

**Conservation Commission
Minutes of January 8, 2015
Public Hearings
Mashpee Town Hall
Ockway Meeting Room**

Commissioners: John Fitzsimmons, Dale McKay, Ralph Shaw, Mark Gurnee, John Rogers, Louis DiMeo (Associate Member).

Staff Present: Drew McManus (Conservation Agent) and Judy Daigneault (Recording Secretary).

CALL MEETING TO ORDER: 5:55 p.m.

PRE/POST-HEARING AGENDA:

Minutes: December 11, 2014.

Motion: Mr. Shaw moved to accept the minutes of December 11, 2014, seconded by Mr. Rogers. Vote unanimous 5-0.

261 Hooppole Road: Wetlands Violation.

The Agent informed the Commissioners that, due to the length of the Agenda, this discussion will be continued to January 22.

AmeriCorps Update

The Agent gave an update on the work done by AmeriCorps volunteers on the work completed at Santuit Pond Reserve. They constructed four benches two of which have been installed at Santuit Pond. They also picked up debris from the wetlands and DPW has disposed of it. They also did trail work and created a loop trail. The Agent said the volunteers did a great job.

Administrative Review: 63 Uncle Henrys Road, DEP File # 43-2784. Proposed Septic System Upgrade

Matt Costa, Cape & Islands Engineering, requested approval to upgrade the septic to a Title V compliant sewage disposal system. He explained the property is in a low lying area entirely within the flood zone and the only resource area within 100 feet of the site is Land Subject to Coastal Storm Flow. He said the only change to the open Order of Conditions is they discovered the leach field needs to be upgraded. The work will be done in a previously disturbed area. He said the plan has been submitted to the Board of Health and they will hold approval until the applicant goes through all the proper channels.

The Agent said the area is Land Subject to Coastal Storm Flow and it does not abut a coastal water body. He recommended an approval of the Administrative Request to include a septic upgrade which is covered under DEP #43-2784.

No Comments from the Public.

Motion: Mr. Shaw moved to approve the Administrative Request, seconded by Mr. Rogers. Vote unanimous 5-0.

HEARINGS:

6:00 Popponeset Beach Association, 0 Uncle Percy's Road. Proposed aquatic management of Dean's Pond. *Applicant requests additional continuance to 1/22/2015. NOI*

Motion: Mr. Shaw moved to continue the hearing to January 22, 2015 at 6:00 p.m. at the request of the applicant, seconded by Mr. Gurnee. Vote unanimous 5-0

6:03 Gregory Bush, 55 Santuit Lane. Amendment to Order of Conditions 43-2711 to allow for demolition of existing structure and construction of new dwelling within same footprint AOOC

Resource Area: Buffer Zone to Inland Bank and Land Under Water bodies and Waterways.

Gregory Bush, owner, explained he appeared before the Commissioners several years ago previously under an NOI to tear down the basement on the structure and keep the wooden structure intact. Building Codes have changed and it has been recommended to him to seek a permit to take down the entire house. The rebuild will be done in the same footprint.

The Agent noted this project lies within the buffer zone to resource areas, Land Under Waterbodies and Waterways and inland bank. No part of this project will be occurring within those resource areas. He clarified that this Amended Order request does not involve any septic upgrade. Any septic upgrade will require a separate plan approved by the Board of Health. The Agent noted there is erosion control on the site and needs to be refortified on the water side either with a siltation sock or hay bails to ensure no fill or soil runs off into the wetland resource areas.

No Comments from the public.

Motion: Mr. Shaw moved to approve the Amended Order of Conditions pending Board of Health approval, seconded by Mr. Rogers. Vote unanimous 5-0.

6:06 Constance R. Connors, Trustee, 114 Summersea Road. Proposed removal of hazardous and diseased trees. RDA

Resource Area: Buffer Zone to Top of Coastal Bank.

Victor Corda, representing homeowner, explained they are looking to take down some diseased trees that are leaning over the house in the back of the house and also some trees in the front of the house.

The Agent said he met with the applicant and two trees were deemed hazardous and leaning towards the house. The third tree he recommended to cut into a snag to add a wildlife feature. He recommended a negative determination. There was a discussion on the discrepancy of the number of trees to be taken down. There are scattered trees in

the front of the home along with some shrubs proposed to be removed. The Agent clarified the number of trees to be removed: 3 on the coastal bank side of the property (just outside the top of coastal bank) and six trees on the road side for a total of 9 trees. The trees proposed to be removed on the road side of the house are in the outer buffer to coastal bank and within a previously landscaped area. No adverse impact to the coastal bank or buffer zone thereof.

