

Conservation Commission
September 19, 2022
Minutes

FAIRHAVEN TOWN CLERK
ROAD 20722 NOUBA 1152

1. Chairman's Welcome and Media Notification

Chairman's Welcome and Media Notification Karen Isherwood opened the meeting at 6:03p.m. Vice Chair, Karen Isherwood read the protocol for Zoom meetings and open Public Meeting Law.

Karen Isherwood 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, Amy DeSalvatore, Gary Lavalette, Jake Galary, Michael Kelly. Non-voting members: Carrie Hawthorne, Chelsea Isherwood, Ronnie Medina

Absent: Corey Pietraszek

3. Approval of August 8, 2022 Meeting Minutes

Karen Isherwood made a motion to approve the August 8, 2022 meeting minutes and was seconded by Gary Lavalette. The motion passed unanimously via roll call vote (6-0).

4. **Request for Certificate of Compliance**

a) SE 023-1357, CON 023-292: **78 Akin Street** – *Continued from August 8, 2022*

Rick Charon, of Charon Associates represented the applicant and presented the revised site plan, which includes the riverfront area that was flagged. The narrow lot behind this lot is open grass with a perennial stream. The house is depicted as outside the riverfront area. There was an issue with a concrete washout area, which the homeowner has pushed to the back of the silt fence.

Geoff Haworth added that when the measurements were done it was determined to be at the 100 foot to the Buffer Zone. It may only be 1 or 2 feet into the Buffer Zone; he does believe the applicant should be able to obtain a COC.

Karen Isherwood added the area was allowed to be lawn; she does not see any impact.

Karen Isherwood made a motion to issue a Certificate of Compliance for Complete Certification under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw for SE 023-1357, CON 023-292, 78 Akin Street, with two ongoing conditions: D42 and D43, as listed in the Order of Conditions. The motion was seconded by Jake Galary and passed unanimously via roll call vote (6-0).

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:

Request for Abbreviated Notice of Resource Area Delineation

- a) SE 023-1389, CON 023-284: **Ebony Street, Assessor's Map 43C, Lots 389-400** – *Continued from August 8, 2022*

Request for Abbreviated Notice of Resource Area Delineation filed by Michael Ristuccia to delineate wetlands located at Ebony Street, Assessor's Map 43C, Lots 389-400.

John Rockwell and Branden Costa observed the wetland line. They determined the flagging in the field does not correspond to the location on the plan. Mr. Ristuccia has requested a continuance until the October 3, 2022 meeting.

Karen Isherwood made a motion to continue SE 023-1389, CON 023-284, Ebony Street, Assessor's Map 43C, Lots 389-400 to the October 3, 2022 meeting, at the applicant's request and was seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote (6-0).

Karen Isherwood made a motion to reassign John Rockwell as peer reviewer of Ebony Street, Assessor's Map 43C, Lots 389-400 and was seconded by Gary Lavalette. The motion passed unanimously via roll call vote with all present; Geoff Haworth had signed off (5-0).

- b) CON 023-301: **Rocky Point Road, Map 43C, Lots 110, 113, 114** – *Continued from August 29, 2022*

Abbreviated Notice of Resource Area Delineation (ANRAD) filed by Michael Ristuccia to delineate wetlands located at Rocky Point Road, Assessor's Map 43C, Lots 110, 113, 114. Work to occur in Flood Zone VE. Applicant is no longer pursuing this project.

John Rockwell received correspondence from the applicant that he does not wish to pursue this project. It is an incomplete application under the WPA and the Fairhaven Wetlands Bylaw.

Karen Isherwood made a motion to close CON 023-301, Rocky Point Road, Map 43C, Lots 110, 113, 114 for an incomplete application and was seconded by Geoff Haworth. The motion passed unanimously via roll call vote (6-0).

