

Conservation Commission**March 21, 2022****Minutes**

1. **Chairman's Welcome and Media Notification:** Mr. Haworth opened the meeting at 6:42p.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 22 of the Acts of 2022. 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, Jacob Galary, Corey Pietraszek and Amy DeSalvatore. Non-voting consultants, Ron Medina, Chelsea Isherwood and Carrie Hawthorne. Staff: Whitney McClees, Conservation Agent
Absent: Michael Kelly

3. Minutes

- a) Ms. Isherwood made a motion to accept the minutes of January 10, 2022 and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (6-0).

4. **Request for Certificate of Compliance**

- a) CON 023-133: **130 Ebony Street**

Ms. McClees informed the Commission this Certificate of Compliance (COC) contains a note stating the completed work includes a newly installed fence, which follows along the property line that was not included on the approved plan. Environmental Consulting & Restoration (ECR) believes the fence does not require approval from the Fairhaven Conservation Commission. This is based on a recent determination that the area previously regulated as an Isolated Vegetated Wetland (IVW) is not a regulatable wetland resource area, and the site does not fall under the jurisdiction of the Town of Fairhaven Wetland Bylaw or the MA Wetland Protection Act (WPA).

There are Special Conditions within the Order of Conditions that were never completed. The Conservation Agent has spoken with Town Counsel, given the most recent determination, and stipulated the property no longer falls under the jurisdiction of the Conservation Commission. Town Counsel's recommendation was to make everything properly in line with the determination by having an amendment submitted to remove the conditions that refer to jurisdiction of the commission, perpetual conditions, and any requirements associated with a jurisdictional resource area. Once those conditions are removed, the Commission may issue a COC for Complete Certification.

Ms. Isherwood had concerns issuing a COC for an Order of Conditions with conditions that never happened.

Ms. DeSalvatore concurred with Ms. Isherwood.

Cameron Larson from ECR issued the request for Certificate of Compliance. He is amenable to submitting a request to amend the Order of Conditions, but requested further discussion to determine which conditions to amend.

Ms. McClees suggested to wait to take action on the COC until the amendment request has gone through. She noted there are perpetual conditions related to the Commission's jurisdiction, which based on the most recent determination no longer apply. Inapplicable conditions should be removed, since the area is not jurisdictional.

Mr. Larson believes it would make sense for the owner to record the determination to the deed.

Ms. McClees stated issues still exist on the Order of Conditions that are not in compliance. The issues will be resolved, once the conditions are removed from the Order of Conditions.

Mr. Lavalette asked what needs to be completed by the applicant.

Mr. Haworth stated the Commission cannot amend the conditions through the current meeting; the applicant will need to file.

b) SE 023-1251, CON 023-139: **279 Mill Road**

Ms. McClees stated the applicant has submitted additional information, noting that the wetland crossings and stream crossings have failed and need to be repaired in proper compliance with the plans approved by the Commission in 2017. The agent recommended to hold off on any type of COC until the crossings are repaired.

Tim McGuire, Wildlife Biologist and Wetland Scientist with Goddard Consulting, spoke of the rip rap report by Atlantic Design Engineers. He understands the COC will not be approved until the repairs are addressed. In addition to the rip rap report, he had the opportunity to locate the replication plan that was referenced. There is no official replication plan approved in the Order of Conditions. He believes the area would flood to mirror the conditions of the surrounding perennial stream and wetland in that vicinity. The report submitted in the fall of 2021 articulated the area has 75% vegetative coverage. He would be happy to meet on site and noted there is still time for another report. He expects that vegetation will continue to thrive and does not anticipate any issues. He still plans on sending the final year of monitoring reports for the replication area, which is another outstanding item for the certificate of compliance.

Mr. Lavalette requested a site visit and would like to see the design and how it failed.

Mr. McGuire also recommended that Atlantic Design engineers attend the site visit.

Ms. Isherwood would like to see an improved plan and preferred two full growing seasons before issuing a COC.