Motion: Mr. Shaw moved a negative determination, seconded by Mr. Rogers. Vote unanimous 5-0.

6:09 Leland Kornfeld, 101 Popponeset Island Road. Proposed habitat restoration. NOI

Resource Area: LSCSF, Buffer Zone to Salt Marsh.

Philip Cheney, representing the applicant, explained the owner removed trees and shrubs without authorization. He said he consulted with the Agent on what could be done to restore the area and referred to the plan submitted. Mr. Cheney said they would also like to replace the gravel under the deck with pavers and additionally upgrade the lawn area.

The Agent noted the resource areas, LSCSF, Buffer Zone to Salt Marsh. He said this came about as a result of a violation. He showed the area on photos. The Agent pointed out the violation took place outside of the 50 foot setback to wetland area and quoted regulation 12 which deals with mitigation plans. He deemed the planting plan to be a satisfactory plan. The Agent also referred to the lawn standards under regulation 31 which deals with nitrogen loading and requested the narrative be corrected to include the detail standards. He recommended a continuance or have it approved with the caveat the applicant submit a revised narrative.

No Comments from the Public.

Motion: Mr. Gurney moved to Close and Issue with the caveat the applicant submit a revised narrative to include regulation 31, lawn standards, seconded by Mr. Shaw. Vote unanimous 5-0.

6:12 Robert M. Valletta, 112 Captains Row. Proposed tree removal and replace invasive species with native plantings. Continued from 12/11/2014: DEP Review Required. Open Order of Conditions 43-2441. Applicant requests additional continuance to 1/22/2015.

Motion: Ralph Shaw moved to continue the hearing at the request of the applicant January 22, 2014 at 6:06 p.m. seconded by Mr. Rogers. Vote Unanimous 5-0.

6:15 Donald B. and Phyllis M. Brick, 18 Spoundrift Circle. Proposed pruning of trees overhanging dwelling and establishment of vista corridor. Continued from 12/11/2014. DEP Review Required. NOI

Resource Area: LSCSF, Coastal Bank, Buffer Zone to Salt Marsh, Land Under Ocean.

Chad Hathaway, represented the applicant. He stated the DEP # was mailed to him yesterday. He is proposing a 46 ½ foot vista cut. There is 185 feet of water frontage with plans for 25% vista pruning. He is also looking to remove a dead oak tree and undergrowth to prune down to 5 feet. There are also some limbs hanging over the house that he would like to trim.

The Agent said he was out at the property in order to come up with some allowable view corridors on the site, taking into consideration the existing vista corridors. There is still allowance for more vista pruning based on the linear frontage in accordance with the buffer strip regulations. He said vista pruning plans require corridor lines showing an actual vista corridor; therefore the plan submitted is not acceptable. The Agent agreed he would do another site visit and felt a revised plan is necessary to show the vista corridor.

Motion: Mr. Shaw moved to continue the hearing to January 22 at 6:12 p.m., seconded by Mr. Gurnee. Vote 5-0 unanimous.

6:18 Edward D. and Lillian K. Yun, Trustees, 11 Ocean Bluff Drive. Proposed construction of swimming pool and required safety fence. Renovation of existing elevated boardwalk, and installation of mitigation plantings. Continued from 12/11/2014: location of pool, deck, work limit flagging required. NOI

Resource Area: Buffer Zone to Coastal Bank.

Dan Wells, Goodard Consulting, along with Mike Coutu from Sudbury Design Group were representing the applicant. Mr. Wells described the existing condition of the property which contains inland and coastal wetland buffers. The proposed work is within the buffer zone to coastal bank and coastal dune. He noted on the plan the coastal dune, the coastal bank with a 100 foot buffer zone. Mr. Wells stated the applicants propose to construct a pool and wooden deck/terrace in the existing backyard patio and landscape area. Plans also call for replacement of the boards on the boardwalk and installation of a fence under the pool regulations within the coastal bank. The boardwalk repair area is to only replace the existing boards. No vegetation will be impacted by the boardwalk replacement and a small amount of vegetation may be impacted by the fence installation. The terrace would be pervious with crushed stone placed underneath. The project is subject to performance standards 310CMR 10.30 and the bylaw Regulation 16. The construction of the fence is the only impact within the coastal bank and would have no impact on the stability of the bank. Mr. Wells requested a waiver from the performance standards for work within the natural vegetated buffer. Mitigation proposal is to replant beach grass in the coastal dune area and mitigating the remaining areas outside of the work area.

