Conservation Commission October 3, 2022 Minutes

FAIRHAVEN TOWN CLERK ROUD 2022 NOU 8 AMII:55

1. Chairman's Welcome and Media Notification Mr. Haworth opened the meeting at 6:00p.m. Mr. Haworth 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.

 Quorum/Attendance: Present: Chairman, Geoff Haworth, Karen Isherwood, Gary Lavalette, and Amy DeSalvatore, Jacob Galary, Corey Pietraszek, Michael Kelly. Non-voting consultants, Chelsea Isherwood, Carrie Hawthorne.

Absent: Non-voting consultant, Ronnie Medina

Pleasant Street and 27 Silver Shell Drive.

3. Minutes

a) Review and approve the August 29, 2022 minutes
 Karen Isherwood & Amy DeSalvatore requested further discussions in the minutes for 83

1. Requests for Certificate of Compliance

a. SE 023-816, CON 023-298: 28 Whisper Lane, Map 42A, Lot 178
Peter Therrien, of Field Engineering represented the applicant. At the time they originally submitted the order it was for a septic system upgrade, which include a small amount of fill in the area. There was a shed on the property that was non-compliant, which has been removed. There was previously a COC submitted and it did not have the correct purview. Everything looks stabilized as of today.

Conservation agent, Branden Costa confirmed the non-compliant shed had been removed.

Karen Isherwood made a motion to issue a Certificate of Compliance (COC) for Complete Certification, under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw for SE 023-816, CON 023-298, 28 Whisper Lane, Map 42A, Lot 178. The motion was seconded by Amy DeSalvatore and passed unanimously via roll call vote (6-0).

2. **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.

Geoff Haworth made a motion to continue SE 023-1389, CON 023-284, Ebony Street, Assessor's Map 43C, Lots 389-400 to November 1, 2022 and was seconded by Karen Isherwood. The motion passed unanimously via roll call vote (6-0).

Requests for Determination of Applicability

a. CON 023-309: 165 Balsam Street, Map 43B, Lot 131

Request for Determination of Applicability filed by Kim Hyland to replace existing seashell driveway and walkway with stamped concrete, covering 784 square feet. The proposed work is located at Map 43B, Lot 131, with the work to take place in Zone AE-14.

Branden Costa gave a brief overview of the project. He conducted a site visit with several commission members. He did not find this project to have any significant impact on storm drain capacity in Land Subject to Coastal Zone Flooding. Mr. Costa presented the site plan submitted. The proposed resurfaced area will be 784 square feet (5,337 square feet = total pervious area and 2,220 square feet = total impervious area).

Satellite imagery depicts the driveaway in existence since 2001. The front half of the driveway has a slight slope. The municipal storm drain system would need a straw wattle or compost filter sock prior to construction, in order to mitigate any sediment or debris discharged into the municipal stormwater drainage system. It will be the applicant's responsibility to ensure erosion controls are maintained and fully functional throughout the entirety of the project.

Mr. Costa recommended issuing a Negative 2 & 7 Determination with Special Conditions.

Jake Galary joined the meeting at 6:20p.m.

Kim Hyland, owner of 165 Balsam Street agreed with the recommendations. He spoke with the Board of Public Works (BPW) in regards to the storm drain.

Geoff Haworth added the applicant would need a permit with the BPW to make any alterations with the apron. He suggested to omit item 2 under findings, plans, and documents.

Kim Hyland intends to remain (2) feet away from the storm drain. He will narrow the width at the entrance of the driveway.

Karen Isherwood made a motion to close the public hearing for CON 023-309, 165 Balsam Street, Map 43B, Lot 131 and issue a Negative 2, with Appendix A as attached to the staff report dated September 26, 2022, with the modification under findings, plans, and documents that number 2 be removed and Special Condition A be amended to remove the revised plan dated September 9, 2022, and a Negative Determination 7 under the Wetlands Protection Act and the

Fairhaven Wetlands Bylaw. The motion approves the plan attached to the staff report, dated September 26, 2022, with the added condition: CAP-3, and that all work shall comply with the local, state, and federal flood zone regulation and that the driveway remain (2) feet away from the storm drain. The motion was seconded by Amy DeSalvatore and passed unanimously via roll call vote (7-0).

Karen Isherwood amended the motion to include Special Condition WAS-1 and was seconded by Amy DeSalvatore and the motion passed unanimously via roll call vote (7-0).

b. CON 023-310: 104 Fir Street, Map 43A, Lot 325

Request for Determination of Applicability filed by Lev Bronstein and David Hirsh to resurface existing gravel driveway and walkway located at Map 43A, Lot 325.

