lincoln: We haven't opened the amendment request hearing. On the table right now is that the wall has to be removed. If eventually the amendment request is accepted and approved we can back track.

Ms. Wilson: What about the request for the extension of the Order?

Ms. Lincoln: That was denied at the last hearing. The Order is already extended for 45 days beyond the end of the Governor's emergency order. If the emergency order is cancelled tomorrow it won't end for 45 days.

Mr. Mathews: The mitigation has not been completed?

Ms. Wilson: They need to plant one more row of shrubs.

Mr. Mathews: So it is incomplete?

Ms. Wilson: Yes.

Ms. Lincoln: We're focusing on the wall. Ms. Lincoln posted a photo of the wall. It is not in

compliance and doesn't meet the OOC. It should be removed.

Mr. Bird: On the plan approved under the original OOC wasn't there some kind of platform for egress from the house?

Ms. Gladfelter: I believe it was a little landing.

Ms. Lincoln: It was a box on the plan.

Mr. Bird: Was it a deck?

Ms. Lincoln posted the plan.

Ms. Gladfelter: It was a small platform.

Mr. Bird: If they take the wall out what supports the egress? Is there a construction detail?

Ms. Lincoln: It shows a box on the plan.

Mr. Mathews: Please bring up the first photo. If we force them to remove the wall will the platform be supported?

Ms. Wilson: The original egress was a wooden platform one foot above grade.

Ms. Lincoln: Like a little deck.

Ms. Wilson: If the wall comes out it will have to be supported.

Mr. Bird: It should be a wooden deck supported by sonatubes. That can be part of the enforcement order.

Ms. Lincoln promoted Brian Wall to a participant.

Brian Wall (Attorney for the applicant) Some of the members may remember that when the applicants first came before the Commission they asked for a 12x12 deck adjacent to the house because there is not usable yard in the back of the house. But as part of the bargain the applicants had to stay in the footprint. A loose end that had not been thought of is that a second egress from the house was mandatory. The engineer took the deck away and drew a square. They need a small landing with sonatubes to hold it up.

Mr. Bird: I'm supportive of having the wall removed but want to incorporate a step supported by sonatubes with a railing so it clears up loose ends.

Ms. Gladfelter: I agree that the wall has to go. The slopes need to be stabilized with the appropriate vegetation. We should go ahead with the enforcement order.

Mr. O'Brien: No comment.

Ms. Gladfelter: The slopes have to be stabilized.

Mr. O'Brien: In the original OOC was there any comment about stabilizing the slope?

Mr. Lincoln: Yes.

Mr. O'Brien: If the wall has to come down that is the next course of action for us.

Mr. Gurnee: I'm annoyed at this. The Commission is so indignant about this wall. There is no discussion about the environment. It is well planted below the wall. We have seen this many times and I don't want to be unreasonable.

Ms. Lincoln: How are we being unreasonable?

Mr. Gurnee: If that had been my house I would have put in a wall like that. Then I would ask "What more planting can I do to ameliorate for the wall? Put in another 100-sq.ft of something?"

Ms. Harlow-Hawkes: There is no room for more planting. As for the environment, the wall and fill are not helping the environment. There is no drainage. The wall was not permitted for a reason.

Mr. Gurnee: Do we know it was not engineered?

Ms. Lincoln: Yes, I checked with the Building Department and there is no permit.

Mr. Mathews: And the Building Department would have required it to be engineered.

Mr. Walsh: I'm with Betsy.

Mr. Robbins: I'm with Maurie and Courtney.

Mr. Gurnee: How do we vote to take the wall out if they are planning to request an amendment?

Ms. Lincoln: We go ahead and vote for an enforcement order and give them a certain amount of days to do it. We have their amendment request in the office and if we have to address the amendment the Board can always go back and rescind the enforcement order. If the Board decides the wall can stay, we can go back.

Mr. Gurnee: I'm concerned about the timeline.

Ms. Gladfelter: Is the Building Department aware of the wall?

Ms. Lincoln: I believe so. (to Mr. Robbins) Would the wall require a railing at the top?

Mr. Robbins: Yes.

Mr. Bird: It requires a railing or a clearly defined setback. There is a ledge.

Mr. Robbins: I believe it has to be a railing now.

Mr. Mathews: Anyone on the Chat function?

Ms. Lincoln: Not now.

Ms. Gladfelter: I can move to issue an enforcement order that requires the wall to be removed, the slopes to be stabilized with the appropriate vegetation, a plan made for egress supported by sonatubes, the deteriorated hay bale line to be removed and the required mitigation to be planted. What about the time limit for this? It's not the best time to plant. 60 days would be August 26<sup>th</sup> for the plan and then complete the project by October 15<sup>th</sup>.

Mr. Bird: What will slow it down? It's just a drawing for the Building Department.

Mr. Robbins: The deck and the sonatubes. The Building Department is now at 30 days out.