Requests for Determination of Applicability

- a) CON 023-303: **43 Reservation Road**

Request for Determination filed by Natalie Caetano to resurface driveway with cement and establish circular sitting area in lawn located at Map 29A, Lot 351. Work to take place in Flood Zone (VE) and Buffer Zones of both Coastal Dune and Bordering Vegetated Wetland.

Property owner, Natalie Caetano, represented herself. The proposed patio will be surfaced with pavers and sand (measuring 16 feet in diameter). The existing driveway is proposed to be resurfaced.

Karen Isherwood informed the applicant that multiple resource areas are included in this Request for Determination of Applicability (RDA). RDA applications are for one resource area

only. The Commission is not confident on the resource boundaries. She believes the applicant needs a wetland delineation. Ms. Isherwood stated the applicant is in Land Subject to Coastal Flowage (LSCSF), Buffer Zones to Coastal Beach, Salt Marsh, and Bordering Vegetated Wetlands (BVW). Projects within multiple resource areas require a Notice of Intent (NOI).

Gary Lavalette added she is 25 feet from the resource area and the driveway has not changed in size. He did not feel the 16 foot diameter patio would dramatically change anything; there is only a small corner close to the resource area.

Geoff Haworth recommended a delineation. The patio is believed to be within a 25 foot Buffer Zone, but this is only an estimate without a delineation. He added the applicant might need a variance for the town's bylaw, but would need an ANRAD for this determination.

Karen Isherwood made a motion to close the public hearing for CON 023-303, 43 Reservation Road and issue a Positive Determination 2B, Bordering Vegetated Wetlands (BVW), Salt Marsh, and Coastal Dune, and a Positive Determination 5, under the WPA and the Fairhaven Wetlands Bylaw. The motion was seconded by Amy DeSalvatore and passed unanimously via roll call vote (6-0).

b) **CON 023-306: 685 Sconticut Neck Road**

Request for Determination filed by Steven Koczera to replace driveway with 6-inch concrete located at Map 42, Lot 014B. Work to take place in Flood Zone (VE) and Buffer Zone of Bordering Vegetated Wetland.

Steven Koczera, applicant and owner of 685 Sconticut Neck Road stated his old driveway is breaking apart and he would like to replace with the same dimensions.

Branden Costa recommended closing the public hearing and issuing a Negative 2 and 7 Determination.

Gary Lavalette asked Mr. Koczera if he is extending the driveway. He noted that it will be going from pervious to impervious.

Branden Costa added the application did not include a wetland delineation. The surface will become impervious in the 50-100 foot Buffer Zone (550 square feet impervious and 1,110 square feet total gravel surface).

Karen Isherwood does not see anything wrong with concrete within the 100 foot buffer.

Karen Isherwood made a motion to close the public hearing for CON 023-306, 685 Sconticut Neck Road and issue a Negative Determination 3 and Appendix A, as attached to the staff report dated September 15, 2022, and a Negative Determination 7, under the WPA and the Fairhaven Wetlands Bylaw. The motion was seconded by Gary Lavalette and passed unanimously via roll call vote (6-0).

Notices of Intent

- c) SE 023-1385, CON 023-279: **27 Silver Shell Beach Drive** – *Continued from July 25, 2022*
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, Assessor's Map 41, Lot 54. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Coastal Dune.

Attorney, Nicholas Gomes represented the applicant. He expressed concern with condition 3, which proposes to change the groundwater level. He confirmed two submissions to the Board: (1) the public records request that included plans of septic systems in the general area of Silver Shell Beach Drive and; (2) public records for 8 Chambers Street. The percolation test performed to find the groundwater elevation of 3.8 feet was performed by the Board of Health (BOH) agent, David Flaherty, who is a licensed sanitarian.

