

**Conservation Commission****March 7, 2022****Minutes**

1. **Chairman's Welcome and Media Notification:** Mr. Haworth opened the meeting at 6:32p.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; 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 consultants, Ron Medina, Chelsea Isherwood and Carrie Hawthorne were also present. Staff: Whitney McClees, Conservation Agent

3. **Review and approve minutes:**

- a) Mr. Haworth made a motion to approve the January 24, 2022 meeting minutes and was seconded by Mr. Lavalette. The motion passed unanimously via roll call vote (7-0).

4. **Requests for Certificate of Compliance:**

- a) SE 023-0725, CON 023-204: **732 Sconticut Neck Road**

Ms. McClees briefed the Board that this Order of Conditions covers successfully completed grant-funded work on three privately-owned parcels under one DEP file number. The request for Certificate of Compliance came from the new property owner of one of the property owners listed on the Order of Conditions. This Order of Conditions was issued as part of the grant-funded Winsegansett Marsh Restoration Project completed in November 2000. The Conservation Agent recommended a Certificate of Compliance for Complete Certification.

Ms. DeSalvatore made a motion to issue a Certificate of Compliance for Complete Certification for SE 023-0725, CON 023-204, 732 Sconticut Neck Road and was seconded by Ms. Isherwood. The motion passed unanimously via roll call vote (7-0).

- b) SE 023-1081: **110 Middle Street**

Ms. McClees stated this is the first of three requests for a Certificate of Compliance. This is a procedural issue as the Commission previously issued a Certificate of Compliance on June 20, 2011. That certificate was never recorded and the applicant now requests the Commission to issue a new certificate to close out the Order of Conditions.

Ms. Isherwood made a motion for Certificate of Compliance for a Complete Certification for SE 023-1120, 110 Middle Street and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (7-0).

- c) SE 023-1120: **110 Middle Street**

Ms. McClees stated this is an Order of Conditions to reconfigure 936 square feet of floating timber dock and install new pilings for the reconfiguration. Based on the request for Certificate of Compliance and discussions with the applicant, the work approved by this Order of Conditions was never started due to waiting on the dredging project in the Harbor to be completed. The Order expired in 2018. The conservation Agent recommended a Certificate of Compliance for an invalid Order of Conditions.

MS. Isherwood made a motion to issue a Certificate of Compliance for an invalid Order of Conditions for SE 023-1120, 110 Middle Street and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (7-0).

d) SE 023-1131: **110 Middle Street**

Ms. McClees stated the Order of Conditions was issued and no work was done. The Order expired in 2019. She recommended a Certificate of Compliance for an invalid Order of Conditions.

Ms. DeSalvatore made a motion to issue a Certificate of Compliance for an invalid Order of Conditions for SE 023-1131, 110 Middle Street and was seconded by Ms. Isherwood. The motion passed unanimously via roll call vote (7-0).

e) SE 023-0843: **475 Bridge Street**

Ms. McClees stated this is a Notice of Intent for an Order of Conditions that was issued May 10, 2004 and included the following special conditions: split rail fence to be installed five feet from the BVW before the project starts; remove fill from Southeast portion of lot and; only pervious driveway and parking area are allowed.

In assessing old filings as well as discussions with the applicant's representative, it was determined the property is in compliance with the Order of Conditions, as well as all subsequent work on the property since that Order of Conditions. The work has been approved by other Determinations of Applicability. The Conservation Agent recommended issuing a Certificate of Compliance for Complete Certification.

Ms. Isherwood made a motion to issue a Certificate of Compliance for SE 023-0843, 475 Bridge Street and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (7-0).

5. **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 023-1377, CON 023-263: **128 Huttleston Avenue – *continued to March 21***

Notice of Intent filed by Michael Sullivan, Wash Ashore Car Wash, for the redevelopment of the 1.5-acre property into a proposed car wash and auto detailing facility, including associated parking, access drives, vacuum stations, landscaping, stormwater measures, and utility infrastructure, at the property located at 128 Huttleston Avenue, Assessors Map 25, Lots 240C and 243. Work to take place in the 100-foot buffer zone to Bordering Vegetated Wetland.

**Requests for Continuance**

b) SE 023-1356, CON 023-229: **12-18 Rio Way – *request for continuance to April 11***

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.

Ms. Isherwood made a motion to continue SE 023-1356, CON 023-229, 12-18 Rio Way to April 11, 2022 and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (7-0).

c) SE 023-1369, CON 023-255: **10 Diamond Street – request for continuance to March 21**

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.