Ms. DeSalvatore agreed with Ms. Isherwood's sentiments.

Tim McGuire will discuss rip rap designs with the engineer and will address any planting deficiencies. He also agreed to discuss culvert repairs with the engineers and applicant.

5. **Request for Extension**

a) SE 023-1290, CON 19-036: **Torrington Road, Map 29B, Lot 128**

Ms. McClees stated this was an Order of Conditions issued in 2019, due to the COVID state of Emergency, an extension placed the expiration date in June 2023. The property has changed ownership, since the initial Order of Conditions, and the new owners have not had the opportunity to start the project. The applicant is requesting a 3-year continuance for this Order of Conditions. The agent also noted the Order of Conditions issued in 2019 did not approve the wetland line.

Engineer for the project, David Davignon, of Schneider, Davignon & Leone stated they do anticipate breaking ground this summer.

Ms. Isherwood made a motion to grant a three-year extension for the work approved by the Order of Conditions for SE 023-1290, CON 19-036, Torrington Road, Map 29B, Lot 128, under both the Wetland Protection Act and the Fairhaven Wetland Bylaw and was seconded by Mr. Galary. The motion passed unanimously via roll call vote (6-0).

6. Public Hearing on Proposed Chapter 192 Wetlands Bylaw Changes

Ms. McClees spoke of the proposed changes to the Bylaw for the 2022 Annual Town Meeting. The first intends to add Land Containing Shellfish as a wetland value, which is more consistent with the Wetland Protection Act. How resource areas are responding to climate change and contributing to overall protection of the resource and adjacent areas will be incorporated.

The second section involves replacing the 100-foot Buffer Zone and establish a separate resource area called the Coastal Resilience Zone. This is further defined in the definitions.

Land in the Nasketucket River Basin Overlay District will be added to the Regulated activities, under Chapter 192-2. In years past, the Commission has permitted work within the Basin without anything formalized in the Bylaws. If the Commission wishes to have regulatory oversight for work within the Basin, this change would make past practice consistent with what is in the Bylaw.

The EPA has requested to be notified of any project proposed in the New Bedford harbor, so they can liaise with applicants regarding interference with the superfund site. This addition does not take anything away from the Commission.

There is a change to make notices and hearings more consistent with the Wetlands Protection Act. Applicants will be able to choose between three different options regarding abutter notification.

Changes to Chapter 192-8, includes more defined clarification on aesthetics, cumulative effect, Coastal Flood Risk Area, and the Coastal Resilience Zone (CRZ). Buffer Zone has been replaced with Flood Zone and Coastal Flood Risk Area as it relates to the Coastal Resilience Zone. The Target Year is written to be determined by the Commission. These resource areas, in addition to Land Subject to Coastal Zone Flowage, will be scrutinized by the Commission based on past data. This will allow the Commission to be more proactive in considering future conditions and impacts of future sea level rise and storm surge. Structures will be designed to remain safe for decades to come.

Ms. McClees stated that instead of identifying an area as a 100-foot buffer within a flood zone, more consistent flood zone markers will be identified. These modeling tools will better protect those at risk. Additionally, when an applicant is not at risk of flooding, the project may be proposed without these additional safeguards outlined in the Bylaw.

Ms. Isherwood is comfortable with the changes.

Mr. Lavalette asked how will a Target Year be derived.

Ms. McClees explained that it would be set in the subsequent regulations. The Target Year should remain flexible in the Bylaw, since a Town Meeting approval is required for changes.

Ms. DeSalvatore feels comfortable with these proactive policies to prevent and mitigate the impact of flooding. She believes maps predicting future flooding instead of relying solely on historical data will better mitigate risk. She suggested more public awareness on this matter.

Mr. Galary asked Ms. McClees for clarification regarding these new coastal terms and what affects they will have for residents on the water. Will projects become more difficult to initiate?