Attorney Gomes claimed Mr. Rockwell determined the groundwater elevation to be 3.5 feet. He would like the Commission follow Mr. Flaherty, as he is a certified soil evaluator and sanitarian. Mr. Gomes believed that Mr. Rockwell dug disturbed material, which would lead to an improper soil evaluation. The Title 5 regulation, specifically under 310 CMR 15.0.17, sets forth the soil evaluator license. This Certification is delegated from the Department of Environmental Protection (DEP) to the New England Interstate Water Pollution Control Commission (NEIWPCC). NEIWPCC confirmed Mr. Rockwell does not have the correct certification to perform the task. Mr. Gomes does not dispute Mr. Rockwell's extensive experience with municipalities, but feels he does not meet the technical criteria for certified analysis.

Attorney Gomes has no doubt Mr. Rockwell used the Munsel color system, but has concerns it was performed on disturbed soil. He urges the Commission to go with the BOH analysis and the plan created by Farland Corp., which was based on the BOH findings.

Karen Isherwood's main concern is the failing septic system. She claims David Flaherty now approves Mr. Rockwell's findings.

John Rockwell brought up the right of preconstruction review and the duties of the Commission members. Commissioners donate their time to protect town resources. They are not required to have environmental expertise. They are required to review the bylaws and plans created by professionals, in order to determine if the plans meet the intention of the Wetlands Protection Act. It is up to the Commission to decide if plans are accurate or not.

John Rockwell made the correction that his water table determination was 5.4 feet and not 3.5 feet, as Attorney Gomes stated. He emailed the engineer with Farland Corp. and they refused to participate with his soil evaluation. These disputes and delays could have been avoided if all parties were receptive and present for his analysis.

Mr. Rockwell confirmed his conclusion was based on a test pit in fresh soil that was not disturbed. The surrounding water tables are consistent with Mr. Rockwell's theory. 8 Chambers Street was reported as 6.7 feet, which is the highest in the area. 21 Silver Shell Beach Drive was 5.1 feet. Further down the road, 19 Silver Shell Beach Drive was 4.7 feet. 27 Silver Shell Beach

Drive is in the middle of these surrounding properties and goes down in elevation; the water table is as predicted. The information Attorney Gomes gathered from the public record request, only further supports Mr. Rockwell's conclusion.

Christopher Augenti, of 8 Chambers Street reiterated that on July 7 and August 15 the septic system was pumped. This failing system is a problem to the neighbors and a resolution should not be delayed any further.

Karen Isherwood requested a revised plan.

Geoff Haworth suggested the Commission either moves forward with an OOC or continue to the next meeting in order to receive revised plans.

Karen Isherwood added the Commission would need a revised plan showing the water table at 5.4 feet.

Nick Gomes would be happy to hear the Board's decision at the next meeting. The few inches in groundwater deviation result in additional feet of fill, which is an added expense to his client. He is still not in agreement with Mr. Rockwell's findings.

Atty. Gomes expressed concern regarding a meeting conducted that was not in the public sphere. His client was not privy to the items discussed.

Geoff Haworth responded that many reviews occur outside regular conservation meetings, when a reevaluation of data is required. Once Dave Flaherty reviewed Mr. Rockwell's data and the measurements of the surrounding properties, he did in fact agree with John Rockwell. For the record, Geoff Haworth was not present for this meeting with Dave Flaherty and John Rockwell. The data was reevaluated due to the inconsistencies.

Gary Lavalette stated all documentation was required to be sent to the proper channels. The BOH agent needed Rockwell's report to reevaluate and make an informed decision.

Karen Isherwood responded that the meeting with Dave Flaherty did not involve Commission members. The revised plan should reflect Condition A3. If the revised plan does not depict 5.4 feet as the measured groundwater elevation, then the Commission will not approve.

Karen Isherwood made a motion to continue SE 023-1385, CON 023-279, 27 Silver Shell Beach Drive, in order for the Commission to receive a revised plan reflecting general condition A3 and the proposed Order of Conditions, to the October 3, 2022 meeting. The Commission will allow a waiver of the submission deadline to be submitted within 10 days, at the applicant's request. The motion was seconded by Amy DeSalvatore and passed unanimously via roll call vote (6-0).

Karen Isherwood closed the hearing for a break at 7:47p.m.; Karen Isherwood officially reopened the meeting at 7:53p.m. and conducted roll call.

