

Conservation CommissionJune 14, 2022MinutesRECEIVED
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1. **Chairman's Welcome and Media Notification:** Mr. Haworth opened the meeting at 6:00p.m. and read the protocol for Zoom meetings and open Public Meeting Law.

Mr. Haworth 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:** Geoff Haworth, Karen Isherwood, Gary Lavalette, Amy DeSalvatore, Michael Kelly, Jake Galary, Corey Pietraszek. Consultant: John Rockwell

3. **Reorganization of the Board and reappointment of non-voting consultants:**

Karen Isherwood made a motion to nominate Geoff Haworth as Chair and was seconded by Jake Galary. The motion passed unanimously via roll call vote (7-0).

Geoff Haworth made a motion to nominate Karen Isherwood as Vice Chair and was seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote (7-0).

Geoff Haworth nominated Gary Lavalette as clerk for the Commission and was seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote (7-0).

Karen Isherwood made a motion to nominate Carrie Hawthorne as non-voting consultant until May 31, 2023 and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (7-0).

Amy DeSalvatore made a motion to nominate Chelsea Isherwood until May 31, 2023 and was seconded by Jake Galary. The motion passed unanimously via roll call vote (7-0).

Karen Isherwood made a motion for Ronnie Medina as non-voting consultant until May 31, 2023 and was seconded by Gary Lavalette. The motion passed unanimously via roll call vote (7-0).

4. **Request for Extension**

- a. SE 023-1315, CON 023-119: 333 Bridge Street

Mr. Haworth stated this is a request for a three-year extension for an Order of Conditions originally issued on March 11, 2022. There is a recommendation from the former agent to extend until March 11, 2026.

Ms. Isherwood made a motion to extend the Order of Conditions for SE 023-1315, CON 023-119, 333 Bridge Street to March 11, 2026, under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw. The motion was seconded by Gary Lavalette and passed unanimously via roll call vote (7-0).

b. SE 023-1298, CON 019-052: 7 Union Street

Ms. Isherwood made a motion for SE 023-1298, CON 019-052, 7 Union Street to extend the Order of Conditions to September 10, 2026, under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw. The motion was seconded by Gary Lavalette and carried 6-0 with 1 extension Amy DeSalvatore.

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:

Request for Determination of Applicability

a. CON 023-280: 86 Fort Street

Request for Determination of Applicability filed by Mark and Elizabeth Rees to remove the existing wooden patio and replace with a two-tiered stone patio at the property located at 86 Fort Street, Assessors Map 5, Lot 6. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Coastal Beach.

Applicant, Mark Rees, presented his project. He is looking to improve the patio on his back deck; this stone, two-tiered structure would begin at garage level and step down to yard level.

Ms. Deslavatore asked for the area encompassing the 50–100-foot buffer zone. She was specifically looking for the percentage of proposed impervious surfaces.

Mr. Rees stated the diagram shows the 100-year flood plain and the 50-foot buffer zone. The yard is 110 yards long and 50 yards wide, and the patio is 25 feet wide.

Mr. Haworth inquired if the existing patio is the same footprint.

Mr. Rees stated he will be extending out about 10 feet from the existing location.

Ms. Isherwood stated that 20 percent of impervious surfaces lie within the 50–100-foot buffer; Fairhaven regulation allows up to 30 percent.

Ms. Isherwood made a motion to close the public hearing for CON 023-280, 86 Fort Street and issue a Negative 2 and Negative 6 Determination, under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw. The motion was seconded by Ms. DeSalvatore and passed unanimously via roll call vote (7-0).

b. CON 023-281: 12 Gilbert Street

Request for Determination of Applicability filed by Eunice Eble for the construction of a 10-foot-by-20-foot shed on a slab at the property located at 12 Gilbert Street, Assessors Map 29A, Lot 221. Work to take place in Land Subject to Coastal Storm Flowage.

Applicant, Eunice Eble, of 12 Gilbert Street presented the proposed 10x20 foot storage building that will consist of a slab foundation, versus a sonotube construction.