Ms. McClees stated jurisdiction within the Conservation Commission will not change dramatically. Currently, through the Bylaw, the Commission has jurisdiction over all the resource areas, the 100-foot buffer zone to the resource areas, the flood zone, and the 100-foot buffer zone to the flood zone, which is not a jurisdictional area under the WPA. These proposed changes would better clarify and provide better language for the areas that are already within the Commission's jurisdiction. Instead saying the flood zone plus 100 feet, the Commission would state the flood zone, the 100-foot buffer to the resource areas within the Resiliency Zone. Also, instead of having 100-foot buffer zone to the flood zone, it would be replaced with a future projection of what flooding is going to do between now and the Target Year. The Flood Zone may not always be accurate, considering variations in elevation, vegetation, impervious areas, etc. These descriptive terms will ensure the Commission is protecting residents to their best ability, and utilizing modeling tools that will protect properties and structures from flooding.

Currently, flood zones are set according to FEMA and are based on historic flooding data. These new standards would allow more specifics and the ability to individualize each project, thereby allowing a property who is not at risk of flooding the ability to proceed with their project. According to the current Bylaw, the Commission must assume that if the property falls within the zone, then there is automatic risk.

Ms. McClees understands those that live along the coast should have flood insurance and be aware of flood risk, but a severe flooding event can destroy development on properties designed to withstand flooding and cause damage to resource areas. The WPA and the Bylaw look at impacts of more severe flooding and coastal storm damage to reduce these impacts.

Mr. Lavalette believes these changes are beneficial to the town and is a proactive approach. The town has two houses that are under water at high tide. The utilities to these homes affect neighboring homes and is a safety issue. Had this Bylaw been enacted 10 years ago, chances are that whole street would not have been built upon.

Kevin McLaughlin asked what specific rules the Board will put in place.

Ms. McClees stated this proposed addition would allow the Commission to incorporate a regulation in projects that occur within a flood zone, coastal beach, salt marsh, wetland, etc. The Commission will be able to question if projects near a salt marsh will aid or prevent the salt marsh from mitigating severe storm surge and flooding.

Mr. McLaughlin would like to know specific regulations. How will the change affect individuals within the resource areas? What rules or regulations will be put forward to mitigate impacts from climate change?

Ms. McClees cannot speak in terms of specifics because this discussion does not relate to proposed regulations. She can only speak to how resource areas fundamentally help the town and protect the town from impacts that are already occurring from sea level rise and more severe storms. This

particular Bylaw change would allow the Commission the ability to identify the extreme value of these resource areas.

Mr. McLaughlin expressed the Bylaws being open ended and did not feel they are specific enough. They are based on predictions and act on the side of caution. His concerns focused on projects that may not go forward due to predictions. He fears residents will not know how to comply.

Mr. Haworth believes these new proposed guidelines will evaluate a project based on science, and may not necessarily prevent a project from happening.

Mr. McLaughlin understands the Commission wants to change the law to mitigate the effects from climate change. He stated he is not opposing these effects and concerns, but objects to the creation of a law without specifics to enforce.

Ms. McClees stated the Bylaw has been in effect since 1988 and these are proposed updates to that existing Bylaw, in order to be more consistent with current modelling. The regulations under the Bylaw would be a separate discussion and would stipulate Mr. McLaughlin's concerns. Regulations provide a clear road map for applicants. If this proposal goes through then the new regulations would be put forward. The Commission has not had regulations under the Bylaw for years. It would be in the best interest for the Commission, and the town, to have those regulations and provide answers that are not answered with a Bylaw.

Mr. Galary agreed with Mr. McLaughlin on the Bylaw's interpretive language.

Mr. Haworth reiterated Ms. McClees statement that the goal is to set the Bylaw and subsequently the Commission will set the regulations under the Bylaw.

Ms. McClees stated any regulation under the Bylaw only needs a public hearing, held by the Commission, for changes to be passed. Regulations allows flexibility, a clear roadmap, and guidance, but the 7-member Commission changes frequently, and new members will interpret the Bylaw differently.