Mr. Coutu noted there is some existing vegetation that was planted at the top of the bank and the idea would be to transplant some of these on the bank. At the date of submission he met with the building inspector and the building inspector doesn't see any problems with the project from a zoning standpoint.

The Agent agreed with the assessments regarding the performance standards for the resource areas and that it meets the performance standards as only minimal alteration is proposed along with substantial mitigation. He stated that a waiver of the standards are looked at from one of the criteria being compelling need and that is not demonstrated.

He felt the impact was minor and the degree of mitigation will result as an enhancement. The Agent recommended to submit a revised plan with a reduced footprint of the decking because it doesn't need to extend to the top of the coastal bank and must not replace/interfere with mitigation that was put as a result of the construction of the single family home. Mr. McKay asked why the fence needed to be in the coastal bank. Mr. Coutu explained the reason is to be sensitive to the view of the applicants and the neighbors. There was a discussion on what mitigation was required when the single family house was built.

The Agent recommended the hearing be continued in order to do more research regarding the mitigation from when the house was built and to determine if the mitigation was altered over the years. The Agent noted once they have established the initial mitigation it should be re-established and if altered, the design for a pool and patio cannot encroach into the original mitigation area.

No comments from the public.

Motion: Mr. Shaw moved to continue the hearing at the request of the applicant to February 12, 2015 at 6:00 p.m., seconded by Mr. Gurnee. Vote unanimous 5-0.

6:21 The Osprey Nominee Trust, 71 Monomoscoy Road. Proposal of the following reconstruct/maintain pier, ramp and float, remove existing elevated deck, stairs, wood and concrete debris from coastal beach, beach nourishment, extended existing concrete bulkhead along shoreline, remove/replace existing bulkhead along driveway, construct two-car garage, make improvements to existing gravel driveway, install stone patio and fire pit, perform associated grading and landscaping, wetland restoration, native plantings, and invasive species management. Continued from 12/11/2014 revised plans. NOI

Resource Areas: LSCSF, Coastal Bank, Land Under Ocean, Salt Marsh, Bordering Vegetated Wetland, Coastal Beach.

Matt Costa, Cape and Islands Engineering, represented the applicant. Matt referred to multi-page plans given to the Commissioners: first sheet, existing conditions with proposed conditions, second sheet – mitigation plantings, and third sheet – details of piers, bulkheads, etc.

Mr. Costa reviewed sheet one. Property consists of two islands connected by two causeways. The property is located in a velocity zone and in a Natural Heritage area and is adjacent to BVW, Salt Marsh and Land Under Ocean. He reviewed the plans. Plans call for regrading of a portion of the driveway with a gravel base, as well as installation of a gravel turnaround area. The turnaround is necessary because it is difficult to turn around on the property (causeways are single lane width). This was situated in an area where no trees need to be taken down. They are also proposing to install two z piled vinyl coated bulkheads with wooden caps and ties tying them together. The walls will touch the mean high water mark so the applicant will be pursuing Chapter 91 licenses. The existing driveway will be regraded. The proposed garage has been relocated further away from the BVW. It will be located in a predisturbed buffer zone area. They will be closer to the top of the coastal bank which is not a sediment source and completely disturbed with a makeshift lawn and trees down to the edge of the BVW. They are also going to be upgrading the septic tank so it will withstand vehicular traffic.

There will be no modification to the bulkhead. They are proposing to do some beach nourishment into the beach area. Mr. Costa noted only 3 cubic yards of material will be used in that area. They will not be in the salt marsh areas. The primary reason is to cover up the exposed footing of the concrete retaining wall.

They are also proposing to remove the existing pier. It will be rebuilt with an elevated walkway that will start with stairs from the upland side of the existing bulkhead and then span out to the existing gangway. The float will be relocated to deeper water to protect the shellfish habitat. Mr. Costa noted the concrete retaining wall which will be extended by 8 foot to help stabilize the bank. They are going to clean out the debris and remove a cedar tree and compensate for that with plantings of cedar trees in an area of coastal bank on the property.