Ms. Isherwood stated the slab will be in zone AE, which will allow the proposed amount of square footage with a slab.

Mr. Lavalette inquired if the new shed is attached to the garage.

The applicant responded that it would not be attached and will be located about 2 feet from the garage.

Mr. Lavalette stated a shed that size on sonotubes would not be as supportive as a slab; it is not located in a velocity zone, so he did not consider the slab an issue.

Ms. Isherwood made a motion to close the public hearing for CON 023-281, 12 Gilbert Street and issue a Negative 2 and Negative 6 Determination under the WPA and the Fairhaven Wetlands Bylaw. The motion was seconded by Ms. DeSalvatore and passed unanimously via roll call vote (7-0).

Request for Amended Order of Conditions**c. CON 023-252: 184 Balsam Street**

Request for Amended Order of Conditions filed by Robert and Caryn Sullivan under the Fairhaven Wetlands Bylaw only to update the site plan to match that approved by MassDEP at the property located at 184 Balsam Street, Assessors Map 43B, Lots 40 & 41. No additional work is requested to be approved beyond what the original Order of Conditions approved.

Applicant, Robert Sullivan, of 184 Balsam Street presented his project and reiterated this is an amendment to an order to comply with the Fairhaven Wetland Bylaw. He is ensuring all paperwork aligns for the Certificate of Completion.

Mr. Lavalette inquired about pylon materials.

Mr. Sullivan stated all pylons will be manufactured by Green Heart, which is approved by MA DEP.

Mr. Haworth stated that modifications to MA DEP recommendations cannot be made by the Commission.

Ms. Isherwood concurred that Green Heart is more environmentally friendly and that the revised plan is better for the salt marsh.

Consultant, John Rockwell, added that the former agent suggested certain conditions, which did cover pylon material (Condition 19: SDP-7: The use of chromated copper arsenate (CCA) treated wood and creosote treated timber is prohibited. Wood preservative must dry before the treated wood is used in construction). The plan dated July 14, 2021 was approved by the Commission. The

applicant is now coming back after review and approval by MA DEP with the revised date of January 31, 2022.

Ms. Isherwood made a motion to close the public hearing for CON 023-252, 184 Balsam Street and issue an amended Order of Conditions under the Fairhaven Wetlands Bylaw, approving plans dated January 31, 2022, with the conditions outlined in the May 26, 2022 staff report. The motion was seconded by Mr. Galary and passed unanimously via roll call vote (7-0).

Notices of Intent

d. SE 023-1385, CON 023-279: 27 Silver Shell Beach Drive

Notice of Intent filed by Nancy Blouin to upgrade the existing septic system to a Title 5-compliant system and associated site work at the property located at 27 Silver Shell Beach Drive, Assessors Map 41, Lot 54. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Coastal Dune.

Representative, Stevie Carvalho, of Farland Corp. stated this property sits on the corner of Silver Shell Beach Drive and Chamber Street. The property includes a single-family home with one bedroom and a garage, including bedrooms on the second floor. The existing soil absorption system is old and the location is undetermined. There is an existing tank under the deck, which is believed to lead into a leeching pit/field. Farland Corp. is looking to upgrade the system to be Title 5 Compliant, which consists of a leeching field and utilizing the infiltrated chambers required for seasonal high-ground water. In addition, an existing shed needs to be relocated and portions of the fence moved to the property line. All other work is proposed outside the resource area.

John Rockwell discussed the soil log on the plan, which is under the list of requested variances. He looked into septic system plans, but did not look into flow rate calculations. A color chart was sent to the Commission (each square in the chart has an associated number that is a universal code). The color correlated with dark soil (associated with organic matter). Soil color is indicative of saturation conditions, with darker colors signifying saturation.

Mr. Rockwell stated the soil conditions at the site indicated saturation, which could be problematic. He then examined high tide elevation, and determined that ground water elevation is only around 6-7 inches above high tide elevation. The plan on a neighboring property had shown a variance request for the septic system, including the percolation test, due to soil saturation 25 inches below the surface.