Mr. McLaughlin wants to make sure the new defined areas of value are areas within resource areas. Property owners have invested in the town and the town does not want to create laws that impact the ability to use their property. He feared implementing a Bylaw that may institute a future regulation, without a Town Meeting. Mr. McLaughlin also inquired if the Wetlands Protection Act includes a provision for climate change.

Mr. Haworth stated it is not about the individual, but protecting the environment. Destroying property on an eco-sensitive area cannot be restored as quickly as it was destroyed.

Mr. Lavalette stated an appeals process is open for all cases. The Commission's intent is to give the applicant an idea of the landscape's conditions. The Bylaw gives residents caution before they spend their money.

Ms. DeSalvatore believes land ownership is a privilege and we are to act as stewards of the precious environment.

Mr. Haworth wants residents to use their property without destroying the land. What a property owner puts on their property may not affect them, but may destroy someone else's property. The Commission is here to be a mitigator.

Ms. Isherwood stated the Commission is looked to for guidance. We are expected to know current information and data.

Mr. McLaughlin asked if the state has incorporated climate change in their law.

Ms. McClees stated the DEP is currently working on regulation revisions that would be more consistent with future flooding projections. Although there is not a specific wetland value in the WPA, the state has initiated statewide climate assessments at both the state and local levels, involving future planning efforts. The state is utilizing numerous entities to prepare for climate change and help protect municipalities, resources, and residents. The DEP is proposing to have updated regulations, for public comment, in order to bring the WPA and its associated regulation consistent with current data.

Mr. Haworth added Fairhaven has 27 miles of coast and is more vulnerable to sea level rise than inland towns within the state. He believes it is important that the Commission is proactive in trying to prevent businesses and residents to be washed into Buzzards Bay.

Mr. McLaughlin stated he is here to discuss a law. He is concerned that Fairhaven is getting ahead of the State of Massachusetts and may have to reevaluate in a few years, once the state sets new guidelines.

Ms. McClees added that according to Massachusetts Home Rule authority, municipalities are granted self-governance and are allowed to be more stringent than the state. Commissions are a unique entity which allows residents of the town to regulate and protect areas of value. Local residents understand their town and have the insight to take localized impacts into account.

Mr. McLaughlin understands the concerns but still believes the town is getting ahead of themselves with these modifications. Commissions use the WPA as a regulatory body to conduct business. Mr. McLaughlin inquired how aesthetics is related to the WPA.

Mr. Haworth answered that aesthetics has been a part of the town's Bylaw since 1988. We are attempting to define the term to provide better clarification for applicants.

Ms. McClees added this is a discussion on our Bylaw and what has been in our Bylaw since 1988. Some of these changes are aimed at better communication with the public. Recently questions regarding aesthetics have arisen and the Commission could not point to anything in the Bylaw. This will provide answers relevant to projects.

Mr. McLaughlin requested that the changes are not adopted until there is a public hearing.

Mr. Haworth asserted that these proposals are already scheduled to be presented at the June Town Meeting.

Mr. Haworth made a motion to close the public hearing for the proposed Bylaw changes for the 2022 Annual Town Meeting and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (6-0).

Mr. Haworth made a motion to go forward at the Town Meeting with the proposed changes for the 2022 Annual Town Meeting as presented and was seconded by Ms. Isherwood. The motion passed (5-0-1), with Mr. Galary abstaining.

7. **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:

Requests for Continuance

- a) 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.

Mr. Haworth 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 (6-0).

- b) SE 023-1377, CON 023-263: **128 Huttleston Avenue – request for continuance to April 11**
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.

Mr. Haworth made a motion to continue SE 023-1377, CON 023-263, 128 Huttleston Avenue to April 11, 2022 and was seconded by Mr. Lavalette. The motion passed unanimously via roll call vote (6-0).