Mr. Costa spoke about mitigation. They are going to do a phragmites eradication along the driveway on a 3 year basis. He pointed out an area of trash and debris that is suppressing natural vegetation and plant with native grasses to help protect the bank. He spoke about the waiver requirement and referred to his narrative. He said they want to leave the site in better condition than when they started. The proposal overcompensates based on the requirements under the regulations, which is around 3 times more square footage of plantings that would normally be required.

The Agent said in his opinion the activities proposed are ones that will enhance existing conditions through mitigation and improve existing conditions in terms of the access roads. He said the turnaround area is mostly devoid of vegetation. He said the patio is not going to affect the armored coastal bank. The dock is in need of repair. The Harbormaster has submitted his comments that he requires the new float to be encapsulated and the DEP number and street address must be displayed in perpetuity. The Agent noted the debris and the large cedar to be removed. He stated the compensated measures outweigh any sort of impact as a result of the garage. Natural Heritage did submit a letter indicating a no-take status.

No Comments from the Public.

Motion: Mr. Shaw moved to Close and Issue, seconded by Mr. McKay. Vote unanimous. 5-0

6:24 Bayswater Seaside II LLC, 42 Coastline Drive. Proposed construction of single family dwelling, swimming pool and landscaping. *Continued from 9/11/2014: revised plans.* NOI

Resource Area: Buffer Zone to Coastal Bank.

Matt Creighton, BSC Group, was representing the applicant. He explained at the last hearing the Commission requested a revised landscape plan. He said the plan now shows a variety of woody plants and grasses.

The Agent stated he has worked closely with Mr. Creighton to go over the mitigation plan. The majority is still comprised of beach grass with a mix of other coastal sand plants. He felt the scenario of recapitulating pitch pines and scrub oaks and shrubs would be problematic in trying to keep the buffer strip maintained and monitored. This is a type of plan that will establish itself more quickly and will be more conducive to this

particular area given its close proximity to the coast. This type of environment has a very high wildlife habitat value which is rapidly disappearing on Cape Cod and coastal areas in general. The Agent noted he liked the planting plan. He mentioned the vegetated areas on the bank at some time had been removed mostly within the 50 to 100 foot setback. The area is all open barren sand. Under the Bylaw, there is a minimum requirement of the establishment of a minimum 50 ft. wide buffer strip. The Bylaw specifically states that any encroachment to within 35 feet of the resource area (on an undeveloped lot) should be deemed to have unacceptable impact upon the coastal resource area, so a 50 foot buffer strip is adequate for this area. The Agent cited regulatory language under regulation 29 Natural Vegetated Buffer Strip, section b and 172-7A of the wetland bylaw as well as 172-A 3c of the waiver requirements. He stated this planting plan meets all of these requirements. It also addresses any clearing that took place in this buffer zone over time that was not caught by the Commission and it adequately addresses those activities would have resulted in a similar sort of compensatory plan. The Agent recommended to close and issue the application for 42 Coastline Drive be approved.

No Comments from the Public.

Motion: Mr. Shaw moved to Close and Issue, seconded by Mr. Gurnee. Vote unanimous 5-0.

6:27 Bayswater Seaside II LLC, 50 Coastline Drive. Proposed construction of single family dwelling, swimming pool and landscaping. *Continued from 9/11/2014: revised plans. NOI*

Matt Creighton, BSC Group, representing the applicant. He referred to the revised planting plan as requested by the Commission and stated the same comments apply as in the previous hearing. The Agent stated his comments were also identical and recommended a Close and Issue.

No Comments from the public.

Motion: Mr. Shaw moved to Close and Issue, seconded by Mr. Rogers. Vote unanimous. 5-0

6:30 Bayswater Seaside II LLC, 60 Coastline Drive. Proposed construction of single family dwelling, swimming pool and landscaping. *Continued from 9/11/2014: revised plans. NOI*

Matt Creighton, BSC Group, representing the applicant. He referred to the revised planting plan as requested by the Commission and stated the same comments apply as in the previous hearing. The Agent stated his comments were also identical and recommended a Close and Issue.

No Comments from the public.

Motion: Mr. Shaw moved to Close and Issue, seconded by Mr. Rogers. Vote unanimous. 5-0.

6:33 Claudia M. Rucky, 8 Summersea Road. Proposed tree removal and pruning RDA

Resource Area: LSCSF, buffer to salt marsh.

Nicholas Rucky, homeowner, explained he is proposing to cut down and remove 3 diseased pine trees and referred to his plan. He said he would also like to prune other trees on the property that are overhanging the house and the deck.

