

Committee/Board name: **Conservation Commission**

Date of Meeting: July 28, 2021

Location and Time of meeting: Town Hall at 7:30 p.m.

Committee/Board members in attendance: Henry Hall, Tom Famulari, Mark Patek, Kristin Kent, Eden Reiner, Colleen Collins

#1: Request for Determination of Applicability, 66 Willow Road

Removal of invasives and debris within Bordering Vegetated Wetlands and Land Subject to Coastal Storm Flowage.

Motion: Issue a Negative Determination of Applicability with the following restrictions-

1. No changes to elevation permitted
2. No toxins/chemicals to be used for invasives treatment
3. No machines to be used after new plantings established (e.g. mowing)
4. No path to be built
5. Periodic updates to be provided to the Commission
6. Photos must be provided to the Commission to establish existing conditions/site elevation

Motion made by Hall and seconded by Patek

Motion passes unanimously.

#2: Continued Notice of Intent, 92 Wilson Road (047-0590)

Installation of rip rap toe protection along existing seawall in Coastal Beach.

Discussion: Elizabeth Wallace of Hayes Engineering presented plan to install rip rap and fill in sink hole in the yard. DEP# has been issued.

Motion: Issue an Order of Conditions with the following conditions-

1. No concrete washout on the beach
2. If beach access is required to facilitate the work, it must be coordinated with the Commission

Motion made by Reiner and seconded by Famulari

Motion passes unanimously.

#3: Continued Notice of Intent, 65 Bass Point Road (047-0589)

Construction of an addition in buffer zone and a deflector cap on the existing seawall in Coastal Bank.

Discussion: Elizabeth Wallace of Hayes Engineering presented the proposed plan. Requested a handrail on top to match adjacent seawall. Updated plans provided to the Commission.

Motion: Issue an Order of Conditions with the following conditions-

1. Erosion controls must be installed downgradient of addition work.
2. No concrete washout on the beach.

Motion made by Patek and seconded by Reiner

Motion passes unanimously.

#4: Notice of Intent, 65A Bass Point Road (047-0591)

Construction of deflector cap on the existing seawall in Coastal Bank.

Discussion: Jody Graul (homeowner) says wants to match to adjacent seawalls, wants to add wire mesh to face of wall, and wants permission to not have to come back to the Commission for routine maintenance.

Kent says Graul cannot have “carte blanche” for future maintenance. In three years owner would need to return to the Commission for a maintenance extension.

Motion: Issue an Order of Conditions with the following Conditions-

1. Owner must return after expiration of the Order to allow for future maintenance.
2. Must notify the Commission of any maintenance within the three year permit period.

Motion made by Famulari and seconded Collins

Motion passes unanimously.

#5: Notice of Intent, 32 Maolis Road (047-2592)

Construction of a retaining wall and fencing in Coastal Bank and buffer zone

Discussion: The proposed work has already begun and this is an after the fact filing.

Kent says footing, as shown on plan, is beyond the Coastal Bank. Concerned with erosion and toe of wall should be pulled back.

Patek: tree roots already cut on all side and all these trees will die because roots required for life of a tree. Runoff will be increased by loss of trees.

Kent: owner must pull back on both sides from Coastal Bank. She will walk the site and meet with the owner.

Motion: Issue an Order of Conditions with the following conditions-

1. Meet with Commission at site to evaluate toe of wall
2. Must pull back from Coastal Bank
3. Must keep erosion controls
4. Must replant to stabilize top of bank.

Motion made by Reiner and seconded by Famulari

Motion unanimously approved.

#6: Request for Determination of Applicability, 12 Spouting Horn Road

Construction of an addition within buffer zone to Coastal Bank

Discussion:

Kent: Why are there catch basins shown on the cliff on the plan? Are there outfalls?

The plan looks wrong as to location of Coastal Bank, about 20' from the proposed addition which is planned to be on a concrete slab.

Patek: Do the owners understand that in the future this cliff will probably erode? Do they know that most people are moving their construction away from shores instead of moving them closer?

