



## HULL CONSERVATION COMMISSION

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**APPROVED – March 8, 2016**

**Members Present:** Sheila Connor, Chair, Sean Bannen, Paul Epstein, Elizabeth Fish, Christopher Olivieri, Paul Paquin, Lou Sorgi

**Staff Present:** Anne Herbst, Conservation Administrator  
Sarah Clarren, Clerk

**Minutes:** Upon a **motion** by P. Epstein **2nd** by S. Bannen and a **vote** of 7-0;  
It was **voted** to: Approve the Minutes of February 23, 2016 as amended

**7:30** Call to order

**7:35 Burr Rd., Map 51/Lot 113 (SE35-1245) Continuation** of a Public Hearing on the **Notice of Intent** filed by **Jeffrey Pinkus** for work described as **construct single family home**.

**Representatives:** Glen Kelly and Jeff Pinkus (purchasers) David Ray (surveyor); Stan Humphries (coastal geologist)

**Abutters:** Michael and Tracy Collins (19 Burr Rd.); Jim O'Connell (Collins' coastal geologist); Joseph Coppola (Collins' attorney); Kathleen Wolf (7 Highland Ave); Karyn Donahue (6 G St)

**Documents:** "Pictures (10)" – n.d.

"section of plan showing coastal bank" – D. Ray – n.d.

"Hull Municipal Lighting Plant Letter" – HMLP Representative – 2/1/2016

"51-113 Land on Burr Road Capacity" – Jim Dow – 8/24/2015

"Property of Joseph Tupin, opposite 19-21 Burr Road, Hull, MA" – Gerald Monaco – 3/7/2016

"Judgment of Plaintiff(s), Collins, Michael v. Kelly, Glenn" Trial Court of MA – 2/23/2016

"Proposed Foundation" (letter) – Michael Schilling – 3/3/2016

"Comments on Proposed House..." – Jim O'Connell – 12/8/2015

"Supplemental Comments on Proposed House..." – Jim O'Connell – 12/21/2015

"Site Assessment..." – Robert Gray – 12/8/2015 (revised 12/21/2015)

"Proposed House" – HML Associates – 12/8/2015

"Letter from M. Collins" – Mike Collins – 12/8/2015

"DEP application (SE-1245)..." – Michael Collins – 1/15/2016

"Burr Rd., Hull" (email thread) – Anne Herbst and Michel Stroman – 1/21/2016

"Proposed Conditions Plan" – David Ray – 11/25/2015

"Supplemental Information" – Stan Humphries – 11/24/2015

"Supplemental Information" – Stan Humphries – 1/20/2016

The Commission asked D. Ray to briefly summarize his delineation of the coastal bank. D. Ray stated that he had gone to the site and had visually examined where the coastal bank was and then verified it using CADD software. Additionally, he flagged the top of the coastal bank to show the Commission.

G. Kelly then stated that at the last hearing, the Commission asked him to show where and how the utilities will be connected to the proposed home. In order to provide the Commission with the information, he called Dig Safe. He then introduced pictures of the site. He went on to introduce letters from the sewer, electrical, and water plants stating that he would be able to hook up to the utilities. He said he had letters from 2 different building inspectors stating that it is a buildable lot as well as three letters from three different highway superintendents stating that Burr Rd. is used as a road. He also said he has two letters from two different Fire Chiefs stating that Burr Rd. is a road. He then went on to state that he has two letters from two different Police Chiefs stating that Burr Road is a public access road. A. Herbst noted that she had consulted with Town Counsel and MA DEP regarding property ownership issues, as M. Collins had requested. It was confirmed that

the Commission's role is not to determine property ownership or to adjudicate property disputes. She stated that if an applicant presents a colorable claim of ownership (a legally plausible claim), it is sufficient for the Commission to accept a Notice of Intent. She continued, stating that Town Counsel examined the Plan of Record and said that as the plan showing ownership of the property and showing Burr Rd as a road was created by a registered land surveyor, that is enough to establish a colorable claim for the Commission. A. Herbst then said that Town Counsel has said that the Commission can review the plan and if there continues to be a property dispute, that dispute would have to be resolved in a different venue. M. Collins of 19 Burr Road asked the Commission if accepting the Notice of Intent meets the Wetlands Regulations. A. Herbst said yes and restated that according to Town Counsel and DEP, if an applicant presents a colorable claim of ownership, it is proper for the Commission to review the application. She restated that the Commission will not determine nor settle any property disputes. J. Coppola, attorney to M. Collins, asked A. Herbst if she had obtained Town Counsel's advice in writing. A. Herbst said that she had not, as she had spoken with Town Counsel earlier that evening.

M. Collins then introduced a court judgment against G. Kelly. G. Kelly responded by saying that he has a court judgment saying that G. Kelly had the right to go on M. Collins' property to obtain information that the Commission had asked for.