Mr. Haworth made a motion to continue SE 023-1369, CON 023-255, 10 Diamond Street to March 21, 2022 and was seconded by Ms. Isherwood. The motion passed unanimously via roll call vote (7-0).

**Request for Determination of Applicability**

d) CON 023-265: **50 Balsam Street**

Request for Determination of Applicability filed after-the-fact by the Mary A. Spadaro Realty Trust for the construction of a front deck, installation of a driveway, and installation of footings for a pergola, at the property located at 50 Balsam Street, Assessors Map 43C, Lot 16. Work to take place in Land Subject to Coastal Storm Flowage.

Ms. McClees stated this is an after-the-fact filing, subsequent to an Enforcement Order issued in August 2020. A member of the Commission posted two separate cease and desist notices, prior to the Enforcement Order being issued. There was no response to the Enforcement Order until this filing for the Commission's consideration. Items requested for determination approval include completion of the driveway area that began in 2020. The deck is also proposed to be reconstructed. Currently, some framing exists and footings will be needed. The proposed footings for the pergola are located in the area of existing lawn. These are the requests within the scope for determination. Based on the scope of work, it does not appear to have impacts on flood control or storm damage prevention. The Conservation Agent recommended issuing a Negative 2 and a Negative 6 Determination, under both the Wetlands Protection Act and the Fairhaven Wetlands Bylaw.

Michael Ristuccia represented the applicant and was willing to follow through with the Commission's wishes on behalf of the owner.

Ms. DeSalvatore asked if there is limit to the depth of gravel.

Mr. Ristuccia stated there is material present that will be taken out and 3 quarter inch stone and driveway material will be brought in and placed on top of that stone. The topography will be brought back to what it was before the project started. He did not feel drainage will be a problem.

Ms. Isherwood asked when the Commission will we be addressing the Enforcement Order.

Mr. Lavalette had no issues with the work. He was disappointed in the owner for not replying in two years after with Conservation Agent sent notices. He felt there should be fine in place.

Mr. Haworth stated they are responsible for \$300 a day from the initial Stop Work Order. Based on the Bylaw that would equate to tens of thousands of dollars.

Ms. DeSalvatore Board felt the fine should be ruled separately from approving a plan.

Ms. Isherwood would like to keep a precedence of what the Board procedure and fine the owner according to the Bylaw.

Mr. Galary left the meeting at 6:59p.m.

Mr. Ristuccia wanted Board to know he was not involved in the project when the noncompliance was in effect. He recently became involved and brought this to the Board.

Mr. Kelly believes the laws are in place for a reason and when residents break them with impunity it weakens the laws and the Commission's credibility.

Mr. Lavalette believes the fine should be paid before work begins.

Ms. DeSalvatore made a motion to issue a \$900 fine for CON 023-265, 50 Balsam Street and that it be paid before any other work commences. The motion was seconded by Mr. Lavalette and passed unanimously via roll call vote (6-0).

Ms. Isherwood made a motion to issue a Determination of Applicability for CON 023-265, 50 Balsam Street and issue a Negative 2 and a Negative 6, under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw. The motion was seconded by Ms. DeSalvatore and passed via roll call vote (5-1). Mr. Kelly was not in favor.

#### **Notices of Intent**

e) **SE 023-1370, CON 023-256: Winsegansett Avenue, Map 42A, Lots 232, 232A & 233**

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.

Dave Davignon of Schneider, Davignon and Leone represented the applicant and requested a continuation in order to evaluate the peer review.

Mr. Haworth made a motion to continue SE 023-1370, CON 023-256, Winsegansett Avenue, Map 42A, Lots 232, 232A & 233 to March 21, 2022, and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (6-0).

#### **6. Correspondence**

a) **Wetland Bylaw Buffer Zone Variance Request: 144 Shaw Road**

Ms. McClees stated the applicant is seeking a Variance to work within the 0-25-foot no-disturb zone and the 25-50-foot no-build zone. The applicant noted items in the Variance request, including the minimal amount of upland area, the proposal to construct retaining walls, and a split rail fence to demarcate a permanent barrier 5 feet from the wetland line. The site plan was submitted for discussion purposes. They are not seeking approval on the site plan, only the Commission's determination on the Variance request. The proposed house will be located between 13.8 and 18 feet from the wetland line.