Request for Determination of Applicability

- c) CON 023-267: **5 Fisherman's Road**

Request for Determination of Applicability filed after-the-fact by Caitlin Hychko for the replacement of an existing shed, addition of a deck, removal of some trees and shrubs, and addition of a seashell driveway, stone walkways, and plantings at the property located at 5 Fisherman's Road, Assessors Map 43A, Lots 119 & 120. Work to take place in Land Subject to Coastal Storm Flowage.

Ms. McClees presented the proposed site plan and stated the application came in after-the-fact. The members of the Commission did a cease-and-desist notice for removal of vegetation without a permit. The entire property is in the flood zone, with no other jurisdictional resource areas nearby. The property owner is willing to work with the Commission and schedule a site visit. The majority of work consisted of small tree and shrub removal, which was initiated by the prior property owner. The applicant is now interested in landscaping items and constructing a shed. They are proposing to plant trees and shrubs. As far as work under Request for Determination, they are looking to add a deck positioned on sonotubes. The Conservation Agent recommended issuing a Negative 2 and a Negative 6 Determination and to allow the applicant to execute the plan as presented.

Applicant, Gary Hychko, was present at the meeting.

Ms. McClees added the applicant did provide a significant planting list and descriptions. The applicant has included existing vegetation as well as what is proposed.

Ms. McClees added to keep in mind that the trees removed were not naturally occurring and planted by the previous owner. No performance standards exist as far as flood mitigation, under either the WPA or the Bylaw.

Ms. Isherwood asked if the Commission has the authority to enforce complete replacement of plantings.

Ms. DeSalvatore added that much of vegetation we protect has been planted. She would like to see more substantial plantings to ensure flood resilience.

Mr. Lavalette believes this warrants a \$300 fine for after-the-fact filings.

Ms. McClees believes a cease and desist was posted. After-the-fact filings are doubled plus advertising fee.

Mr. Hychko understands the after-the-fact filing and associated fees.

Mr. Haworth made a motion for the Commission to issue a \$300 fine under the Fairhaven Wetlands Bylaw, Chapter 192-11 for CON 023-267, 5 Fisherman's Road and was seconded by Ms. Isherwood. The motion passed unanimously via roll call vote (6-0).

Ms. Isherwood made a motion to close the public hearing for CON 023-267, 5 Fisherman's Road and issue a Negative 2 and Negative 6 Determination under the WPA and Fairhaven Wetlands Bylaw and was seconded by Mr. Lavalette. The motion carried (5-0-1), with Ms. DeSalvatore abstaining.

d) **CON 023-268: 475 Bridge Street**

Request for Determination of Applicability filed by Bryant Ribeiro for an addition to the existing residence with a small portion of the work within the Riverfront Area and a deck at the property located at 475 Bridge Street, Assessors Map 31, Lot 5B. Work to take place in Riverfront Area.

Ms. McClees stated there was a site visit with a few members of the Commission. The applicant is proposing work within Conservation jurisdiction in the area outlined. This area includes the proposed deck and a small portion of the proposed addition; everything else proposed is outside the Commission's jurisdiction. The work within jurisdiction is outside the 100-foot buffer zone, but just within the 200-foot riverfront area. Accessory structures such as decks are exempt activities under the WPA, if it is located more than 50 feet of the perennial stream's highwater, river, or edge of a Bordering Vegetated Wetland (BVW). The deck comprises of 250 square feet out of a total 385 square feet of work in the commission's jurisdiction. The remaining portion of work within jurisdiction is the 135 square feet of the proposed addition. Given a small portion of the work is in the outer edge of a 200-foot riverfront area, it was recommended to issue a positive Determination (not confirming resource area boundaries as depicted) and issuing a Negative 2 and Negative 6 Determination, under the WPA and the Fairhaven Wetlands Bylaw.

Rick Charon was present and had no further information to add.