Farland Corp. claims that as land slopes down the water table will follow, but this area is unable to respond to the sloping land, since it is at sea level and cannot go down any further. Mr. Rockwell requested a site visit with Farland Corp., in order to dig a test hole and the request was refused. He recommended the Commission ask the applicant for a continuance, in order to acquire that information. He also recommended the Commission hire a certified soil scientist.

Mr. Carvalho stated all ground water testing was witnessed by the Board of Health (BOH). Mr. Carvalho and the BOH agent took the required state course; they were trained on how to determine seasonal high-ground water in the classroom and in the field. Mr. Carvalho and the BOH agent were both present at 27 Silver Shell Beach Drive when the hole was dug, and determined the property sits

on seasonal high-ground water. He stated depths of seasonal high ground water between the two adjacent properties are consistent. He stated that according to Mr. Rockwell's theory all of Silver Shell Beach Drive would be submerged during a wet season.

Mr. Haworth believes Mr. Carvalho is qualified, but the Commission is unsure and would like to bring someone in to verify.

Mr. Carvalho stated that to determine seasonal high-ground water one would need to excavate down to that elevation. This will not be a visual observation from a soil auger.

Mr. Carvalho stated the soil evaluation was conducted per state environmental code and was properly witnessed by the BOH.

Mr. Rockwell stated the Commission has right of preconstruction review; if the Commission wants to verify a soil analysis there would be no expense to have him conduct the test.

Mr. Carvalho asked why Mr. Rockwell is looking into adjacent properties for gradient, as opposed to using one of the six filings that were done on Silver Shell Beach Drive. They are at more comparable elevation, as opposed to a property 3 feet higher in elevation.

Mr. Rockwell agreed with that point. He was curious about the lot on Chambers Street when he noticed raised systems. The plan revealed red flags and initiated enough concerns to look further. He understands Farland may be correct, but this still needs further review by the Commission.

Mr. Carvalho added this is a mounted system. The systems on adjacent properties have retaining walls with very small lots. The leeching capacity in a small lot needs a deeper profile, which could be why these systems are more elevated. They are still proposing a system elevated 2 feet above existing grade. This property has the area to utilize a lower profile system and bring the leeching field out wider, as opposed to a deeper profile.

Ms. Isherwood concurred with Mr. Rockwell in that the Commission has a right for preconstruction review. Soil colors can be subjective and she would like a more in-depth review.

Mr. Lavalette believes each lot should be taken individually, since there has been fill placed on these properties over the years. He also would like further review.

Ms. DeSalvatore stated the septic is in a flood area and does not feel comfortable without a peer review.

Joyce Eccleston Lopes, of 29 Silver Shell Beach Drive, an abutter to the north was concerned about her main water line, which comes up on Ms. Blouin's property. When she installed her new septic system she was required to have three cement walls, in case of any disturbance. She also needed DEP approval, which took many permits. She does not see barriers on the site plan for 27 Silver Shell Beach Drive.

Mr. Carvalho stated that unless the water line comes straight across, no water lines would be disturbed. In addressing Ms. Lopes' concerns regarding the lack of cement walls, he stated her lot is much narrower. In order to meet the 15 foot horizontal requirement, the ground must be at or above elevation of the system. This is why Ms. Lopes' system has a retaining wall, which is similar to other properties down Silver Shell Beach Drive. They were allowed to go 10 feet closer by meeting

those guidelines. 27 Silver Shell Beach Drive is a larger lot, without retaining walls and impervious barriers.

Ms. Lopes stated she is interested in reading up on FEMA stipulations, in regards to underground water lines and septic systems. She would like more assurance that her water line is not in danger of getting contaminated by a leeching area.

Mr. Carvalho stated the state requirement of a leeching field or component is a minimum of 10 feet from the water line; with the tank over 15 feet from the property line. Unless Ms. Lopes' main water line is more than 10 feet onto the property of 27 Silver Shell Beach Drive, he did not believe there is concern.