The wetland line was flagged by the applicant's wetland scientist in 2019, which has not been approved by the Commission. The Commission must decide, given the previous use of the property, if a Variance from the Buffer Zone regulations are appropriate or if there is minimum setback from the wetland that should be required. The Commission, under Chapter 192 of the

Code of the Town of Fairhaven, Section 8.2, may request an opinion from Town Counsel as to whether enforcing the buffer zone regulations for this property would result in taking without compensation.

David Davignon of Schneider, Davignon & Leone addressed the Board, representing Mr. Carvalho. He has submitted evidence of a former use as a single-family residence. A concrete pad still exists on the site and there is evidence of gravel driveway. Owner, Mr. Carvalho, is looking to sell the property. The property was tagged as a buildable lot and a site plan with a 28x44 rectangular home has been submitted. There are proposed plantings on both sides and a proposed mini-retaining wall and fence at the top of the property. This property ties into municipal sewer and water. The representative is looking to attain approval with the BPW and proceed with the utility plan, before filing the Notice of Intent.

Mr. Haworth asked for the concrete pad dimensions.

Mr. Davignon stated the concrete pad is 21x60, with another strip of concrete beyond that, totaling 1260 square feet. The proposed has a footprint of 1230 sq feet, implying the impervious surfaces would not change as this is a comparable size.

Mr. Lavalette liked the vegetative border concept.

Ms. DeSalvatore would like the Commission to consult with town counsel. She also would like the current wetland line on the property verified.

Ms. Isherwood was not comfortable approving the Variance without an approved line in place.

Ms. McClees will look at the flags before they start growing.

Chelsea Isherwood asked when the line was drawn up.

Mr. Davignon stated the line was flagged April 24, 2019 by Brendan Fenna by Ecosystem Solutions. He also stated only one flag is missing off property on Shaw Road and two were found labeled with the same number.

Mr. Haworth made a motion that 144 Shaw Road will proceed with a line determination conducted by the Conservation Agent and that Board will consult with Town Counsel in regards to the Variance. The motion was seconded by Ms. DeSalvatore and the motion passed unanimously via roll call vote (6-0).

## **7. Violations/Enforcement Orders/Cease and Desist Notices**

### **a) 25 & 29 Mangham Way**

The representative requested to be continued to March 21, 2022.

### **b) SE 023-1341, CON 023-194: North Street Marsh, Map 15, Lot 43**

Steve Gioiosa of SITEC Environmental discussed the remaining \$300 fine, as well as revisions submitted for the restoration plan. Supplemental information was submitted in the form of a letter, as well as backup data on fabric material placed under the stone. Mr. Gioiosa submitted the 2019 aerial photograph to show what had historically been used as storage, parking, and a staging area pre-2019.

SITEC has researched the filter fabric used, and determined it is perfectly acceptable for this type of application. This material is used primarily to create a physical barrier to the soil strata.

It has a high permeability rating with long-term filtering abilities. They plan on wrapping an infiltration trench to allow water to migrate through, while keeping soil particles from contaminating either layer. In Mr. Gioiosa's opinion, the fabric does not impact the marsh and removing it may cause erosion. He will defer to the Commission on this topic.

Mr. Gioiosa asked for guidance from the Commission on seed and loam quantities. Mr. Gioiosa intentionally left out exact quantities until they have proper evaluation.

Mr. Lavalette visited the site and, in his opinion, there has been significant fill added. The stone wall surrounding the parking area is obstructed, due to gravel almost over the top of the rocks.

Mr. Haworth stated the grass berm will act as a filter between the stone and the marsh. He is not comfortable with the plan not stating precise soil amounts. He would also like all negative runoff eliminated, which means no fertilizer is permitted.

Mr. Gioiosa stated a site walk with the Conservation Agent and Commission members, prior to bringing in any material for stabilization, is encouraged. He was concerned inadequate topsoil will inhibit growth and overloading the area will not procure any benefits.

Mr. Haworth stated he would like to see Ms. McClees look into this first. He also asked what will be happening to the stones on site.

Mr. Gioiosa stated any excess stones removed will be disposed offsite.

Mr. Haworth would like to see that noted on the plan, along with stating no increase in depth on existing stone.

Ms. McClees stated the note on the plan states the stones will be left at 4-6 inches.

Mr. Gioiosa will add notation on the plan. Currently, there is no gradient of the crushed stone and it is relatively level with the soil. A berm could be created to lock the stone in place.

Ms. Isherwood would like the stone and filter fabric removed, since she does not think it is environmentally friendly. She would like to see native grasses for seeding and does not believe any further action should be taken until this is corrected.

