

Conservation Commission**January 3, 2022****Minutes**

1. **Chairman's Welcome and Media Notification:** Mr. Haworth opened the meeting at 6:33p.m. Ms. McClees read the protocol for Zoom meetings and open Public Meeting Law.

Ms. McClees advised that the meeting was being conducted remotely, consistent with Chapter 20 of the Acts of 2021. The legislation suspends the requirement of Open Meeting Law to have all meetings in a publicly accessible physical location.

For this meeting, the Conservation Commission convened by telephone and video conference via Zoom as posted on the Town's website identifying how the public may join. The meeting was recorded and will be televised at a later date and some attendees participated by phone and video conference and used chat on Zoom.

2. **Quorum/Attendance:** Present: Chairman, Geoff Haworth, Karen Isherwood, Gary Lavalette, Michael Kelly, Jacob Galary, Corey Pietraszek and Amy DeSalvatore. Non-voting consultant, Ron Medina was also present. All members were attending via zoom. Staff: Whitney McClees, Conservation Agent

3. **Requests for Certificates of Compliance**

- a) SE 023-1269, CON 19-007: **20 Yankee Lane**

Ms. McClees briefed the Board that a partial Certificate of Compliance is being requested for the solar array project. The Order of Conditions approved a 15.1-acre solar development project, with two arrays (northern & southern) that necessitated a stream crossing and some impact to bordering vegetated wetlands, thus the wetlands replication became part of the project.

Based on a site visit and comparing the as-built to the approved plans, it appears that the solar array and storm water facilities have been constructed substantially in compliance with the Order of Conditions. However, the wetland replication was only planted in October of 2021. There has not been adequate time to monitor and ensure the success of the wetland replication area, as required by the Wetlands Protection Act and the Order of Conditions.

The Commission needs to consider the wetland replication has only recently been installed and has not been through a winter or complete growing season and to ensure proper compliance, given this is a leased project. The agent recommended delaying the wetland replication, instead of a partial Certificate of Compliance.

Scott Goddard of Goddard Consulting represented the applicant as the wetland consultant and oversaw the replication inspection. He agreed to a partial Certificate of Compliance to allow the Commission to acknowledge partial completion. This will provide an opportunity for those interfacing with the property indications of which pieces were done in compliance. Mr. Goddard recognized the ongoing monitoring of replication area. The Commission was presented with compliant Stormwater Management, access roads, solar panels, storage pads, fencing, etc.

Mr. Haworth had reservations about the Commission granting partial approval since it creates enforcement challenges. He would feel more comfortable with a completed growing season.

Mr. Goddard recognizes the concerns but believes there are avenues to be considered in a case like this, such as enforcement orders, or a bonding to guarantee the work takes place. He does understand it lies at the discretion of the Commission.

Ms. DeSalvatore did not feel comfortable granting partial approval.

Ms. Isherwood agreed, stating if the project runs into difficulties the Commission will be limiting jurisdiction and scope.

Mr. Haworth added this is a leased area, so enforcement would fall to the landowner. The Commission should protect the rights of the landowner.

Mr. Lavalette questioned the wetland scientist stating he could put a bond up. This could only be if that solar company remains with the project. If the project is sold then the bond would be dissolved and it would defeat the purpose. In agreement with the rest of the Board that it is too early to sign off on this.

Mr. Goddard requested to table to the next meeting.

Mr. Haworth made a motion to take the 20 Yankee Lane violation out of order and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (7-0).

5. Violations/Enforcement Orders/Cease and Desist Notices

a) 20 Yankee Lane

Ms. McClees briefed the Board on the most recent restoration plan, which was submitted in response to comments from Ms. McClees and a Board member. The revised plan will remove the man-made stream, brush, and restore the area to Bordering Vegetated Wetlands.

This is the first half of a two-part restoration plan. The Commission has asked that the second part addressing restoring the impacts to the perennial stream and all related items be submitted by the end of February. She recommended approving Phase 1 and 2 of the restoration plans dated December 14, 2021, for 20 Yankee Lane. Ms. McClees had outlined 20 conditions to go with the approval.