Ms. Isherwood made a motion to close the public hearing for CON 023-268, 475 Bridge Street and issue a Positive 2b, Negative 2, and a Negative 6 Determination and was seconded by Mr. Galary. The motion passed unanimously via roll call vote (6-0).

Request for Amended Order of Conditions

e) **SE 023-1290, CON 19-036: Torrington Road, Map 29B, Lot 128**

Request for Amended Order of Conditions filed by Christopher and Laurie Stevens for changes to the scope of work and reconfiguration of the site layout at the property located at Torrington Road, Assessors Map 29B, Lot 128. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Bordering Vegetated Wetlands.

Ms. McClees presented the current approved plan. Overall, there would be a reduction in scope with the elimination of the garage and reduction in impervious surfaces. The house is 42 feet from the wetland and the driveway is approximately 15 feet to the wetland. The proposed work is no closer to the resource area than the existing disturbed. The agent recommended to close the public hearing and issue an amended Order of Conditions, with both the WPA and the Fairhaven Wetlands Bylaw, including conditions outlined in the staff report.

David Davignon, of Schneider, Davignon, and Leone, represented the applicant and had nothing further to add.

Mr. Lavalette asked if anything else needed to be delineated.

Mr. Davignon explained that a permanent boundary exists on two sides with boulders to the north and the east and west side are developed.

Ms. Isherwood made a motion to close the public hearing for SE 023-1290, CON 19-036, Torrington Road, Map 29B, Lot 128 and issue an amended Order of Conditions under the WPA and the Fairhaven Wetlands Bylaw with conditions outlined in the March 10, 2022 staff report and approved plans dated March 2, 2022. The motion was seconded by Mr. Lavalette and passed unanimously via roll call vote (6-0).

Notices of Intent

f) SE 023-1378, CON 023-266: **148 Main Street**

Notice of Intent filed by the Diane G. Tomassetti Revocable Trust and Ames Family Living Trust for the construction of a pile-supported timber pier, aluminum gangway, and float at the property located at 148 Main Street, Assessors Map 12, Lot 12A. Work to take place in Land Under Ocean, Land Containing Shellfish, Land Subject to Coastal Storm Flowage, on Coastal Bank and Coastal Beach, and in their 100-foot buffer zones.

Ms. McClees stated the proposed dock has received comments from the Division of Marine Fisheries. They had no concerns; everything seemed to be addressed in the submitted Notice of Intent. The work does not fall within mapped priority or estimated habitat for endangered species. Total impacts include pilings proposed within the coastal beach and the old pier pilings are to be removed. The remainder of the pilings are associated with the rest of the pier, gangway, and two pilings associated with a float. The applicant has already submitted the shellfish mitigation fee. With regard to MA DEP docks and pier guidance, it does appear to be in compliance. The area removed will be loamed and seeded. The project will not have impacts on the stability of the coastal banks. The agent recommended closing the public hearing and issuing an Order of Conditions, including the recommended conditions in the staff report.

Dave Davignon represented the applicant. He submitted a 1971 arial photo, which shows the existence of a structure appearing to be much longer than what is being proposed now.

Ms. DeSalvatore made a motion to close the public hearing for SE 023-1378, CON 023-266, 148 Main Street and issue an Order of Conditions under the WPA and the Fairhaven Wetlands Bylaw with conditions outlined in the March 11, 2022 staff report and approving plans dated February 16, 2022. The motion was seconded by Mr. Lavalette and passed unanimously via roll call vote (6-0).

g) 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.

Mr. Haworth made a motion to continue SE 023-1370, CON 023-256, Winsegansett Avenue, Map 42A, Lots 232, 232A & 233 to April 11, 2022 at the applicant's request. The motion was seconded by Mr. Lavalette and passed unanimously via roll call vote (6-0).

h) SE 023-1369, CON 023-255: **10 Diamond Street**

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.

Ms. McClees did not receive any revised documents by the deadline, but had been notified this project does not require review from the Zoning Board.