Ms. DeSalvatore stated the mandate is to restore to 2019 conditions; therefore, they need a narrative on how to do that, including a determination on fill depth and how much will be removed. She did not feel loam should be initiated, unless absolutely necessary.

Mr. Gioiosa stated if we go in and start disturbing the surface now, we won't be able to establish grass for another 6-8 weeks. This will only raise more issues to the salt marsh. He believes he was responsive to the Commission's comments and incorporated into multiple revisions. He would like to make the Board comfortable and avoid any misunderstandings. He explained what makes most sense regarding soil volume.

Ms. DeSalvatore would like to see a plan that gives a narrative on restoring the 2019 contours, limits the gravel area to the original 6-foot contour, and has native grass seed mix (not lawn) to

protect the salt marsh. She suggested a plan in place by the next meeting, or the Commission institutes a \$300 a day fine.

Mr. Kelly believes the Board has made their expectations very clear and expects a plan that satisfies the Board.

Mr. Gioiosa agreed to incorporate these modifications and present to the Board on the March 21, 2022 meeting.

c) 6 & 8 Jeannette Street

Ms. McClees received a report of a possible wetland violation involving removal of large, mature trees and fill in a wetlands area without a permit. Enforcement Orders were issued on two different properties, based on the assessors' maps and aerial photographs. The Commission will need a vote to ratify those Enforcement Orders. The Conservation Agent has not received any contact, since issuing the Enforcement Orders.

Bob Rogers from G.A.F. Engineers, Inc. was present and represented both property owners. He stated he was recently hired. He recently spoke with Brad Holmes from Environmental Consulting & Restoration, LLC. and ECR will rely on Mr. Holmes for the current restoration plan. Mr. Rogers will flag the wetlands, in accordance with the winter policy, and once the survey is completed, he will draft a revised restoration plan. Mr. Holmes will take charge of what needs to be replanted and the wetland delineation, which goes back to 2005.

Mr. Lavalette stated we have not had access to the property yet and do not know the magnitude of what was removed. He requested permission to go on the property and inspect what was done.

Ms. McClees will coordinate a site visit with the Board.

Ms. Isherwood made a motion to ratify the Enforcement Order issued on February 23, 2022 to Jeffrey Couto for violations of the Wetland Protection Act and Fairhaven Wetlands Bylaw at 6 Jeanette Street and was seconded by Mr. Lavalette (6-0). The motion passed unanimously via roll call vote (6-0).

Ms. Isherwood made a motion to ratify the Enforcement Order issued on February 23, 2022 to Scott Couto for violations of the Wetland Protection Act and Fairhaven Wetlands Bylaw at 8 Jeanette Street and was seconded by Mr. Lavalette (6-0). The motion passed unanimously via roll call vote (6-0).

**8. Ongoing Projects**

There were no discussions regarding ongoing projects.

**9. Upcoming Projects**

The Conservation Agent received several submissions for the March 21, 2022 meeting, including one Notice of Intent and two Requests for Determination. A request for Certificate of Compliance, with an extension and an amendment to the Order of Conditions was received for the same project.

**10. General Business**

a) Bills: To be discussed at the March 21, 2022 meeting.

## b) Discussion of remote meetings:

The most recent legislation signed by the governor allows the Commission to continue meeting remotely through July 15, 2022. If Board would like to continue meeting remotely beyond April 1, 2022 there will need to be a motion.

Mr. Haworth made a motion that the Board remains remote through July 15, 2022 and was seconded by Ms. Isherwood. The motion passed unanimously via roll call vote (6-0).

## c) 2022 Town Meeting Articles:

Ms. McClees stated the March 21, 2022 meeting will include a public hearing on the proposed Bylaw changes. The deadline to submit language for the articles is Monday March 14, 2022. This is to allow one final discussion to ensure there are no concerns among the Commission.

Ms. McClees summarized the proposals briefly. The recommendations are to create a coastal resilient zone that take into account future changes from sea level rise and coastal flooding.

Ms. Isherwood read through the definitions and is in favor of incorporating the language into the Bylaw.

There were no objections from the Board to submit these at Town Meeting and for further discussion during the public hearing at the March 21, 2022 meeting.

## d) Next Meeting: March 21, 2022

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

During the next Select Board meeting there will be a discussion regarding the Commission's involvement in Open Space with the BPW.

Mr. Haworth made a motion to adjourn at 8:32p.m. and was seconded by Ms. Isherwood. The motion passed unanimously via roll call vote (6-0).

Respectfully submitted,

Kelly Camara, Recording Secretary