Branden Costa visited the site and found work to occur within a previously disturbed area. The slope of the lot is not steeper than 10%. It is unlikely that the proposed work will have any adverse impact in any protected or areas of interest. The backyard has been identified as a Bordering Vegetated Wetland (BVW), even though it is not designated so by the DEP.

The proposed area to be paved is approximately 850 square feet with stone pavers measuring 6.25-9" each. Stock piling will be confined to the front yard. Most of the work is outside the 25-foot Buffer Zone. The applicants have submitted a variance request form. The agent recommended granting the variance from the buffer zone regulations and issuing a Negative Determination 3 and 7, with the following Special Condition: erosion control, such as straw wattle or compost filter sock at the gate abutting the backyard to mitigate any sedimentation or runoff.

Owner, David Hirsh had nothing further to add to the discussion and concurred with the agent's recommendations.

Karen Isherwood questioned the date of the plan in Appendix A, under Number 2 in findings, plans and documents.

Branden Costa confirmed the plan is dated September 1, 2022.

Karen Isherwood made a motion to approve the request for variance for CON 023-310, 104 Fir Street, Map 43A, Lot 325 and the motion was seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote (7-0).

Karen Isherwood made a motion to close the public hearing for CON 023-310, 104 Fir Street, Map 43A, Lot 325 and issue a Negative Determination 3 with Appendix A as attached to the staff report dated September 26, 2022 with the date modification under findings, plans, and documents 1 and 2 changed to September 1, 2022 and a Negative Determination 7 under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw, approving the plan dated September 1, 2022 with the added condition CAP-3 and an erosion control inspection will be done prior to construction. The motion was seconded by Amy DeSalvatore and passed unanimously via roll call vote (7-0).

Notices of Intent

- a. 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. *The applicant has requested a continuance until the November 1st meeting.*
- b. SE 023-1385, CON 023-279: **27 Silver Shell Beach Drive, Map 41, Lot 54** *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. The applicant has requested a continuance until the November 1st meeting.

c. SE 023-1393, CON 023-304: **2 Melpen Way, Map 29, Lot 002D** – *Continued from September 19, 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.

John Rockwell reviewed the wetland line. He received the revised plan on the morning of October 3, 2022.

Branden Costa gave an overview agreeing with John Rockwell that the addition of an intermediate flag "WL 10A" and the repositioning of flag #5 to "WL 5A" (approximately a 5-foot difference). The delineation follows the edge of the replication area, then crosses over the stone wall to an area rife with invasive species that make delineation problematic.

The agent recommended continuing the public hearing with the consent of the applicant, until the November 1, 2022 meeting, upon submission of a revised plan depicting the revised plans for the raised driveway.

Action: Branden Costa will add all prior cease and desists to the plan.

Rick Charon spoke on behalf of Mr. and Mrs. Shackett. He believes the revegetation to be replanted had been disturbed from the BPW. The new owners will work on changes to the bridge; the width of the bridge will be reduced down to 3 feet (5 feet now). The planks will be turned in the opposite direction to allow for more sunlight. That has been reflected on the site plan and will also be included on the construction plan. Everything will be pushed out, in order to keep the leeching field outside the Buffer Zone. The impervious areas are outside of the 50-

foot Buffer Zone. Being in a flood zone (V Zone) this is a raised and rebuild with FEMA compliant foundation.

Karen Isherwood stated the options to protect the 25 foot no touch zone should be reflected in the OOC to ensure the new owners protect alongside the boardwalk.

Gary Lavalette inquired about sewer system.

Rick Charon responded that residents have invested \$20-25K in septic systems.

Gary Lavalette added if there is an E1 pump they will need a vent in the back of the building, in order to catch flood waters.

Rick Charon stated there may be historic fill, but nothing associated with the violation from 2 years ago. He is looking to get the rail fence installed to minimize encroachment. The lawn has historically been lawn.

Eric Braitmayer, of 2 River Way represented the Sunset Beach Association. The association has been notified by the BPW that sewer funding was approved and they expect this property to have sewer hookup.

Greg Burns, of 10 Sunset Beach Road is also an abutter to the property. They anticipate the installation to begin next year.

Rick Charon will contact Vinny Furtado at the BPW. A sewer connection would be more economic and less likely to impact conservation.

Karen Isherwood brought up Flags 11, 12, and 13; she would like the area established with zero mowing.

Action: Rick Charon agreed to add demarcation.

Karen Isherwood made a motion to continue SE 023-1393, CON 023-304, 2 Melpen Way, Map 29, Lot 002D to November 1, 2022 at the applicant's request and was seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote (7-0).

d. SE 023-1392, CON 023-300: **83 Pleasant Street, Map 08, Lot 094 –** Reopened from August 29, 2022

Notice of Intent Filed by Tetra Tech for the permanent closure in-place of an existing sand-filled underground fuel storage vault located on the former Atlas Tack property at 83 Pleasant Street, Assessor's Map 08, Lot 094. Work will occur within Land Subject to Coastal Storm Flowage or the 100-year coastal flood zone. The hearing was reopened for consideration of NHESP's suggested conditions pertaining to adjacent Priority Habitat, citing 5 species of state-listed waterbirds.