Mr. Haworth suggested Ms. Lopes contact the BPW and ask if they can mark the water line to make sure the water line is not impacted. This would clarify any water line issue. Mr. Carvalho could compare this with his plan. The BPW is required to do this for any underground obstacles.

Mr. Carvalho can compare the ground of 29 Silver Shell Beach Drive. This soil evaluation should not be neglected, since it is at the same elevation and directly adjacent to 27 Silver Shell Beach Drive. 8 Chamber Street is 3 feet higher in elevation.

Mr. Galary asked why Mr. Rockwell was refused to check out the property.

Mr. Carvalho stated that decision was based on a discussion with the applicant.

Mr. Carvalho asked for a continuance to further discuss with the applicant and the applicant's attorney.

Mr. Haworth made a motion to continue SE 023-1385, CON 023-279, 27 Silver Shell Beach Drive to June 27, 2022 and was seconded by Mr. Lavalette. The motion passed unanimously via roll call vote (7-0).

e. SE 023-1386, CON 023-282: 12 Diamond Street

Notice of Intent filed after-the-fact by Michael and Stasia DeCrosta for minor landscaping, removal of RV and associated gravel, and the installation of a fence at the property located at 12 Diamond Street, Assessors Map 29, Lots 48 & 50. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone Bordering Vegetated Wetland.

Applicant. Mike DeCrosta, of 12 Diamond Street represented his project. He stated the former agent helped them identify wetlands and velocity zones. Currently, the property has an RV with some gravel under it. He is proposing to remove the gravel. Depicted on the plan are the areas proposed for lawn and natural habitat. The dotted line on the plan depicts where they would like the fence. FEMA approved the fence to allow water to flow through, in the event of a flood.

Mr. Lavalette had no problem with the fence, but would like the vegetation near the resource replaced and not a lawn.

Ms. Isherwood stated they have requested lawn in this particular location to keep a low clearance for safety. During the previous meeting she understood they wanted the area clear. She could not

tell the extent of clearing from the photo; she does believe that some vegetation needs to be replaced.

Mr. DeCrosta stated that since the road has been replaced it is wider and safer, but the corner overlook is still very dangerous, not only for children but cars as well.

Mr. DeCrosta further detailed that nothing was removed and did he not de-root.

Mr. Lavalette stated 20 feet from the property to the road is allowable to clear for traffic.

John Rockwell contacted the former agent to get a history of the site. The proposed lawn area is outside of the 25-foot no touch zone. This is in an area of buffer where lawn is allowed. He believes the suggestions given by the agent were sufficient.

Mr. DeCrosta stated he did not clear anything out for the RV. He only brought in rocks to level ground and did not clear overgrowth. He also stated the former agent suggested a shadow box fence for water to flow through.

Ms. Isherwood made a motion to close the public hearing for SE 023-1386, CON 023-282, 12 Diamond Street and issue an Order of Conditions under the WPA and the Fairhaven Wetlands Bylaw, approving plans dated May 24, 2022; with the conditions outlined in the May 26, 2022 staff report and with the added condition (WET-1) that the wetland boundary delineated in the field and/or shown on the plans has not been accepted or approved by the Conservation Commission through the issuance of this permit. The motion was seconded by Mr. Lavalette and passed unanimously via roll call vote (7-0).

6. **Violations/Enforcement Orders/Cease and Desist Notices:** None at this time
7. **Correspondence:** None at this time
8. **Ongoing Projects:** None at this time
9. **Upcoming Projects:** None at this time
10. **General Business**
 - a) Bills
 - \$105.00 to Fairhaven Neighborhood News for the May 23, 2022 meeting legal ad
 - \$573.28 to LEC Environmental Consultants, Inc. for 1 Bella Vista
 - b) Next Meeting: Monday, June 27, 2022
11. **Any other business** that may properly come before the Commission not reasonably anticipated 48 hours in advance of the meeting.

Mr. DeSalvatore made a motion to adjourn at 8:05p.m. The motion was seconded by Mr. Lavalette and passed unanimously via roll call vote (7-0).

Respectfully submitted,

Kelly Camara, Recording Secretary