Bob Field, of Field Engineering, stated he submitted the revised plans a while ago, but asked for the last continuance to allow a response from zoning.

Mr. Haworth suggested to continue SE 023-1369, CON 023-255, 10 Diamond Street to review the revised analysis and to continue until April 11, 2022 at the applicant's request. The motion was seconded by Ms. Isherwood and passed unanimously via roll call vote (6-0).

The Board will obtain copy and review before the next meeting.

8. **Buffer Zone Regulations Variance Request**

- a) 144 Shaw Road – *request for continuance to April 11*

9. **Violations/Enforcement Orders/Cease and Desist Notices**

- a) 25 & 29 Mangham Way

Ms. McClees stated the Commission had requested revisions to the proposed restoration plan to incorporate a buffer at the 25-foot no disturb. Based on the revised restoration plan she believes it addresses the 25-foot no disturb. At 25 feet at the adjacent property at 25 Mangham Way they are proposing two sections of split rail fence. The agent recommended approving the restoration plan as revised, subject to conditions in the staff report.

Bruce Webb from Ecosystem Solutions stated there will be a physical barrier with native shrubs at the 25-foot no disturb; this border will go perpendicular between the property line. 25 Mangham Way was amenable to a short section of fence, within the restoration area.

Ms. Isherwood brought up restoration plan numbers 14 and 23. She was concerned the new plantings did not have adequate protection.

Mr. Webb stated the owner set up surveillance equipment looking into the wetland to protect plantings.

Ms. Isherwood made a motion to approve the restoration plan for 25 & 29 Mangham Way dated March 7, 2022, under both the WPA and Fairhaven Wetlands Bylaw, with conditions outlined on the March 11, 2022 staff report and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (6-0).

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

Ms. McClees stated the revised restoration plan addresses all previous concerns. She recommended to approve the restoration plan, with the narrative, and conditions outlined in the staff report.

Steve Gioiosa with SITEC Environmental Consultants believes they have addressed items brought forward.

Mr. Gioiosa stated the heavy dotted line represents the 6-foot contour line, as opposed to the limit of the stock pile area. This dotted line coincides with the FEMA flood plain line. A 2019 arial photograph gave the limits now depicted on the right of the plan. The disturbed area was used as a staging area by the EPA.

Mr. Haworth agrees with Mr. Gioiosa; the heavy dashed lines were not defined clearly enough but now understands the previous discrepancy.

Ms. Isherwood made a motion to approve the restoration plan and narrative for SE 023-1341, CON 023-194, North Street Marsh, Assessor's Map 15, Lot 43 dated March 9, 2022, under the WPA and the Fairhaven Wetlands Bylaw, with conditions outline in the March 11, 2022 staff report and was seconded by Mr. Lavalette. The motion passed and passed (5-0-1), with Ms. DeSalvatore abstaining.

c) 20 Yankee Lane

Ms. McClees stated the Commission asked that Part B of the restoration plan address plantings and the stream to be portioned off. This portion of the restoration plan was to be submitted by February 28, 2022, and the deadline was met. The commission had previously discussed utilizing a peer review for this more complicated restoration to restore stream conductivity.

Tim McGuire, of Goddard Consulting, represented Brian Lopes. He decided to use natural portions of the streams up and down gradient, off site, to serve as a proxy to represent the dimensions of the areas not disturbed. Measurements were taken at all corresponding points and the average of that turned out to be a width of about 8 feet. The height was consistent at one foot across at all survey locations. They are constructing the stream by grading it down, as approved in phases one and two. For the stream, they are proposing to grade it to match this side of the stream. The width is already 8 feet, but the banks need to be graded down as they are little deeper than the natural portions. The natural hydrology of the surrounding wetland will be used to reestablish the stream. The entire area will be seeded with New England wetland mix, with the upland portions receiving a conservation mix. There will also be two years of wetland replication monitoring included in the report. Mr. McGuire was happy to continue addressing the Commission's issues and put any discrepancies to rest.