Collins: The proposed construction is too close to the Top of Bank when considering future erosion. She suggests owners use online tool to calculate rate of erosion due to climate in the future. She requests that the location of the Coastal Bank be clarified.

Kent: has any exploratory work been done?

Answer: No

Kent: Requested that presenter bring plans up to the desk for inspection and the Commission determined that the plan is 20' from Coastal Bank. Presenter had no idea where Coastal Bank is located.

Motion: Motion to continue the hearing to allow for a site visit.

Motion made by Reiner and seconded by Collins.

Motion passes unanimously.

#7: Enforcement Order, 4 White Way

Issued for unpermitted construction of a driveway and landscaping within Land Subject to Coastal Storm Flowage.

Discussion:

Kent stated that a driveway was installed at the residence within Land Subject to Coastal Storm Flowage without a permit from any Town departments.

Motion: Issue an Enforcement Order for the property.

Motion made by Patek and seconded by Hall.

Motion passes unanimously.

#8: Notice of Intent, 4 White Way

After the fact application for installation of a driveway and landscaping within Land Subject to Coastal Storm Flowage.

Discussion:

David Seetram (homeowner) replaced driveway to stop flooding without a permit. Had asked Building Department which provided erroneous information.

Collins: explained that hard surfaces make flooding worse.

Kent: stated that photos have been sent to the Commission. DEP requires a plot plan for this type of work, therefore the Commission cannot yet issue a permit.

Seetram: Have decided not to build a garage at this time. States that he is the lowest house in the area so all water flows onto property from neighbors. He did get a Dig Safe permit.

Famulari: please add driveway to existing plot plan.

Kent: The Commission does not allow new paved driveways in flood zones – gravel and pavers preferable. Not permitted to push water into neighboring properties.

Patek: observed that owner did not check the box on the building permit application indicating that the land is in a flood zone and said that he has recommended that the Town set up a way to automatically check that box by linking the address to the Coastal Flood Zone map.

Motion: Continue the application to the next meeting to allow the homeowner to obtain a plot plan showing the work.

Motion made by Collins and seconded by Hall.

Motion passes unanimously.

#9: Resident Complaint, 2 White Way

Unpermitted hardscape and landscape work within Land Subject to Coastal Storm Flowage.

Bob Gilbert (homeowner): Tarney Landscaping “redistributed” earth with some fill. Stated that they had removed rotten railroad ties and added pavers and removed a “sick” tree and old rhododendrons. House was raised to avoid flooding at some time in the past.

Kent will visit the site to assess the status. No action at this time.

#10: Request for Certificate of Compliance, 430 Nahant Road (047-0528)

Request to close out permit for seawater intake emergency repairs.

Discussion:

Bob Lambert (NU): permit was for seawater intake repairs in 2016.

Patek: Why are old pipes still there?

Kent: The Commission missed the fact that the pipes were still in the water as part of another permit closeout. I asked that NU wait on removal of pipes given the proposed work that was forthcoming.

Member of public Monteith: Is permit needed for cleaning the pipes?

Lambert: No.

Motion: Issue a Certificate of Compliance for the project.

Motion made by Reiner and seconded by Collins.

Motion unanimously approved.

#11: Request for Certificate of Compliance, 430 Nahant Road (047-0529)

Request to close out permit for shoreline protection project.

Bob Lambert (NU): Request to close out the Canoe Beach restoration project.

Kent: stated that she was disappointed in the narrative submitted as it provides a revisionist history of events and leaves out details. Will need to address protection of utilities serving the site.

Lambert: plans to protect utilities next to Canoe Beach as part of CSI project.

Collins: What are NU's "other means" to protect future of the site. This failed project leaves 1.7 acres of parking lot exposed to destruction.

NU: plans to "encase utilities in concrete."

Kent: "You plan to dig up this fragile site and then encase the utilities in concrete?" She questioned the future safety of the public and students with this abandonment of the project.

NU: "happy to meet with you about this"

Patek: erosion from NU foot traffic across Canoe Beach a major concern.

Collins: shows photographs of “temporary” buildings and asks about that uncompleted project.