Ms. DeSalvatore requested a peer review, due to the project's complexities and sensitive resources.

Ms. McClees commented that a peer review should be reserved for the stream restoration, which will require hydraulic calculations.

Mr. Haworth added that a peer review during the stream restoration phase would also serve to verify the first phase of the project.

Ms. McClees did not want to delay the project any longer. This would allow spring plantings to begin this year.

Mr. Haworth made a motion for the Board to approve Phase 1 and 2 of the restoration plan dated December 14, 2021, for 20 Yankee Lane, Enforcement Order 023-014, with the 20

conditions as outlined in the December 16, 2021 staff report. The motion was seconded by Mr. Lavalette and passed unanimously via roll call vote (7-0).

Action: Mr. Haworth told Mr. Goddard to work with Ms. McClees to ensure everything is done according to the restoration order.

4. **Public Hearings** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and/or the Code of the Town of Fairhaven Chapter 192, Wetlands:

Continued to a Future Meeting

- a) SE 023-1356, CON 023-229: **12-18 Rio Way – continued to February 14**
Notice of Intent filed by George Mock, Nye Lubricants, Inc., for stormwater upgrades and reductions in impervious surface associated with building upgrades at the property located at 12-18 Rio Way, Assessors Map 19, Lot 242. Work to take place in the Riverfront Area and 100-foot buffer zones to Coastal Bank and Coastal Beach.
- b) SE 023-1369, CON 023-255: **10 Diamond Street – continued to January 24**
Notice of Intent filed by Ruby and Jaime Medeiros for the construction of a garage, mud utility room, and expansion/reconstruction of the existing dwelling at the property located at 10 Diamond Street, Assessors Map 29, Lots 46 & 72. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone Bordering Vegetated Wetland.
- c) SE 023-1370, CON 023-256: **Winsegansett Avenue, Map 42A, Lots 232, 232A & 233 – continued to January 24**
Notice of Intent filed by Alexander and Elizabeth Kalife, Trustees of the Kalife Residence Trust, for the reconstruction of the existing garage with a flood-zone compliant garage at the property located at Winsegansett Avenue, Assessors Map 42A, Lots 232, 232A & 233. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Coastal Beach.
- d) SE 023-1366, CON 023-251: **Bridge Street, Map 36, Lot 15J – continued to January 24**
Abbreviated Notice of Resource Area Delineation filed by Paul Downey, Fairhaven Properties, LLC, requesting confirmation of all jurisdictional resource areas under the Wetlands Protection Act and Fairhaven Wetlands Bylaw at the property located at Bridge Street, Assessors Map 36, Lot 15J.

Request for Continuance

- e) SE 023-1345, CON 023-206: **2 Oxford Street – request for continuance to January 24**
Notice of Intent filed by Robert Weeks, 2 Oxford Street, LLC, for the construction of a fixed pier, gangway, and floating docks at the property located at 2 Oxford Street, Assessors Map 13, Lot 1. Work to take place in Land Under the Ocean, Land Containing Shellfish, Land Subject to Coastal Storm Flowage, and the 100-foot buffer zone to Coastal Beach.

Mr. Haworth made a motion to continue 2 Oxford Street, SE 023-1345, CON 023-206 to January 24, 2022, and was seconded by Ms. Isherwood. The motion passed unanimously via roll call vote (7-0).

Request for Amended Order of Conditions

- f) SE 023-1309, CON 023-110: **1 Bella Vista Island**

Request for Amended Order of Conditions filed by Heiam Alsawalhi for the revision and clarification of special conditions for the Order of Conditions issued August 13, 2021, under both the Wetlands Protection Act and Fairhaven Wetlands Bylaw.

Ms. McClees briefed the Board that after discussions with the applicant and the applicant's representative they are looking for revisions to the special conditions. No work was proposed to be altered and no changes will be made to the scope of the project.

The Harbormaster agreed to reduce the shellfish mitigation fee slightly. There were clarifications to language, which resulted in the applicant submitting an additional stockpiling plan. This will provide greater clarity on where equipment, materials, etc. are permitted to be stockpiled.