Mr. Haworth felt the restoration plan should be backed by a third party to ensure the best possible outcome.

Tim McGuire asked if a peer review could be avoided with continued discussions with the Commission. The applicant is very willing to get everything fixed. Mr. McGuire stated he had discussed the hydrologic calculation with Ms. McClees and that phases one and two are being restored to the natural grades from 2017. The design was fine-tuned by using offsite measurements to mirror the existing stream.

Mr. Haworth stated the Board had avoided punitive measures, thus saving the applicant thousands of dollars. The Board would rather see money go towards a peer review to verify work. This is not to question the work, but rather confirming work.

Mr. McGuire stated area will be restored to its natural state. All grades were lined up to avoid engineering calculations.

Ms. McClees stated some of the work is to lower the elevation of the stream, which is what is feeding the BVW. She was concerned there was nothing proposed that mentions restoring and

bringing the stream bed back up. If not receiving water from the stream, then feeding the BVW will still cause the BVW to dry out. She would like to see the stream restored to a functional stream with an associated BVW.

Mr. McGuire stated that once the stream is dug out it will deplete the groundwater. This will result in establishing natural hydrology.

Ms. Isherwood believes that a peer review would be doing our due diligence. Sometimes peer review brings up topics not thought of originally.

Mr. Lavalette agreed to keep with the process and require a peer review for a project this size.

Mr. McGuire asked Ms. McClees if there is anything in the proposal that needed clarification.

Ms. McClees stated there are no elevations associated with the stream bed on the plan. She deferred to Commission's decision on a peer review in order to ensure proper hydrologic activity.

Mr. McGuire stated that elevations were shown in the vicinity of the stream.

Ms. Isherwood made a motion to allow the agent to coordinate a peer review process for the second half of the restoration for 20 Yankee Lane, in order to ensure compliance with the Wetlands Protection Act and the Fairhaven Wetlands Bylaw, and to certify proper restoration of the perennial stream's hydrology. The motion was seconded by Ms. DeSalvatore and passed unanimously via roll call vote (6-0).

The peer review process will require a \$2,500 initial deposit and Ms. McClees will solicit for peer review quotes to acquire a more accurate cost.

10. Correspondence

Ms. McClees stated two informational correspondences were received: (1) a letter from Bristol County Mosquito Control Project notifying of upcoming mosquito maintenance and; (2) a notification from Eversource regarding gas line maintenance, which is exempt from filing.

She also received an Order of Conditions request for 4 Fox Lane. This is a request to see if the Commission would consider an amendment to allow for a slightly larger garage than what was permitted in the fall of 2021. They are proposing 24-foot garage, instead of the approved 22-foot garage. Ms. McClees will follow up with property owner stating the Commission would like an official filing for the amendment.

The final correspondence was a request for the Commission to convene for a special meeting to address work started in absence of an approved restoration plan. Mr. Haworth does not feel special meeting is appropriate.

11. Ongoing Projects

N/A

12. Upcoming Projects

N/A

13. General Business

a) Bills: N/A

b) Next Meeting: April 11, 2022

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

A cease-and-desist was issued on a property that was placing mulch and wood chips around the property. Ms. McClees added the owner did speak with her today. The EPA is doing a clearing for harbor restoration. The owner, Mr. Medeiros, stated he would like to work with the town and keep his trailer on the property.

Ms. McClees agreed that the Commission must first determine if the camper can remain on the property. This is will need to be addressed by the Building Commissioner. Once that has been determined, the Commission can decide if the property owner can do the work and discuss the potential filing. The EPA is planning to seed the area, create wood chip paths and add shrubbery and a conservation seed mix. The whole area has been dredged for PCBs and the EPA will be coming back this spring to execute the plan.

Mr. Pietraszek left the meeting at 10:07p.m.

Mr. Haworth made a motion to adjourn at 10:09p.m. and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (5-0).

Respectfully submitted,

Kelly Camara