Member of Public Christian Bauta: erosion on and washing up of stones and sand from Canoe Beach onto public parking lot is a threat to the parking lot and to the public.

Attorney David Lurie: context of CSI project includes importance of threats of flooding and erosion.

Collins: unfinished projects are a problem, including the “temporary” building.

Reiner: is NU responsible for future effects of erosion/flooding?

Member of public Bill Mahoney: Canoe Beach is part of Coastal Dune. This entrance is very small and fragile in comparison to planned work/traffic/construction. The situation is dangerous. Canoe Beach is connected to all the adjacent coastal areas.

Collins: asks NU to please define “other means” of protecting the site in their statement.

Member of public Diane Monteith: there needs to be research about further action with respect to the Town’s rights. Town should take action on this safety issue.

Kent: what is Town’s responsibility? The Order has expired at this point.

Member of public Jeff Musman: NU did not comply.

Famulari: will NU come back with information on their plans for future work?

NU: No.

Hall: foot traffic is heavy across dune. “Ask people at NU to change the access route to the beach.” Nothing is being done to protect Canoe Beach’s dune.

NU: “you see traffic everywhere”

Hall: expressed disappointment. Storm of 2018 destroyed their project. Why not just change your foot traffic pattern/route?

Kent: let’s work out something regarding the foot traffic.

NU: Order has expired. No work can be done on an expired Order.

Kent: let's work out issues on the certificate because it does not affect NU's other projects.

Collins: revisit the planting. Even Short Beach was successfully replanted by hand with dune grass seedlings by a bunch of volunteer residents.

Kent: we can add a condition of dune grass planting.

Collins: "we don't agree that there was compliance for shoreline protection."

Kent: we can decline to close the certificate and add conditions to a subsequent permit.

Collins: "No shoreline protection therefore no certificate."

NU: does not want Canoe Beach conditions attached to the CSI.

Nahant Lawyer: application is inadequate so Con Com should deny request as written and ask for a rewritten text. A record is needed.

Motion: Deny Request for Certificate of Compliance.

Motion made by Collins and seconded by Famulari.

Motion passed unanimously.

12: Continued Notice of Intent, 430 Nahant Road (047-0580)

Construction of a new building on the existing bunker and two new parking areas and associated appurtenances.

Presenter from NU: 3 items regarding CSI project have been sent to Con Com. Item #26 Stormwater Garden: could be a safety hazard so they would enclose it whenever it was wet. Tree Count: 36 trees to be removed, 200 new trees and lots of new shrubs. More construction info coming later.

Kent: final plan is 200 trees within buffer zone?

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NU: the plan is underway and the do not know what percentage is in buffer zone.

Kent: our by-law requires a site plan.

Dan Berman of Planning Board: PB has the responsibility to review. Does the Dover Amendment apply? The interface between the PB and Con Com is complex.

NU: rep. state “we are not trying to use the Dover Amendment”

Jeff Blake, Nahant Attorney: a site plan must be filed. NU review application arrived yesterday. NU knows it must provide a site plan.

Patek: where are the docs which were delivered this week?

NU: said sent by email.

Kent: said she got them July 16 and it is her fault the Con Com does not have them.

Patek: how can we work without copies?

NU: said peer reviewer saw these docs.

Kent: there are outstanding issues, e.g. size of parking lots at 5k square feet. We have not seen justification of location of parking lots.

NU: disagrees with the regulations – does not feel the 5,000 sf threshold is cumulative.

Kent: rebuts NU rep stating that they are planning 25k and more.

NU: states “we have recalculated”

Kent: current NU calculation is 14 times what NU rep just said.

NU: explains some things including permanent changes would be less than 5k square feet.

Collins: NU wants 4.1 acres plus 1.7 acres of new impervious surfaces which equal parking lots.

NU: says by-law applies to 100 foot buffer zone to floodplain.

Kent: says Con Com interprets this as a combination.

NU: disagrees and says all must stick to by-law wording.

Patek: “please show us the math behind this calculation”. The equation for defining the parking proportion is needed. “Where are the numbers? Who did the calculation?” No reply from NU.