The Agent referred to the plan and noted all trees are diseased and leaning toward the house. The trees have bark beetle damage. He referred to the other trees that are in need of maintenance trimming which are overhanging the house. All of the trees are out of the resource area and he recommended a negative determination.

No comments from the public.

Motion: Mr. Shaw moved a negative determination, seconded by Mr. Rogers. Vote unanimous 5-0

6:36 Gooseberry Island Trust and SN Trust, 0 Gooseberry Island and 0 Punkhorn Point Road. Proposed construction of a bridge and driveway to provide vehicle access to Gooseberry Island from property located at end of Punkhorn Point Road. Continued from 12/11/14. NOI

Resource Area; Land Subject to Coastal Storm Flow (Velocity and A-Zones), Land Under Ocean, Salt Marsh, Bordering Vegetated Wetlands, Coastal Bank, Tidal Flats, Buffer Zone to Rare Species Habitat (Priority and Estimated NHESP). Land Containing Shellfish.

The Agent commented that everyone in attendance who wishes to make commentary on this particular project must be recognized clearly by the Chairman before they provide verbal comment. He asked for anyone who wished to comment to go up to the microphone, identify themselves for the record and make the comment. He said he would appreciate everyone keeping their decorum professional.

Jack Vaccaro said the coastal geologist has been delayed in Bourne and asked that the discussion be tabled until he arrives. The Agent recommended the discussion be tabled as requested.

6:39 Valentin P. Gapontsev, 15 Ocean Bluff Drive. Proposed construction of elevated boardwalk and stairs and mitigation plantings. Continued from 12/11/2014: field staking required. Open Order of Conditions 43-2311. Applicants requests additional continuance. NOI

Motion: Mr. Shaw moved to continue the hearing to January 22, 2014 at 6:09 p.m. at the request of the applicant. Seconded by Mr. McKay. Vote unanimous 5-0

6:42 David J. Paparella, et al Trustees, 67 Popponesset Island Road. Proposed kitchen addition. RDA.

Resource Area: Buffer zone to Armored Coastal Bank, Land Under Ocean.

Jack Landers, J.E. Landers-Cauley, P.E., was representing the applicants. He stated they were proposing the removal of a small portion of an existing concrete patio and an existing wooden deck. He said both areas are within the immediate footprint of a proposed 14'X16' kitchen addition located on the southeast side of the house and he referred to the plan. He noted an oak tree will have to be removed.

The Agent said this is entirely within the buffer zone of an armored coastal bank. It is within one of the cove areas of Popponesset Island with existing turf going on top of the bank. It does not trigger mitigation but does include removal of an oak tree and meets all of the performance standards. The Agent recommended a negative determination. The Agent noted the Board of Health comments that septic inspection will be required prior to building department sign off however indicated that no application is necessary.

No Comments from the Public

Motion: Mr. Shaw moved a negative determination, seconded by Mr. Rogers. Vote unanimous 5-0.

6:45 Matthew and Paraskevi Anthony, 46 Summersea Road. Proposed septic system upgrade. RDA

Resource Area: Buffer zone to coastal bank.

Michael Hugh was representing the applicants and explained the proposal is to locate a new septic tank adjacent to the old per recommendation of the Board of Health. The tank will connect with D-Box and leaching field.

The Agent noted it is a septic upgrade with emergency repairs per the Board of Health who has the application on file.

No comments from the Public.

Motion: Mr. Shaw moved a negative determination, seconded by Mr. Rogers. Vote unanimous 5-0.

6:36 Gooseberry Island Trust and SN Trust, 0 Gooseberry Island and 0 Punkhorn Point Road. Proposed construction of a bridge and driveway to provide vehicle access to Gooseberry Island from property located at end of Punkhorn Point Road. Continued from 12/11/14. NOI

Resource Area; Land Subject to Coastal Storm Flow (Velocity and A-Zones), Land Under Ocean, Salt Marsh, Bordering Vegetated Wetlands, Coastal Bank, Tidal Flats, Buffer Zone to Rare Species Habitat (Priority and Estimated NHESP). Land Containing Shellfish.

Rebecca Saiguero, Tilden and McCoy, was present, along with Chuckie Green, Assistant Director Natural Resources for the Mashpee Wampanoag Tribe. She distributed a binder of material regarding this project to the Commissioners.