- d) SE 023-1391, CON 023-291: **Bridge Street, Map 36, Lot 15J** – *Continued from August 8, 2022*
Notice of Intent filed by Fairhaven Properties, LLC for proposed redevelopment work located at Map 36, Lot 15J, Bridge Street. Fairhaven Properties proposes to redevelop the site into a two-

building self-storage facility. Development includes landscaping, as well as stormwater and utility infrastructure improvements. A portion of the proposed work is located within 100 feet of a wetland resource area, previously delineated and approved under an Order of Resource Area Determination (ORAD), issued in January 2022.

Karen Isherwood made a motion for another \$2,500 deposit and was seconded by Amy DeSalvatore. The motion passed unaimously via roll call vote (6-0).

John Rockwell sent a review to summarize the regulations that apply. There was a change in stormwater regulations in 2021 and those revised regulations were not used for the design.

Karen Isherwood made a motion to continue SE 023-1391, CON 023-291, Bridge Street, Map 36, Lot 15J until October 3, 2022 amd was seconded by Am DeSalvatore. The motion passed unanimously via roll call vote (6-0).

- e) SE 023-1393, CON 023-304: **2 Melpen Way** – *Continued to October 3, 2022*
Notice of Intent filed by Andrew & Cheryl Shackett for razing an existing dwelling and constructing a new residence on a flood-compliant foundation with a septic system, utilities, and associated site work located at Map 29, Lot 2D. Work to take place within the Flood Zone (VE), Salt Marsh, Coastal Dunes, and Land Subject to Coastal Storm Flowage and Buffer Zones of Bordering Vegetated Wetland and Coastal Beach.

Karen Isherwood made a motion to contract with John Rockwell for a peer review of SE 023-1393, CON 023-304, 2 Melpen Way with the authorization of the Chair or Vice Chair to sign the contract and was seconded by Geoff Haworth. The motion passed unanimously via roll call vote (6-0).

Amended Order of Conditions

- f) SE 023-1382, CON 023-305: **8 Winslow Court**
Amended Order of Conditions filed by Thomas Marshall to construct and maintain a pier, ramp, and float system located at 8 Winslow Court, Map 12, Lot 010. Work to take place within Land Under Ocean, Coastal Beach, Land Subject to Coastal Storm Flowage, and Land Containing Shellfish.

Patrick Rezendes of Foth represented the applicant.

Karen made a motion to close the public hearing for SE 023-1382, CON 023-305, 8 Winslow Court and issue an amended Order of Conditions, approving the amended plan dated June 14, 2022, with the conditions and findings outlined in Appendix A, dated September 15, 2022, under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw. The motion was seconded by Gary Lavalette and passed unanimously via rol call vote (6-0).

- i) SE 023-1296, CON 023-307: **1-8 Alves Way**
Request for an Amended Order of Conditions filed by Alexander Gray Development, LLC for the following modifications located at 1-8 Alves Way, Assessor's Map 28, Lot 24: (1) sump pumps are being installed which tie into the roof leaders. The roof leaders tie into pop-up drains that outlet into the property lawns; (2) the front and rear yard elevations have been raised as much

as two feet for lots 4, 5, and 6, however the slopes are generally consistent with the design plans; (3) Stone boulder walls have been installed throughout the site, including access road and wetland replication areas (located on lots 4, 5, 6, and 7) and; (4) an installed irrigation system for the lawn. Work to take place in Bordering Vegetated Wetland and its 100-foot buffer zone.

Antonio Alves and Josh Alves represented Alexander Grey Development, LLC on this subdivision off Sconticut Neck Road.

Arsen Hambarzumian, the civil engineer for the project stated he previously submitted a request for an Amended of Order of Conditions for one specific lot, but this is for the entire project. There have been several site meetings with the Commission, much of these changes were approved by the previous agent. Pop up drains are being installed throughout the lots to disperse runoff from the roofs. The retaining walls were done to help with the drainage, but also to serve as a barrier near the wetland mitigation zone. The original proposal was for a split rail fence, but the walls seemed to serve much better and are better barrier to the resource areas. Much of this work was agreed to previously by the Commission.