G. Kelly said that at the last hearing, the Commission asked for more information on the foundation of the proposed house. He then introduced a letter from McKinnon Associates, which he read. The Commission expressed concern that installation of pilings could destabilize the ledge. The Commission also expressed concern about impacts to the bank from wind and water, particularly that a home could exacerbate erosive effects. G. Kelly said that each piling will be drilled into the rock. The Commission then asked if drilling 29 holes into the rock would destabilize the area. G. Kelly said that it wouldn't; many houses in the south shore have been built on the same rock. He also said that due to its proposed elevation, water will not hit the house. The Commission then stated that they need proof; they need a registered professional to certify that the area will not be destabilized from the work. The Commission then referenced a letter from HML Associates (geotechnical and civil engineers) (M. Collins' representative) which raised questions regarding the stability of the ledge. The Commission then stated that is why they had suggested, at the last hearing, that G. Kelly have a geotechnical engineer examine and approve the plans. G. Kelly said that the questions raised by HML Associates were ultimately questions from M. Collins and it is not his job to satisfy M. Collins. The Commission said that as a registered professional he raised an issue of concern to the Commission, it is in the applicant's best interest to address the issues raised.

G. Kelly asked the Commission if they had any questions for his builder, surveyor, and coastal geologist. J. Barry, the builder, said that drilling holes and pins on the ledge will not be a problem. The Commission said that they would like to hear from a certified engineer that where the pilings are proposed is where they should go. They also want to know that the pilings will not destabilize the coastal bank and how each one will be installed. They said they also want to know how the utilities will be tied into the home. G. Kelly said that is a building department issue. The Commission responded by stating that anything that is on the ground or could destabilize the bank is the Commission's issue; they also said that if the requested information is provided, it should be provided in writing.

S. Humphries, the coastal geologist hired by G. Kelly, said that the proposed project is located on a coastal bank in an area subject to coastal storm flowage and that he agrees with D. Ray's delineation of the top of coastal bank. S. Humphries disagrees with the contention that the bank is a sediment source. He continued to state that there is minor erosion from wind and rain at the top, but most of the bank is ledge and does not erode. He said that much of the unconsolidated material located at the base of the rock (in the crevasses), likely comes from the ocean as overwash. S. Humphries then went on to say that according to the regulations, if a coastal bank is a sediment source, it will go to a coastal beach, a coastal dune, or a barrier beach. The existing bank does not fall under this definition and should not have to follow those performance standards. Instead, he believes the function of this bank is a vertical buffer and should have to follow the performance standards as such. He then said that engineers and contractors can adequately handle building on a vertical buffer. S. Humphries then said that because the bank is not a sediment source, if later desired, a retaining wall can be built because "...house or no house, Burr Road is in jeopardy...". The Commission asked S. Humphries if he could think of any houses that were built in a similar location: sitting on piers, on a northeast position, on

the Atlantic Ocean. S. Humphries said he could not identify one by address, but would think about it. He then said due to the uniqueness of the site, the Commission is justified to ask a structural engineer examine the plans.

G. Kelly asked the Commission if he could be provided with a list of questions that he is supposed to answer. The Commission said that throughout the meeting, they had been clear with what they want G. Kelly to provide. To provide more clarity for G. Kelly, the Commission restated many of the issues/questions they are having with the project, including: 1) G. Kelly's engineer must address issues raised by the other engineer, 2) will construction destabilize any part of the coastal bank?, 3) where can pilings go and where they cannot go? 4) how will pilings be put in? and 5) provide text stating where and how the utilities would be installed. The Commission suggested that all 29 pilings could be numbered and a list should be provided describing each and potentially grouping them together based on how they would be installed. The Commission reminded G. Kelly that any description/s must be in writing and from a certified professional. J. Barry asked the Commission if they have a protocol or a list of conservation related questions they ask each applicant. The Commission responded by saying that they ask questions pertaining to the Wetlands Protection Act.

J. O'Connor, M. Collins' coastal geologist said he reviewed everything that was found in the record for this project and had provided the Commission with two reports. He stated that when an application comes before the Commission, resource areas must be identified. In this case, the resource areas are: 1) land area subject to coastal storm flowage, 2) coastal bank, and 3) a coastal beach. J. O'Connor said that he disagrees with D. Ray's delineation of the coastal bank because when J. O'Connor visited the site, he used the DEP policy 92-1 which includes a standardized way to delineate the top of coastal bank. Based on these calculations, he determined the top of coastal bank to be landward to the top of coastal bank line that was delineated by D. Ray. D. Ray later interjected stating that his delineation is accurate; he confirmed it using CADD software where J. O'Connor simply used calculations on site. D. Ray then introduced a sheet showing his delineation of the top of coastal bank. A. Herbst then said that the Commission revisited the site after having D. Ray flag the location of the top of coastal bank. She then stated that the Commission has never spent as much time as this in determining the delineation of a coastal bank.