The one change received from the applicant's representative on January 3, 2022, was to modify finding number 2 and strike everything except the first two sentences. Ms. McClees recommended closing the public hearing and issuing an amended Order of Conditions, with the conditions as outlined in attachment A of the Staff Report, with a modification to finding 2.

Rich Rheume, of Prime Engineering, represented the applicant and stated he and attorney Jim Marsh sat with the Agent, Chair, and Harbormaster to modify orders. They have no further requests currently.

Mr. Haworth made motion to close the public hearing for SE 023-1309, CON 023-110, 1 Bella Vista Island and issue an amended Order of Conditions under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw with conditions outlined in attachment A (7-page document attached to the staff report dated 12-8-21). With the clarification that finding 2, line 2, page 1 everything beyond that will be struck. The motion was seconded by Ms. DeSalvatore and passed unanimously via roll call vote (7-0).

g) SE 023-1365, CON 023-250: **86-88 Middle Street**

Request for Amended Order of Conditions filed by Patrick Carr, A1 Crane Company, for the installation of concrete on 100% of the lot, a permanent structure, a concrete wall and fence, and associated stormwater at the property located at 86-88 Middle Street, Assessors Map 11, Lots 6D, 6E & 7. Work to take place in Land Subject to Coastal Storm Flowage.

At this time, the applicant has proposed a temporary water quality treatment insert into the catch basins on the property. This will allow the BPW time to seek funding for their drainage project. If funding for that project does not come to fruition, then the applicant will be installing a stormceptor to fully comply with water quality treatment and storm water standards on the subjects' property, as outlined in plan B from the submitted site plan.

The applicant wanted to ensure the structure being relocated is classified as a portable shed and not a temporary structure. At this point, given discussions, the agent recommended closing the public hearing and issuing an amended Order of Conditions, under both the Wetlands Protection Act and the Fairhaven Wetlands Bylaw, with conditions outlined in the staff report for revised plans dated December 22, 2021.

Rich Rheume, from Prime Engineering, represented the applicant. He stated the current plan is to finish placing concrete, but also inserting a stormwater prevention device into the existing catch basin. Those devices include zeolite, activated carbon, and special filters to remove hydrocarbon, gasoline, fuel oil, and particulates. Hopefully town will acquire the funding to treat all the wastewater, but if not, A1 Crane will install a stormceptor to take care of the problem.

Mr. Rheume believes the device is compliant with the National Pollutant Discharge Elimination System (NPDES) MS4 permit. used to treat hazardous waste. Prime engineering uses Zeolite and activated carbon in their hazardous waste business. All stormwater that runs off this concrete slab will go through those filters and take volatile organics out of the flow stream.

Ms. Isherwood expressed concerns about future testing.

Mr. Haworth asked if Prime Engineering had an Operations & Maintenance (O&M) plan.

Mr. Rheume verified the O&M plan will require annual inspections. The zeolite and activated carbon will get replaced once the filters are saturated.

Ms. DeSalvatore would like a measurement of how compliant the device is right away.

Mr. Rheume has specification sheet providing the makeup of material with a list of substances the filters catch. There are separate features on the device: one to take out trash and sediment; and the other to take out heavy metals and oils. It is rated for 60 gallons a minute. The registered trademark for heavy metal catch basin filtration system (P.I.G.) provides the product specifications.

Ms. DeSalvatore asked about training for staff on spills.

Mr. Rheume stated the site will have kits for any type of spills. All personnel will be trained on to deploy booms, sweep up, containerize, and label. In this scenario, personnel would call Mr. Rheume for DEP reporting; he would certify that proper measures were taken.

Action: He can show sheet (P.I.G.) that states what it removes and when to call for spill.

Ms. Isherwood asked how personnel would dispose of any substances cleaned off the filter.

Mr. Rheume stated it would automatically be containerized.

Ms. Isherwood asked who would determine if the filter should be squeezed out or replaced.

Mr. Rheume stated a licensed site professional, certified by the EPA, would make that determination. Mr. Rheume is licensed to do a stamped and signed manifest sheet.