Attorney Brian Wall was representing the applicant who is proposing a bridge from Punkhorn Point Road to Gooseberry Island. He stated when they filed this Notice of

Intent they took the position that the structure was water dependent. They maintain the structure is water dependent. They have instructed their consultants to do a re-analysis of the project under the "no adverse impact" standard and have submitted materials to the Commissioners dated January 7, 2015. Attorney Wall reviewed the material with the Commissioners. He stated in order to remove any question as to the status of the bridge, the applicant proposes to confer an easement for the public to traverse on-foot across its property on the mainland to access the bridge; to cross the bridge to the line of mean high water on the island side; and to access the inter tidal zone on the island side via a ladder for purposes of fishing, fowling and navigating. This will cause the bridge to be a pedestrian facility that promotes use and enjoyment of the water. Attorney Wall stated this easement makes the bridge water dependent.

The Agent noted this material was submitted yesterday by the applicants in response to a meeting he had with the applicant and their consultant and legal counsel and Matt Creighton from the BSC Group. Attorney Wall stated he agrees with many of Mr. Creighton's conclusions and disagrees slightly on only a few. He requested after hearing from Mr. Creighton, he would like to have a brief opportunity to address Mr. Creighton's proposal.

There was a discussion on water dependent vs. non water dependent.

Matt Creighton, BSC Group, Consultant for the Commission, addressed his peer review of the proposed access driveway and bridge, Gooseberry Island. He noted he was asked to review:

1. Determination of water dependency status of proposed bridge.
2. Assessment of project impacts to all applicable performance standards under both Chapter 172 and 310 CMR 10.00
3. Compliance of proposed project to Wetlands Restriction Order MGL c. 130 s. 10.
4. Evaluation of any impacts to Land Containing Shellfish/Aquaculture.
5. Summary.

Mr. Creighton reviewed his Peer Review dated December 31, 2014

He noted the Commission will need to determine the water dependency. In order for the project to be considered water dependent as defined in the wetlands protection act means: the use and facilities which require direct access to, or location in, marine, tidal or inland waters and which cannot be located away from said waters, including, but not limited to: marinas, public recreation uses, navigational and commercial fishing and boating facilities, water-based recreations uses, navigation or requiring large volumes of cooling or process water which cannot reasonably be located or operated at upland site, crossings over or under water bodies or waterways (but limited to railroad and public roadway bridges, tunnels, culverts, as well as railroad tracks and public roadways connecting which are generally perpendicular to the water body or waterway) and any others uses and facilities as may further be defined as water dependent in 310 CMR 9.00. He reiterated it states but limited to railway and public road bridges so it has to be

a public road or public railway to be considered water dependent because it is being traversed over and is not being used to access water or water related activity.

Mr. Creighton discussed the resource areas and performance standards as outlined in his report. (see attached) He noted it is up to the Commission to determine the water dependency.

Rick York, Shellfish Constable, addressed the project. He read from a prepared statement which stated the Gooseberry Island project on the plan March 11, 2014 would adversely affect the productivity from the displacement of sediment by 18 pilings, 14 inches in diameter in the creek and the proposed salt marsh restoration on the south side of the island. These areas are significant shellfish habitat for soft shell clams and quahogs; therefore, changes in productivity are not allowed. In the affected areas within the Mashpee Wampanoag Tribe aquaculture site, the loss of shellfish productivity could be higher because the purpose of aquaculture is to increase productivity. He also commented the other restorations would not be a problem. It is just the one on the south side of the island that goes in to quahog habitat. The pilings are displacing the habitat and in this case, the productivity could be very high because it is a shellfish aquaculture site. That area could support 1,000 oysters a year, which is significant.

Mr/ Creighton continued to present his peer review. He concluded by stating it is up to the applicant to show the Commissioners that they are meeting the performance standards. He summarized the project does not meet the definition of water dependent use nor does it meet all applicable performance standards under the wetlands protection act and the town of Mashpee wetlands regulations. He said additional information is needed to demonstrate the limited loss of salt marsh from beneath the bridge, bridge abutment impacts within v-zone and to show the naturally vegetated buffer strip impacts. In addition, the plans should be revised to show the correct HATL, MHW, MLW, and salt marsh/BVW impacts. He also stated the access from Punkhorn Point Road requires approval by the Commission as this is Town owned land. An access agreement/easement should be drafted and approved by the Town. This project will require additional approvals with local, state, and federal agencies.