J. O'Connor continued by stating that this section of coastal bank is a highly fractured, convoluted, unstable coastal bank. He said that it is clear that the bank is eroding and one can see parts breaking apart and falling into the fissures below. J. O'Connor then read the definition of a coastal beach and said that there is no other way to define this area. The Commission asked J. O'Connor to confirm that he is claiming the sediment in the fissures to be a coastal beach. J. O'Connor said yes and that the area on the front part of the bedrock is rocky intertidal shores. The Commission then asked if it matters if the sediment is coming from the landward side, to which J. O'Connor said no, as beaches receive sediment from the seaward and landward sides. The Commission stated that not all of what is found in the rocks is from natural causes; some sediment is clearly from the road and/or some rocks thrown by Hullonians. J. O'Connor responded by saying that even if that is the case, some of the sediment was eroded naturally. J. O'Connor then said that if the bank is a sediment source for a coastal beach, then the area cannot be structurally armored (no retaining wall). If a retaining wall is desired, one must seek a variance from DEP. D. Ray later asked Mr. O'Connor to confirm that if any vertical surface is eroding, even by some miniscule amount, it can be considered a sediment source. J. O'Connor said yes, that is true. J. O'Connor then went on to say that a geotechnical engineer should examine the plan, not a structural engineer.

B. Grey, a wetlands scientist from Sabatia Inc., questioned if McKinnon (the firm that created the proposed home's plan) had ever been to the site to determine if each pile can be placed exactly where it is shown on the plan. He then stated that the most recent plan (last revised in 11/2015) shows the utilities coming from Collins' property/Burr Rd. He then said, that if that is indeed the case, it was not stated in the NOI. J. Coppola, attorney of M. Collins, then stated that the wetland regulations require that if an applicant is not the owner, the applicant must receive written permission from the owner, prior to submitting an NOI. He then stipulated that if the plan does indeed include any part of Mr. Collins' property, Mr. Collins will not allow it and by continuing with the hearing, the Commission is going against regulations. In response, A. Herbst stated, again, that it is not within the Commission's jurisdiction to determine property rights; as long as there is a colorable claim of ownership, the Commission can entertain a project. She then restated that due to the colorable claim, the Commission is in compliance with the regulations.

The Commission agreed to continue the hearing in order for the applicant to respond with the requested information.

- Upon a **motion** by P. Epstein **2nd** by S. Bannen and a **vote** of 5-0-2;  
It was **voted** to:  
**Continue** the Public Hearing to 4/26/2016 at a time to be determined.

**9:52 180 Main St., Map 1/Lot 1A (SE35-1303) Continuation** of a Public Hearing on the **Notice of Intent** filed by **Kathleen Tyrell** for work described as **contingent on funding, construct synthetic turf field including lighting and jogging track.**

Because the peer review is not yet completed, the hearing must be continued to March 22, 2016.

- Upon a **motion** by P. Epstein **2nd** by E. Fish and a **vote** of 7-0;  
It was **voted** to:  
**Continue** the Public Hearing to 3/22/2016 at a time to be determined.

### **Requests for Certificate of Compliance**

351 Beach Ave. (SE35-1239) – P. Epstein **Motion**, S. Bannen **2nd**, vote 7-0; CoC **issued**.

49 Edgewater Rd. (NE35-935) – CoC not issued because the owners must submit proof of a Ch. 91 License

49 Edgewater Rd. (NE35-493) – P. Epstein **Motion**, S. Bannen **2nd**, vote 7-0; CoC **issued**.

Spinnaker Island (NE35-97) – P. Epstein **Motion**, S. Bannen **2nd**, vote 7-0; CoC **issued**.

Spinnaker Island (SE35-1132) – P. Epstein **Motion**, S. Bannen **2nd**, vote 7-0; CoC **issued**.

### **New Business:**

109 Hampton Circle violation discussion: The violation has been postponed to a date TBD.

180 Main St. update: A. Herbst said that she has hired John Chessia to complete the peer review on 180 Main St. and that the peer review is expected to be completed by 3/17.

Spinnaker update: A. Herbst informed the Commission that Spinnaker Island (SI) will come before them with a proposal to replace a water main and do borings along the causeway. She also said that SI is working on CoC's for older projects. The Commission discussed the status of the marina, which has, for the most part, been removed. The Commission will discuss the status of the remaining underwater material with the Spinnaker representatives at the next meeting.

Adams St. question: the Commission reviewed a question regarding a minor repair.

**10:20** Upon a **motion** by P. Epstein and **2nd** by S. Bannen and a **vote** of 7-0;  
It was **voted** to: Adjourn