Ms. Isherwood questioned if certain conditions would warrant more frequent replacement.

Mr. Rheume suggested the filter is checked every three months for the first year. If it is determined that a cleaning or replacement is necessary every three months, the condition will remain; if the filter is relatively clean throughout the year, the condition will switch to an annual inspection.

Mr. Lavalette feels confident with what the engineers are proposing.

Mr. Haworth made a motion to close the public hearing for 86-88 Middle Street, SE 023-1365, CON 023-250, and issue an amended Order of Conditions under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw, with the following recommended conditions: the 29 conditions as outlined in the staff report dated December 16, 2021, with the added condition that the heavy metal catch basin inserts shall be inspected every three months for the first year, and annually thereafter, if the three-month frequency is determined unnecessary. The motion also approves the revised plans dated December 22, 2021. The motion was seconded by Mr. Lavalette and passed unanimously via roll call vote (7-0).

Notices of Intent

h) SE 023-1372, CON 023-259: **10 Littleneck Road**

Notice of Intent filed by Paul and Francesca Federico for the construction of a new flood-zone compliant foundation on which to place the existing house and an addition, the construction of a new deck, and associated site work at the property located at 10 Littleneck Road, Assessors Map 43A, Lots 86 & 87. Work to take place in Land Subject to Coastal Storm Flowage.

Ms. McClees presented the site plan and stated the property previously came before the Commission for an addition and deck determination. Further changes to the project resulted in FEMA flood zone requirements. The applicant is moving the house to the designated location on the site plan, to build a flood zone compliant foundation. This is not a velocity flood zone, so flood vents will be installed, and fill placed to grade around the existing house location. The homes blueprint will not change, but the foundation will be relocated on the property. The project will need review and approval from the Zoning Board of Appeals.

A site visit identified two issues: 1.) Plans noted paved driveway, but it is crushed shells; and 2.) Members of the Commission had concerns regarding the mature tree adjacent to the house. She recommended to close the public hearing and issue an Order of Conditions outlined in the December 14, 2021 staff report.

Rick Charon, from Charon Associates prepared the plans and agreed with the error in the plans regarding the paved driveway. The most destructive method would be to place the house on cribbing to move on wheels. Another less destructive possibility is to raise the house high enough to build a foundation directly underneath. Mr. Charon presented this scenario to the contractor, for them to decide. The house is in Zone AE elevation, with just over 11 feet around house when finished. This will allow for 2.5-to-3-foot workable crawl space. The first-floor requirement in the A Zone would be at least one foot above the basement elevations, with 15.1 being the target elevation.

Ms. DeSalvatore was concerned about the tree root zone and would like to see a written condition providing a safe work zone around the tree.

Mr. Charon believes the size of this house will cause little root damage. He recommended no work during rainy weather to ensure root protection.

Mr. Lavalette asked for further description of the proposed foundation.

Mr. Charon stated a closed, frost-wall foundation with flood vents is ideal.

Ms. McClees stated for every inch diameter there should be one foot of protection. Diameter-at-breast-height (DBH) is a standard method to ensure consistency.

Mr. Charon does not believe they have space for that and would like to rely more on weather conditions.

Ms. Isherwood would like a condition with an included distance requirement.

Ms. McClees suggested replacing proposed condition (C21) and adding the tree will have a 10-foot zone established.

Mr. Haworth made a motion to close the public hearing for 10 Littleneck Road, SE 023-1372, CON 023-259, and issue an Order of Conditions under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw with the following conditions: the 38 conditions outlined in the staff report dated December 14, 2021; the additional 39th condition being that if the house be temporarily relocated during construction of the foundation the move shall not be done after wet weather and replace condition C21 with the mature tree near the house shall have a 10-

foot tree buffer zone established with a fence. The motion was seconded by Ms. Isherwood and passed unanimously via roll call vote (7-0).

i) SE 023-1374, CON 023-258: **89 Akin Street**

Notice of Intent filed by Daniel Pounds for the removal of the existing house and construction of a new residence with town water and sewer connections and associated site work at the property located at 89 Akin Street, Assessors Map 30B, Lots 54-67. Work to take place within Riverfront Area and the 100-foot buffer zone to Bordering Vegetated Wetland.