Rebecca Saiguero, legal consultant on behalf of the Mashpee Wampanoag Tribe, referred to the binder which included all of the submittals they have made in opposition to the project. She wanted to make it clear that they do have legal rights to the area. She noted the shellfish grant has been under existence for many years and is under renewal until 2027. She reviewed photos of the bridge that is being proposed going through the shellfish area. Rebecca said they learned about the third report that was submitted, which report they do not have in their possession. She requested they have the opportunity to submit an additional report in response. She referred to the meeting Tuesday afternoon with the applicant, town counsel, Mr. McManus and BSC Group. The Tribe was invited and then uninvited. They were advised the meeting wasn't going to have substantive discussion, but would be merely procedural. She said what the Commissioners have before them is findings to give them ample information to deny the application. This application has been going on for 10 months. There are various materials submitted by the applicant that they would like to look closely at. They are hoping to have Bob Sherman, the former conservation agent speak. Rebecca commented the applicant is trying to have it both ways. Anyway you look at, this project should be denied. Is it water dependent or not water dependent? The Chair commented he was really shocked at the beginning of the hearing that they were trying

to make it water dependent by making changes to the design to allow for pedestrian access. Rebecca thanked him for expressing that. She noted the access point is under litigation by the abutters and by the town attorney. She stated the town attorney did recommend that it was not water dependent. The Agent stated for the record the Commission has not taken a position on this yet. She requested a copy of the third report. The Agent commented the third report was essentially the blending of the two reports previously submitted. It was simply for the readability for the Conservation Commission. There was no change in the content, it was format with the same information. Rebecca cited 310 CMR 105 which refers to an incomplete application.

Robert Sherman, former conservation agent, said his main focus is under chapter 172. In his opinion, what has been submitted falls far short as far as satisfying chapter 172. He said this is corroborated by Ms. Ball's report from Horsley Witten and the January 6 letter from Mr. Green with some significant information regarding wildlife habitat. The BSC peer report also corroborates that many regulations of 172 are not met. He mentioned there are triggers within the requirements that trigger wildlife evaluations which have not been addressed. Of particular importance is land subject to coastal storm flowage. Several things require buffer strips which are not provided for in the plan. There should be a plan showing a delineated area of natural vegetation and an analysis which has not been done. There are significant issues and, in his opinion, it would be significantly difficult to satisfy all of those problems even with submittal of more information. He disagreed with the BSC Group that submittal of more information would fix everything.

Bob Daler, Senior Vice President of Tetra Tech, agreed with BSC's determination that the project is not water dependent, that the project does not meet the performance standards and the plans are incomplete. The reason that the water dependency is such an important task is that the blue space between the island and the main land belongs to the public. The public has every right to pass on that water: walk on the bottom, swim in it and that is why it is held in public trust. If the public lands on the shore and walks in the intertidal zone, they may pass on the intertidal zone. The proposed bridge interferes with the public rights. He read from CMR 310 953, Activation of Commonwealth Tidal Lands for the Public Use which is the requirement for non-water dependent use projects. He repeated it is not water dependent and they can't get a license for it so there is no purpose continuing this hearing for something they cannot get. He said he would hope the Commissioners deny this project which is the only way to fix this problem. There was a question about docks. Mr. Daler said docks by their very nature are water dependent and therefore they are not subject to this water dependency test. Docks and wharfs provide access to the public which is a public benefit. This bridge has no public benefit therefore, it does not qualify for a chapter 91 license. The Agent stated the issue is whether a structure is truly going to inhibit public access to the shore lands for fishing, fowling and navigating. Mr. Daler said Punkhorn Road is private and the island is private and to have some major public way between these two private pieces is almost unfathomable. There is no public benefit from this bridge.

Amy Ball, Horsley and Witten, reiterated they agree with Mr. Baler and with the peer report that it elevates the level performance standards to one of no adverse effects. Mr. Daler and the consultant and others have all agreed that this does not meet the performance standards under the wetlands protection act. They believe the project will result in a great impact to the resource areas and there will be adverse impacts to the shellfish. She said the Commission has been given an application for a bridge and a

driveway to an empty island and the Commission has been denied the opportunity to review the full impact of this project. The project will need some additional permitting such as Chapter 91 license, a water quality certification and MEPA approval. The full project should be presented.

Chuckie Green referred to his submission. He referred to the plans and said there is one thing that has not been talked about. There is approximately a 9 foot slope and there is no mitigation for runoff. The application is incomplete.