Collins: “you do not speak to size and scope”, gives two local examples of ratios. “The carrying capacity of the land is critical. You are talking about 2 acres of impervious surfaces. This is an excessive number of parking spaces.”

NU: “we are not inventing the number of parking spaces”.

Kent: “you have no incentive to reduce them”.

NU: we want to avoid zoning. Building Dept should make determination of percentage of parking area.

Kent: “Why not give us the numbers? Same with the pumphouse. Please give us the information”.

NU: “we showed the plan of the pumping station and CSI performance standards and the peer reviewer approved. Half of the parking area has been made pervious”.

Patek: “why can’t you give us a map?”

NU: “we gave it to the Planning Board”.

Patek: “Why do you refuse to give information to the Con Com? Have you been told not to give it to the Con Com?”

NU: “The architect did the calculations”.

Dan Berman of the Planning Board: “The Planning Board says to give the information to the Con Com.”

David Lurie of NPT: All permits must be approved sufficient to deny NOI. NU needs zoning approvals. More than 35’ high proposal is a violation of the zoning. A host of permits is needed and should have been submitted. The late submissions are outrageous. NU is wrong about by-law intent to refine the regulations. NU must prove their presumption. 70k total impacts. Adverse impact calls for a vote to deny the application. Con Com knows all evidence of flooding at Canoe Beach and ice house – there are photos and videos of the flooded parking area. Con Com should issue a denial. The Secretary of Environmental Affairs told NU that there is high risk with respect to potential flooding of Canoe Beach and that NU should do something about it. NU got a CZM grant but never submitted it to CSI. Our by-law says NU must consider cumulative impacts. NU failed to address this and therefore Con Com should issue a denial. Lots of evidence has been submitted and will stand up in court.

Collins: Department of Defense says there is undetonated material in our region – has NU looked for this? You could cause harm to the public if you exploded an old ordinance. NU must publish greenhouse gas emissions measurements. This is MEPA policy.

NU: “gas is not related”. All work in floodplain is “temporary”. All regulations re: stormwater flow have been fulfilled. The project will not cause problems. The rep said he does not know anything about artillery and never heard about it.

Collins: describes photos she has received in the mail from the Department of Defense about unexploded ordinance in our area.

Kent: expresses concerns about access next to Canoe Beach to the NU project.

NU: the access will be used for construction.

Kent: expresses concerns about stability of that route into the area.

NU: says large vehicles would take the other route into the site.

Bill Mahoney member of public: Erosion is occurring along the shore of Canoe Beach right now. The North Portal is 20 yards or less to the sea. Erosion from trucks and thermal well digging will affect the ocean. “NU is not telling the truth.” Please deny the application.

Christian Bauta member of the public: “Why is NU arguing against protecting the environment?” Heat is absorbed by paving.

Kent: gas, light pollution are not under the aegis of Con Com.

Famulari: “if we deny, what happens next?”

Diane Monteith member of public: “Please deny due to adverse effects on environment.”

Collins: “Are conditions imposed by Con Com a stronger move than denying application? No.” She feels that saying “yes” with conditions gives permission to NU. “There are always problems of enforcement in Nahant. “Says they should deny and that this is not a good project.”

Famulari: “If we deny, NU will appeal to DEP.”

Kent: “Do you want to vote, or add conditions?”

NU: Con Com must determine whether the project meets requirements and should approve the project.

Bill Mahoney member of public: NU's project will denude the bunker hillside. After rains all the dirt will go into the sea and harm the fishing. Please deny. The runoff of dirt into the sea is in Con Com's jurisdiction.

Kent: WPA: we can say yes with conditions and we have 21 days to create the conditions. By-law: we can say no.

Motion: Close the public hearing

Motion made by Reiner and seconded by Patek

Motion passes unanimously

Jeff Blake: there are three options: 1. Approve 2. Approve with conditions 3. Deny. If denied under WPA there can be an appeal to the DEP. If denied under our by-law it can be appealed to Superior Court. "You don't need to vote tonight because you have 21 days to vote."