Mr. Haworth made a motion to continue 89 Akin Street, SE 023-1374, CON 023-258, until January 24, 2022, and was seconded by Mr. Galary. The motion passed unanimously via roll call vote (7-0).

j) SE 023-1373, CON 023-260: **182 Ebony Street**

Notice of Intent filed by Enrico and Linda Picozza for the demolition of the existing house and construction of a flood-zone compliant dwelling with associated site work at the property located at 182 Ebony Street, Assessors Map 43B, Lots 260, 262, 264, 266 & 268. Work to take place in Land Subject to Coastal Storm Flowage.

Ms. McClees stated this is a flood zone project that is proposed completely outside the 100-foot buffer zone to the salt marsh. There are two different flood zones on the property: velocity and AE flood zone. The reconstruction of the proposed single-family dwelling will be entirely compliant with FEMA's velocity flood zone standards. Schneider, Davignon & Leone, Inc. are proposing to elevate the structure on piles, with some fill proposed to be brought in for site grading, which will remain compliant with FEMA. The project will take place completely outside 100-foot buffer zone to the salt marsh. They will maintain all the mature trees except for one, which will have to be removed and replaced.

The applicant had additional information submitted from a structural engineer to satisfy the FEMA flood zone standards. Since the breezeway is fully detached, it is self-supporting and is not structurally related to the garage. All FEMA velocity flood zone requirements are met. Ms. McClees recommended an Order of Conditions under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw, with conditions outlined in the December 20, 2021 staff report on plans dated November 3, 2021.

Dave Davignon, representing the applicants and owners, stated the Zoning Board of Appeals approved a Variance for street setback. The proposed dwelling will be moved slightly off the street. The owners are trying to preserve the entire rear of the house on the west side.

Ms. DeSalvatore participated in a site visit and has no concerns.

Mr. Haworth made a motion to close the public hearing for 182 Ebony Street, SE 023-1373, CON 023-260, and issue an Order of Conditions under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw with the 53 conditions as outlined in the staff report dated December 20, 2021, and to approve the plans dated November 3, 2021. The motion was seconded by Ms. DeSalvatore and passed unanimously via roll call vote (7-0).

k) SE 023-1375, CON 023-261: **Fisherman Road Right-of-Way**

Notice of Intent filed by Vincent Furtado, Fairhaven BPW, for drainage work and paving an existing gravel road at Fisherman Road between Balsam Street and Fir Street, Assessors Map 43A. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Bordering Vegetated Wetland.

Ms. McClees briefed the Board on the drainage and paving project. Portions of the road fall into the Commission's jurisdiction, including a velocity flood zone and a bordering vegetated wetland. Erosion control has been implemented within proximity to the bordering vegetated wetland and at the base of the road, beyond the final area of paving, to prevent runoff into the resource area. There is an existing stormceptor installed at the base of the road. This project will improve functionality, treatment, and water quality by properly tying the catch basins into the existing stormceptor.

The applicant submitted information regarding the drainage improvements and compliance with state and local stormwater standards. A recommendation to close the public hearing and issue an Order of Conditions with the plans dated December 16, 2021, with the included conditions outlined in the staff report dated December 20, 2021.

Mike Carter of CGC Associates, prepared the notice of intent for the BPW. He further added that the drainage system currently runs catch basin to catch basin to the stormceptor located on Balsam Street. Installing a standard catch basin will provide a more conventional drainage system to minimize any sediment in the stormceptor.

Mr. Haworth made a motion to close the public hearing for Fisherman Road Right-of-Way, SE 023-1375, CON 023-261, with the 30 conditions outlined in the staff report dated December 20, 2021, and approve the plans dated December 16, 2021. The motion was seconded Mr. Lavalette and passed unanimously via roll call vote (7-0).