Steve Peters, Mashpee resident and member of the Wampanoag Tribe, stated in order to make the bridge public it needs to promote the enjoyment and use of the water. He didn't see how this bridge provides any use or enjoyment of the water. He said there is a big distinction between the bridge and a dock where a dock provides access to the use and enjoyment of the water. He said as a town resident he would not have any benefit to this bridge.

Jack Vaccaro said they agree they would like to close the hearing out as soon as possible. He wanted to focus on the issues where they continue to disagree with the peer review consultant. He said they need to consider impacts that are more than negligible. He referred to Mr. Creighton's statements to specific resource standards where he feels they cannot meet the performance standards on the salt marsh, land subject to coastal storm flowage and to some extent land under ocean. He started with land under the ocean. Mr. Vaccaro said Mr. Creighton stated they needed to show that there would not be any impacts relating to plowing and salting of the driveway. The bridge is proposed as a steel graded structure so snow will not accumulate on this bridge. They would not be permitted to plow the bridge. Mr. Vaccaro then addressed the area of salt marsh. He acknowledged there will be impacts and stated supported structures are allowed in salt marshes. He said in the salt marsh they have a total of 88 linear feet of bridge and 990 square feet underneath the bridge, which is a relatively small area. This will be a graded bridge structure that is going to allow the sunlight through. They are anticipating the salt marsh will do just fine and are willing to monitor that. Mr. Vaccaro commented on Mr. Creighton's concern with sand coming off the tires onto the salt marsh. He said he does not consider that a significant impact. Salt marsh is very good at absorbing material within its system. There are other minor impacts that are associated to changes to water circulation, how the bridge piles in the channel might somehow affect the water circulation that might result in scour, how the presence of the bridge could change the circulation which will be addressed by the engineer Stan Humphrey. Mr. Vaccaro spoke about Shellfish Constable York's comments referring to the potential conflict with the restoration area at the southern tip at Gooseberry Island. The area has been greatly affected over the recent years. There is a fair amount of degradation that has occurred there and also on the island, which is why they targeted that area. He said they are certainly willing to work with Mr. York because if Mr. York feels the restoration on the southern tip has extended to far seaward they can provide salt marsh restoration elsewhere on the site.

Stan Humphreys, Consulting Engineer for the applicants, referred to two documents submitted. The performance standard addressing patterns in tidal flow and obstruction and movement of sediment coincide with the interest of the wetlands protection act. He said the project does comply with the wetland restriction program and that agrees with the BSC review. He addressed the proportion of the water piles. He tried to bring in a substantial study from the Mass Estuary project and wanted to place this project in the

context within the Popponesset Bay System. This is no more than another dock going across a water body. They are looking at very fine sand, silt and muck and not looking at heavy wave action. He said any sand on tires will drop off on the gravel before they get to the bridge.

Jack Vaccaro wanted to address Mr. Green's comments. He said they looked at the drainage on the island side and proposed a grass swale which he noted on a plan.

The Chair thanked everyone for all of the information they provided.

The Agent stated this application has gone about in a piece meal approach and it is important for the Commission to be mindful of procedural issues when it comes to the filing of a notice of intent in this application and future applications. He also said the other approach is to allow for one side or the other to submit materials to further their assertions throughout the process which takes up a lot of time for everyone associated with this process. He noted there are two choices: to continue the hearing or render a decision on whether the project meets the performance standards (approve or deny). The Agent said based on the peer review, he didn't believe it meets all of the performance standards. If the Commission wishes to deny it without prejudice, it would mean the applicant can come back with another notice of intent that addresses the performance standards. He reiterated this type of project takes up so much time. The Agent suggested if the Commission continues the matter they make a statement of a deadline of submission and if they feel that they have received all of the information they need to make it known tonight. He commented this application has placed an unnecessary burden on the department which is something that needs to be addressed. Attorney Wall stated a third option is to close and read everything and not make a decision because if the Commissioners close the hearing they have 21 days to make a decision.

Following a discussion,

Motion: Mr. McKay moved to Close and deliberate for another discussion on January 22, 2015 with no further submissions from anyone because the Commissioners have all of the information they need. Seconded by Mr. Gurnee. Vote unanimous 5-0.

Motion: Mr. Shaw moved to adjourn the meeting, seconded by Mr. Rogers. Vote unanimous. Meeting adjourned 10:35 p.m.

Respectfully submitted,

Judith Daigneault, Recording Secretary