Karen Isherwood added DEP policy 85-4 for amended Orders of Conditions are for minor alterations. These issues pose more severe negative impacts to the resource areas. It would be prudent not to amend these modifications. The elevation has changed from the original plans.

The Commission requires the most updated as-builts. Also, there is the issue of runoff on the lawns. During a site visit, the Commission noticed significant erosion from the rainstorm. In the Order of Conditions, there is no condition in perpetuity for storm water that regulates the Commission is to be notified of any changes after storms.

Gary Lavalette stated topography issues need to be resolved as nothing is containing the water on the site. The boulder wall is caving in/eroding on lot numbers 10 and 7. It should be noted the lawn is not fully established yet. These two lots are pitched to direct stormwater in a northerly direction.

Arsen Hambarzumian responded by saying the significant erosion was due to the long drought followed by heavy rains. He has placed jute netting and the lawn has further established to mitigate erosion. Slopes and elevations are in 2 foot increments which is allowed by the bylaw. He can address runoff onto neighboring properties with a stormwater swale. He can conduct a topographical survey to determine deviations.

Karen Isherwood asked why they were filed together.

Josh Alves with Alexander Gray Development, LLC responded that the OOC applied to the entire subdivision, but they are now having specific issues with each individual lot. The Building Department and Planning Board will not approve anything by lot until approved by conservation, which is why they were filed as one.

Tony Alves commented that the erosion complaints came from the abutters. The erosion was caused by two rain leaders that were not tied to the pop up drains. Water was being dumped into a concentrated spot. He disagreed that erosion was caused by the grades.

John Rockwell stated their application specifies a designated subdivision with the Planning Board. He recommended a review from the BPW. He speculated whether the original plan had an implementation or design issue.

Aresen Hambardzumian agreed to meet with the Commission to compare the as-built plan with the building plan. He also recommended a site walk to determine any substantial changes.

Karen Isherwood made a motion to accept the request for withdrawal without prejudice for an Amended Order of Conditions for SE 023-1296, CON 023-307, 1-8 Alves Way, under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw. The motion was seconded by Jake Galary and passed via roll call vote; Amy DeSalvatore abstained (5-1).

Violations/Enforcement Orders/Cease and Desist Notices

- a) **3 Shawmut Ave, Map 32, Lot 053:** unpermitted bridge, wood pile, and boat docking in salt marsh.

Branden Costa stated the Conservation office received a correspondence from MassDEP regarding an unpermitted bridge, path, and boat in a salt marsh. During a site visit, it was noted the area was disturbed. Mr. Costa recommended to allow the natural vegetation of the *Spartina alterniflora*. It would be the property owners' responsibility to monitor, document, and report the progress of revegetation to the Commission at the end of each growing season for a period of at least (3) years.

Karen Isherwood added this falls in the Fairhaven/Acushnet Land Trust. The Commission had cooperation from John Methia, who created the path. He is trying to comply.

Amy DeSalvatore added she went to the site with Branden Costa and believes if left alone it will revegetate. Mr. Costa suggested an alternate access to avoid going through the property. If they create any new path through the salt marsh (not on Conservation property), they still need to come before the Commission.

Karen Isherwood added the owner reached out to Tim Cox to approve a mooring for their boat, so he would not have to keep accessing through the salt marsh.

Gary Lavalette added that everything has been corrected off the property. The floatation touching the wetlands is now being put on the mooring, and will not be touching any of the marsh. He believes the Commission only needs to send a letter to the Fairhaven/Acushnet Land Trust to notify them that the violations have been corrected.

Karen Isherwood disagreed with Gary Lavalette and added that there is a section in the Commission's regulation (Form 9) that allows the Commission, if they know the individual violator, to send a letter and a copy to the landowner. In this case, no fines were accrued, the Commission is just informing them that revegetation and monitoring is required.