Branden Costa gave a brief update to the project. The limit of work intrudes into National Heritage & Endangered Species Program (NHESP) Priority Habitat by about 12 feet. The NHESP has provided a comment letter pursuant to 310 CMR 10.59 and has suggested several conditions to avoid a take of several state listed species. The conditions are as follows: (1) construction

timing, (2) authorization duration, and (3) notice upon filing for renewal, extension, or amendment of the Orders of Conditions. The applicant shall contact the Division for Fisheries & Wildlife for a written response regarding impacts to resource area habitat of state-listed wildlife.

Ed Hutchinson with Tetra Tech had nothing further to add.

Karen Isherwood made a motion to close the public hearing for SE 023-1392, CON 023-300, 83 Pleasant Street, Map 08, Lot 094 and issue an Order of Conditions under the WPA and the Fairhaven Wetlands Bylaw approving the findings, plans, and documents with the attached conditions as stated in the attached appendix A, dated September 8, 2022. The motion was seconded by Michael Kelly and passed via roll call vote (7-0).

Amended Order of Conditions

a. SE 023-1369, CON 023-308: 10 Diamond Street, Map 29, Lot 048 Request for an Amended Order of Conditions filed by Ruby and Jaime Medeiros for a two-foot expansion along the rear of the house located at Map 29, Lot 046. The proposed work to take place in a buffer zone to Bordering Vegetated Wetland (BVW), Land Subject to Coastal Zone Flowage (LSCSF), and Zone AE-14.

Branden Costa discussed the site and stated the erosion controls are very well maintained. He does not see significant impacts and recommended an Amended Order of Conditions, approving the modification on the revised proposed site development plan, dated September 2, 2022.

Bob Field, of Field Engineering reiterated it would not entail any additional excavation. The area under the overhang would not be an impervious surface.

Geoff Haworth questioned the date of the plan.

Bob Field stated the initial date is 11-12-2001, but the latest revision is 8-30-22. Karen Isherwood asked if there should be a condition to keep the overhang (the cantilever) pervious.

Karen Isherwood made a motion to close the public hearing for SE 023-1369, CON 023-308, 10 Diamond Street, Map 29, Lot 048 and issue an Amended Order of Conditions, approving the revised plan dated August 30, 2022 with the conditions and findings outlined in Attachment A, attached to the staff report, dated September 28, 2022 under the wetlands Protection Act and the Fairhaven Wetlands Bylaw, with the condition that the area under the cantilever stanchion be kept pervious and meets all building and fire codes. The motion was seconded by Gary Lavalette and passed via roll call vote (7-0).

Request for an Extended Order of Conditions

a. SE 023-1274: 2 River Avenue, Map 17, Lot 16
 Request for an extension of an Order of Conditions that expired on June 25, 2021. Work to take place in LSCSF, Land Containing Shellfish, Land Under Ocean, Coastal Bank, and Buffer Zone to Salt Marsh.

Agent, Branden Costa explained the work consists of repairs to an existing bulkhead measuring approximately 200 square feet with 10 pilings. He does not believe the request was made by the 30-day deadline. Branden Costa recommended denying the request, pursuant to 310 CMR 10.05 (8)(a) and 310 CMR 10.05 (8)(b) and that the applicant file a new NOI.

Karen Isherwood had questions regarding the expiration date. She had read emails from the previous agent, which stated the expiration date was October 1, 2022. 30 days prior would calculate to September 1, 2022. She advised not denying this extension based on the request only being one day after the deadline.

Branden Costa expressed concerns that the OOC did not include a contingency plan for chemical spillage.

Gary Lavalette feels the work should be done immediately; the bulkhead ready to cave in and this is a tremendous safety issue.

Geoff Haworth explained deadline confusion began due to COVID. He believes it is fair to grant the 24-month extension.

Karen Isherwood mentioned change of materials discussed at the site visit. Fiber glass was discussed and should be added in the staff report. The materials used should not leach out and cause impact to sea life.

Karen Isherwood made a motion to extend the OOC for SE 023-1274, 2 River Avenue, Map 17, Lot 16 to September 30, 2024 with the added conditions MAC-1 AND mac-9 under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw and to submit to the commission any materials not on the original plan before construction. The motion was seconded by Amy DeSalvatore and passed via roll call vote (7-0).