Ms. Gladfelter: Will they need a structural engineer?

Mr. Robbins: Yes.

Mr. Bird: Not for a little platform.

Ms. Lincoln: Let's say a date certain. Submit the plan within 60 days. Give the Board time to review it and require the plants to be removed.

Ms. Gladfelter: So we are voting for a continuance?

Ms. Gladfelter: At the request of the applicant's representative I move to continue the hearing until August 26, 2020 with a plan submitted one week ahead (August 19, 2020).

Ms. Harlow-Hawkes: Second.

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

## **VOTE ORDER OF CONDITIONS**

Arthur and Pamela Chaves, 400 Edgewater Drive East, East Falmouth, MA

Quorum: Jamie, Betsy, Courtney, Maurie, Russ, Steve, Pat

Mr. Mathews: This is the removal of the pool and the deck addition.

Ms. Lincoln: They want to expand the deck. It is going closer to the resource area in the A zone of the salt marsh and in a Velocity zone. They are staying under the square footage and have revised the deck size.

Ms. Gladfelter: They are staying under 200-sq.ft.

Mr. Mathews: One portion of the deck is in the A zone.

Ms. Lincoln: I know it seems unfair but the staff's job is to keep consistent with our regulations. The Board can discuss this.

Mr. Robbins: If a hardship was involved they would have asked for a variance. I don't see one here.

Ms. Lincoln: There is no hardship. I can't see granting a variance.

Ms. Gladfelter: They didn't ask for one, but if they did it wouldn't qualify for one.

Ms. Lincoln: There has been no formal request.

Mr. Mathews: If we approve this as presented we are granting a variance.

Ms. Gladfelter: If the pool goes out they have to remove everything, not just a little around the side. They have to backfill. If they don't remove everything it doesn't do the environment any good. If they take everything out there could be a finding that the deck is not part of the house. You're allowed to have accessory structures. A finding re the impervious surface in the A zone being removed.

Ms. Lincoln: I disagree. How is the deck not part of the house? We have always held very firm

about encroaching in the A zone.

Ms. Gladfelter: They moved the deck closer and took out all the other impervious surface.

Ms. Lincoln: The deck is closer than the present primary structure. It can't move closer.

Ms. Gladfelter: It can if it's not part of the structure.

Ms. Lincoln: They can't have anything move closer than the present primary structure.

Ms. Gladfelter read FWR 10.18 (7,e,1) which appears to say that you can.

Ms. Harris: They are not modifying an existing structure.

Ms. Lincoln: You're skipping the first whole part of the regulation. What's the accessory structure?

Ms. Gladfelter: The pool.

Mr. Bird: What is the net gain? They will pull out the pool and patio and build a deck on the house. It is an improvement.

Ms. Harris: Your regulations don't allow for the balancing of these two things. If the project doesn't comply with the regulations it must qualify for a variance or the applicant must rebut the presumption of significance...for a variance. I don't see that happening here. The end result is a benefit, but...Ms. Harris read 10:38 (4, f) re a small addition to an existing structure in a Velocity zone.

Ms. Lincoln: Unless you have a clear plan to overcome presumption you go down a capricious path that the Board has been really good about not doing. They are not quite there yet. They are also putting in a turf lawn. The environment isn't greatly benefitted. They can remove the pool but they can't put in the deck. They can come back with the deck if they want to figure something out. Don't allow encroachment. Hold your ground. They didn't submit this as an accessory, just a deck. Let them figure it out.

Mr. Bird: They can remove the pool and keep the retaining wall?

Ms. Gladfelter: Yes.

Mr. Bird: Why not take everything out? What's the justification for keeping the retaining wall?

Ms. Lincoln: We can't make them take out the wall. It's been there since 1975.

Ms. Gladfelter: Move to adopt the Order of Conditions as discussed with the entire removal of the pool but without the addition of the deck.

Mr. Patton: Second.

Mr. Mathews: Mathews, aye; Gladfelter, aye; Bird, aye; Maurie Harlow-Hawkes, aye; Robbins, aye; Gurnee, aye; Patton, aye; Harris, aye. Unanimous, so moved.

College Light Opera Company, Inc., 54 Chapoquoit Road, West Falmouth, MA

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

Ms. Lincoln: This is the widening of the road, the gravel trench drain, additional vegetation, moving the vegetation 10-ft from the buildings, adding more vegetation for the installment of the utilities, removing the hay bales along the salt marsh and reviving the vegetation under the hay bales.

Ms. Harlow-Hawkes: What about the maintenance for the drain?

Ms. Lincoln: They must submit a maintenance plan for the drain.

Ms. Gladfelter: Move to adopt the Order of Conditions as discussed..

Mr. Bird: Second.

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

Mr. Bird: Move to adjourn.

Mr. Patton: Second.

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

The meeting adjourned at 10:30 p.m.

Respectfully submitted,

Susan Cronin, Recording Secretary