Karen Isherwood made a motion to issue an Enforcement Order for the violation at 3 Shawmut Avenue to John Methia for the violation at Map 32, Lot 046 and to require the natural revegetation of the damaged vegetation. It is the violator's responsibility to monitor, document, and record progress of revegetation to the Conservation Commission at the end of each growing

season for a period of (3) years, with a copy to the property owner under the WPA and the Fairhaven Wetlands Bylaw. The motion was seconded by Amy DeSalvatore and the motion passed unanimously via roll call vote (6-0).

- b) **1 Pavilion Way, Map 29, Lot 004H:** restoration plan in place that is not overseen by wetland scientist; wetland vegetation mowing; possible diversion of hydrologic flow.

Agent, Branden Costa recused himself from discussion on the property.

Michelle Robert represented her father, the owner of the property. A violation was received a few years ago for filling in conservation area. Ms. Robert confirmed she had completed the planting plans proposed by Prime Engineering. This remediation plan required monitoring the site until Spring 2022. Ms. Robert contacted the Commission over the summer to attain closure.

John Rockwell has done research on this site and looked into town records. He did find the 2007 Enforcement Order, which lacked details. The violation from 2015 included wetland alteration (approximately 2,700 square feet) with the Bordering Vegetated Wetland (BVW) mowed down and replaced by lawn. Recent aerial views determined there are multiple issues within the wetland and is happy to work with Rich Rheame.

Karen Isherwood believes this needs a peer review, based on John Rockwell's findings.

Michelle Robert was unaware of the additional violation from 2007.

John Rockwell did find the Enforcement Order letter and confirmed it was sent.

Rich Rheame was also unaware of the 2007 Enforcement Order and was only privy to the filling of the wetland, which has been remediated.

Geoff Haworth asked homeowner if they will fund peer review money for John Rockwell finalize the restoration plan. Under Chapter 192.11 this constitutes a fine of \$300 a day.

Karen Isherwood made a motion to request a \$2,500 peer review deposit for 1 Pavilion Way, Map 41, Lot 50-67 & 74-81 from Michelle Robert. The motion was seconded by Amy DeSalvatore and passed; Michael Kelly abstained (5-1).

Jake Galary asked if the correct violation is 1 Pavilion Way or Chambers Street?

Karen Isherwood stated the violation is for 1 Pavilion Way, which abuts Chambers Street.

Ms. Robert preferred the violation to go on record as Chambers Street. She believes the map and lot Karen Isherwood referenced in the motion technically corresponds to Chambers Street.

Karen Isherwood made a motion to accept John Rockwell as the peer reviewer for 1 Pavilion Way, Map 41, Lot 50-67 & 74-81. The motion was seconded by Jake Galary and passed via roll call vote; Micheal Kelly objected to the motion (5-1).

- c) **CON 19-023, SE 023-0761: 217 Alden Rd, Map 36, Lot 085:** fill removal and planting plan required.

Shaun DeGrace, owner of 217 Alden Road stated a wetland scientist drew up a restoration plan. Mr. DeGrace asked the Commission if he can go forward with the process of removing fill and planting the vegetation.

Karen Isherwood was not sure if the plan was approved by the Commission. She believes the Phase 1 plan was originally submitted by Ivas Environmental and is dated September 19, 2021. Without the new plan in front of the Commission, they can not approve anything tonight.

Mr. DeGrace stated there was a second plan submitted in 2022.

Gary Lavalette explained the 2-step process for removing the fill and that it should be witnessed by the Commission.

Karen Isherwood added violations carry over to new homeowners. Ivas Environmental they place erosion control at the perimeter of the paved area with a detailed paragraph. Step 1 includes a delineation by a qualified wetland scientist and the submission of a restoration plan on or before November 15, 2021.