Kent: let's approve under the MA WPA with conditions

Patek: let's take time to make clear the set of conditions and say no under the by-law. Let's take time to give our reasons and be ready for court if needed.

Motion: Approve the CSI project under MA Wetlands Protection Act with conditions

Motion made by Hall and seconded by Famulari

Motion passes 5-1-0, Collins opposed.

Motion: Approve the CSI project under the Nahant Wetlands Protection Bylaw with conditions

Motion made by Reiner and seconded by Hal

Motion defeated unanimously.

Kent: we need to set date to formulate conditions with 21 days. **In person meeting Wednesday, August 11 at 7 p.m.**

#13: Continued Notice of Intent, 430 Nahant Road (047-0582)

Replacement of the existing seawater intake lines, pump house and discharge system.

NU presenter: four sets of information have been sent to peer review, including about trees. Everything has been addressed. All sorts of provisions to protect environment. Old pipes to be removed. "Meets all standards". Design of pump station meets OSHA standards.

Patek: "OSHA standards and recommendations wording is not clear."

NU: they shrank build by three inches and six inches – the building is the right size. Designer of the building says all sorts of stuff included, including pipes and also maybe room for a roto rooter for the future. There are concerns due to danger due to electricity and seawater. Four-foot offset required by OSHA. More space is needed.

Patek: there are two intake pipes, are there two outflow pipes?

NU: explains that two are needed so they can be cycled on and off during cleaning, etc. They just want to design it one time.

Monteith member of public: why aren't the pumps elevated?

NU pump engineer: the elevation is correct to permit cleaning and they need to alternate pumps. There is a very detailed document.

Bill Mahoney member of public: concerned about lobsters and effect of mud from digging during construction.

NU: says current design is correct and old design was incorrect.

Collins: concerned about effect of mud on eelgrass.

NU: "no eelgrass nearby". A temporary "gravity cell" will be built with sandbags around the construction to catch mud during drilling.

NU pump engineer: "if you want a lobster hatchery you have to give them the space to build it."

Kent: "You are unwilling to do anything to agree with us. You are rigid."

Famulari: "will all maintenance be done in the basement?"

NU: yes

Vi Patek member of public: will seawater washing over seawall during storms wash into the pumping station?

Kent: “will you chlorinate the water?”

NU: will use ultraviolet light and other stuff to kill invasives. If chloride is used it is neutralized within a closed system.

David Lurie, NPT: “there are many reasons to deny this.” NU has not obtained approvals, has not submitted texts, has no zoning permit for the building in a natural resource area, it is in a floodplain – all of this should have been applied for long ago – including applications to the Planning Board. Land is subject to coastal storm flowage and the pumphouse is in the middle and they have requested a variance without any basis.”

NU pump engineer: “lobster larvae float on top of water during intake. NU wants six hundred gallons per minute- minimal entrainment.

Josh Antrim, Nahant Selectman: how many square feet are planned for the pump house? How much space does the pump take?

NU: the area includes the pump and clearance. “1800 square feet = the building and occupies the floodplain. Basement = 600 square feet.”

Marilyn Mahoney member of public: states that this meeting needs to be brought before the public. A university’s goal is to educate the public. NU is not giving facts. The Town voted to give power to the Selectmen to negotiate with NU but NU has shown no respect. Please vote no.”

Motion to close the public meeting.

Motion made by Famulari and seconded by Reiner

Motion passes unanimously

Motion to approve the pump house project under the MA WPA.

Motion made by Hall, seconded by Reiner

Motion passes 4-2-0, with Collins and Hall opposed.

Motion to approve the pump house project under the Nahant Wetlands Protection Bylaw.

Motion made by Reiner, seconded by Collins

Motion defeated unanimously.

Approval conditions will be formulated at in person meeting on Wednesday, August 11th at 7:00 PM.

Motion to adjourn

Motion made by Hall and seconded by Patek

Motion passes unanimously

Time of adjournment: 11:50 p.m.

Name of person completing minutes: Vi Patek, 172 Willow Road, Nahant

Date minutes were approved: November 17, 2021