5. Violations/Enforcement Orders/Cease and Desist Notices

b) 25 & 29 Mangham Way

Ms. McClees discussed the Enforcement Order and the submitted restoration plan. The plan noted the disturbed areas of wetland, buffer zone and areas to be restored. Ecosystems Solutions included removal of fill from the wetlands, excavation to original grade, reintroduction of topsoil, treatment of invasive species, and plantings in affected wetland areas in the 25 foot no disturb zone.

The overall restoration plan does appear to address many of the concerns the Commission had discussed during the initial violation. To execute this restoration plan, permission will need to be obtained from the adjacent property owner. Based on previous discussions the Commission should plan on scheduling a site visit within the next week or two. This would allow the Commission an opportunity to look at the property and examine the wetland line and demarcated area of disturbance (both have been flagged).

Ms. DeSalvatore appreciated the overview but would like a site visit before an extensive conversation.

Ms. Isherwood agreed.

Bruce Webb, Wetland and Soil Scientist with Ecosystem Solutions, spoke on behalf of the landowner. The landowner conducted unauthorized unpermitted work on the south portion of the property and the neighbor's property. There was some fill in the Bordering Vegetated Wetland. The owner immediately stopped work upon the Enforcement Order and was receptive to the Commission. The fill that was placed is limited. He noticed tree trunks in the buffer zone and wetland have fallen but were not cut. To resolve the situation, Ecosystem Solutions proposed to remove the fill within the area of violation with the BVW and a portion of the buffer zone on edge of northern line. They will introduce organic soil and plant red maples of one inch

caliber. Proposing to plant some wetland shrub species, 5 sweet peeper bush and 5 blueberry, which are the proper species for the environment and to seed with NE wetland seed mix and stability mix in the 25-foot no touch. This should remedy the violation and improve the function of the wetland. On site there are signs of disturbance going back 100 years. One of the photos in the restoration package shows refuse and debris that the landowner removed within the wetland while he was working on this. Another element is the abundance of Japanese knotweed. To ensure we hit 75% native species we propose treating the knotweed with Garlon or some other wetland specific herbicide to hit restoration goals.

Ms. Isherwood asked who would be applying the herbicide and has all the of rubbish been removed.

Mr. Webb discussed the herbicide in the proposal will be performed by a licensed applicator. The refuse and debris are outside the area of disturbance, so removing it would increase the area of disturbance. However, the landowner may look to resolve this issue in the future, as this was part of the original goal.

Mr. Haworth asked about the 20 yards of material dumped by a dump truck.

Mr. Webb had never seen a large volume of fill or soil.

Ms. McClees stated it was removed.

Action: To set up site visit with the Commission. Ms. McClees will be in contact with board members to set up a date and time within the next two weeks.

Mr. Haworth stated will take up at the next meeting.

6. Correspondence

Mr. Haworth stated he received a call from Town Counsel last week requesting an Executive Session. This is to discuss North Street Marsh and the pending court litigation.

Action: Ms. McClees to post open and executive sessions for January 10, 2022, at 6:30p.m.

Mr. Haworth is open to suggestions to streamline meetings and keep within 3-hours. Ms. McClees can answer questions ahead of time and make a notation in the staff report to reduce meeting time.

Ms. McClees state meetings will now be conducted every three weeks, with staff reports and packets sent out one week prior to meeting once the revised application materials submission deadline is revised.

7. Ongoing Projects

None

8. Upcoming Projects

Ms. McClees received a request for an amendment to a landscaping project for 1 Bella Vista Island.

9. General Business

a) Bills: None

b) Next Meeting: January 24, 2022

c) Special executive meeting January 10, 2022

Action: Ms. McClees to notify Town Counsel and make posting for the January 24, 2022 Executive Session.

10. **Any other business** that may properly come before the Commission not reasonably anticipated 48 hours in advance of the meeting.

Mr. Lavalette brought up concerns for a property on Sconticut Neck Road with at least one hundred yards of debris and loads of fill.

Ms. McClees stated if it is 732 Sconticut Neck Road, the Buzzards Bay Coalition is in the process of acquiring the property for protection and preservation. This is in the Board's jurisdiction, due to a portion of the property being in a flood zone. The agent will investigate this concern.

Mr. Haworth made a motion to adjourn at 8:40p.m. and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (7-0).