Karen Isherwood made a motion for the required restoration plan for 217 Alden Road to be submitted within 30 days of the September 19, 2022 meeting, with the Conservation Commission to review and approve. If the restoration plan is not submitted within 30 days, a \$300 a day fine will accrue until such time as a restoration plan is submitted under the Fairhaven Wetlands Bylaw, Chapter 192.11. The motion was seconded by Amy DeSalvatore and passed unanimously via roll call vote (5-0).

- d) **344 & 346 New Boston Rd, Map 40, Lot 023B & C:** unpermitted vegetation clearing in a wetland.

Branden Costa went on site and was able to identify the property as jurisdictional with the presence of sweet pepper bush and cinnamon fern (obligate species). According to Websoil maps, it does appear that more than 90% of the area is designated as hydric soil. The office was notified by Chris Gilbert of Farland Corp, stating that he would be filing an application by the next meeting to address this.

Karen Isherwood stated it is a violation in a wetland. She does not believe the Commission would have permitted this work to be done. She views this as a violation/enforcement that needs restoration. A filing would insinuate the work was permissible.

Branden Costa stated original intention was to do perc tests at the rear of the lot.

Jake Galary would like to table this as others are waiting to be heard. Jake Galary does not want to take any more time of those that are on tonight waiting.

Karen Isherwood asking should we ratify for the next meeting.

Amy DeSalvatore stated to mandate to ask Branden Costa to create enforcement order.

Gary Lavalette that this happened over a month ago and is still waiting for action. Farland needs to be notified again and send them Enforcement Order. Only 150 feet is needed to do a test pit

and the site was left a mess with lots of trees knocked down. He suggested after certified letter, the Commission start a \$300 per day fine.

Karren Isherwood added that an enforcement order should be created so that we can review and ratify it.

Action: Branden Costa to write up Enforcement Order and we ratify/review at the next meeting.

Karen Isherwood made a motion to have the agent issue an Enforcement Order for 344-346 New Boston Road to be ratified at the next meeting. The motion was seconded by Amy DeSalvatore and assed unanimously via roll call vote (5-0).

e) **7 Summer St Map 08, Lot 037:** non-FEMA compliant fence was installed without permit.

Branden Costa received a communication from a commission member about the fence. In doing research discovered in 2008 there was a white fence on southern side of the property in 2019 still there. Now there is new fence in the flood zone, which is jurisdictional and should have been brought to attention of the Commission before erecting the fence.

Karen Isherwood added we do not know if posts were in place or not; if the posts are in the flood zone, they need a permit.

Jake Galary stated if the put new panels on existing posts nothing the commission should be worried about.

Gary Lavalette added the old fence was 50% open to the bottom. The new fence is a solid fence down to the ground, A zone with a base flood elevation of 3.5 feet.

Karen Isherwood added do not need 6 inch gap underneath unless conditioned. She was unaware if this house has had previous conditioning. So, it needs a permit.

Karen Isherwood made a motion for 7 Summer Street to file an after-the-fact RDA within 60 days and was seconded by Jake Galary. The motion passed unanimously va roll call vote (5-0).

f) **CON 023-303: 43 Reservation Rd:** unpermitted driveway and damage to Town-owned salt marsh.

Branden Costa owner did come in to file for driveway and birdwatching area. This is across the street from her driveway she wanted to let us know she put don rugs to keep ticks off. Resulted in die off of phragmites.

Karen Isherwood made a motion to issue an Enforcement Order for Natalie Caetano for the violation at 29A, Lot 311 to require the natural revegetation. It is the violator's responsibility to monitor, document, and report progress of revegetation to the conservation commission at the end of each growing season for a period of 3 years with a copy to the property owner under the WPA and the Fairhaven Wetlands Bylaw. The motion was seconded by Amy DeSalvatore and passed unanimously via roll call vote (5-0).

- g) **148 Main Street Map 12, Lot 012A:** no erosion controls, spill kits, or designated concrete truck washout area present.

Karen Isherwood visited the site and stated they have complied. Thinks the commission should move forward and lift the cease and desist.

Karen Isherwood made a motion to lift the cease and desist and allow the project to continue. The motion was seconded by Amy DeSalvatore and passed unanimously via roll call vote (5-0).

- h) **Morey Lane Map 04, Lot 081:** concrete washout on soil, lack of erosion control maintenance, uncovered stockpile of soil without siltation barrier, and disturbances to soil outside of the limit of work.

Branden Costa stated the site was discovered upon visiting tentatively donated lands, that there was a cease and desist on site, that it is out of compliance, and that he is trying to contact property manager.

Gary Lavalette added that they stock piled the soil on town property. It is in roadway that they have no permission to be in.

Karen Isherwood commented this property was issued an Order of Conditions 9 years ago. They have had two extensions. Not sure what type of siltation control is going on but a violation. She would need to see original OOC to see which ones they have violated. Then look at the current conditions. Overall, more information is needed. She would like to table this until the next meeting.

Karen Isherwood asked Branden Costa to look through records on Cedar Street.

Karen Isherwood made a motion to table this until the October 3, 2022 meeting to gather more information and was seconded by Jake Galary. The motion passed unanimously via roll call vote (5-0).

6. Correspondence

- a) **OOO Extension Request:** Received electronic letter for 2 River Ave on September 2, 2022

Branden Costa spoke in regards to the OOC and the applicant asking for an additional 24 months due to a change of management.

Karen Isherwood would like them here to explain reasoning.

Karen Isherwood made a motion to table to October 3, 2022 and was seconded by Jake Galary. The motion passed unanimously via roll call vote (5-0).

Karen Isherwood tabled all ongoing projects to the October 3, 2022 meeting.

7. Ongoing Projects

Karen Isherwood tabled ongoing projects to the October 3, 2022 meeting.

- a) **18 Point St:** project manager is currently addressing tasks to ensure compliance with Order of Conditions.

8. Upcoming Projects

- a) CON 023-298: **28 Whisper Lane**, Map 42A, Lot 178-180

- b) **2 River Ave:** OOC Extension Request

Request for site visit scheduled for September 20, 2022.

- c) **104 Fir St, Map 43A, Lot 325:** RDA for driveway proposal

Site visit scheduled for September 20, 2022.

9. General Business

Karen Isherwood tabled to the next meeting on October 3, 2022.

- a) Land Donation: **Washburn Ave, Map Lot**

- b) Land Donation: **Shore Drive**

- c) 2 Melpen Way

- d) Preliminary discussion on Standard Operating procedures for future enforcement

Karen Isherwood tabled this discussion to October 3, 2022. Ms. Isherwood requested the Commission to read John Rockwell's handbook on enforcement and establish standard operating procedures for proper enforcements.

- e) Discussion of Administrative Approvals for Percolation Tests

Geoff Haworth would like percolation tests to come before the Commission for authorization and Chair signature.

Geoff Haworth added the Commission has never been involved in percolation tests. This will allow the agent, with the review of the Chairman or Vice Chair, to be present. The Commission does not want to hold up projects due to percolation tests, since they are a necessary, exploratory step for any filing.

Karen Isherwood made a motion to allow the Conservation Agent, with approval of the Chairman or Vice Chair, to permit percolation tests. The motion was seconded by Gary Lavalette and passed unanimously via roll call vote (6-0).

Geoff Haworth signed off at 10:03p.m.

f) Bills

\$275.00 MACC Fundamental Unit courses for Kelly Camara

\$6.00 Eversource

\$10,792.00 John Rockwell's August bill

g) Budget Overview

Karen Isherwood tabled a budget discussion to October 3, 2022

h) Next Meeting: Monday, October 3, 2022

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

Amy DeSalvatore made a motion to adjourn at 10:44p.m. and was seconded by Jake Galary. The motion passed unanimously via roll call vote (5-0).

Respectfully submitted,

Kelly Camara, Recording Secretary