6. Violations/Enforcement Orders/Cease and Desist Notices

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

John Rockwell met with Rich Rheaume, the professional engineer on the project, as well as owner, Michelle Robert. The Enforcement Order from 2019 still requires more inspections and paperwork, according to a report by a wetland scientist.

A NOI will combine all three enforcement issues into one project giving the ability to fine tune issues and enable the commission to require them to file the updated plans depicting the wetland and what needs to be restored. A COC should be required.

Michele Robert, of 1 Pavilion Way had no additional comments and was in agreement with John Rockwell.

Karen Isherwood made a motion to issue an Enforcement Order as drafted on September 22, 2022, as associated with Pavilion Way, Map 29, Lot 004H. The motion was seconded by Amy DeSalvatore and passed via roll call vote (7-0).

b. **344 & 346 New Boston Rd, Map 40, Lots 023B & 023C:** unpermitted vegetation clearing in a wetland by Farland Corporation.

Branden Costa stated both lots are depicted as hydric soil, so this is an area of jurisdiction. The owner has not authorized anyone to enter the property.

There is significant damage that must be remediated, including a wide pathway cut out of the wooded wetland that extends to an area at the rear of the lot. A significant number of trees and other vegetation were destroyed along this pathway. The agent recommended issuing an Enforcement Order to enforce a restoration plan for the site, within a 60-day period and issuing a fine of not more than \$300 a day until a restoration plan is submitted, pursuant to 310 CMR 10.00.

Attorney, Patrick Mullen, son of property owner Mary Mullen is representing his mother. He became aware of the violation sometime after September 2, 2022. A discussion took place between himself, an interested buyer, and the buyer's attorney. He confirmed that nothing was ever put in writing to authorize this work on the property.

Chris Gilbert, soil evaluator representing Farland Corp. stated they were contacted by their clients who they understood signed a purchase and sales agreement with the owners. Farland Corp. researched the property and did not identify wetlands; percolation tests were scheduled with the town. He stated real estate developer, Patrick Walsh authorized the excavation.

Michael Kelly asked if the property owners have referred this to the proper authorities. If this an act of criminal trespass, then they need to seek recourse.

Daughter, Kathleen Mullen added she hired Farland Corp. in 2018 to survey the property. She was interested in ascertaining if the lot was buildable. Farland Corp. surveyed the property and a botanist walked the property. It was determined that both lots together represented 90 percent wetland.

Chris Gilbert stated he was not aware of this document.

Angeline Lopes Ellison, Town Administrator feels the commission needs legal guidance with Town Council for more definitive answers and to avoid speculation. Town Council may have specific strategies.

Action: Conservation Agent or Chair to draft email requesting Town Council.

Karen Isherwood made a motion to request the use of Town Council for 344 & 346 New Boston Road, Map 40, Lots 023B & 023C. The motion was seconded by Amy DeSalvatore and passed via roll call vote (7-0).

c. **3 North Street, Map 15, Lot 43:** restoration progress update and fence construction.

Branden Costa informed the Board that an Enforcement Order was issued on October 25, 2021. He was unable to locate the restoration plan filed, due to this, the agent recommended to deny the partial COC.

Lee Miguel stated all plans were submitted by SITEC and everything has been completed.

Geoff Haworth stated the partial as-built submitted by Zenith Land Surveyors is not in depth enough.

Karen Isherwood stated she has a restoration plan from SITEC dated February 18, 2022 and needs as-built that reflects the plan.

Action: Karen Isherwood to send restoration plan to Branden Costa to submit to Zenith and Lee Miguel.

Gary Lavalette stated all Mr. Miguel needed was a letter from his LSP stating that he was in compliance, height of gravel, all contours, etc. What was submitted was not detailed enough.

Geoff Haworth added the partial COC is based on the fence only. The Enforcement Order is a separate issue. All the commission is asking for is the proper as-built.

d. **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 a cease and desist previously posted was removed and a new one was issued on September 7, 2022. The agent met with Carlos Medeira, the project manager on September 29, 2022. Mr. Costa helped him identify problematic areas that were not in compliance. Mr. Medeira stated he would reestablish erosion control and mediate other issues, including the encroaching brush pile at the entry way, removal of the concrete wash out piles, and addressing the large unprotected stockpile. The agent recommends issuing an Enforcement Order, if not in compliance by the next meeting. If the site is not in full compliance in 30 days, the agent recommended issuing a fine of not more than \$300 per day, under 310 CMR 10.00.

Karen Isherwood stated there should be an OOC on this. The permit would have expired on August 25, 2022. A new NOI and an ANRAD are expired.

Karen Isherwood made a motion to issue an Enforcement Order for Morey Lane Map 04, Lot 081, which requires an ANRAD within 60 days. The motion was seconded by Amy DeSalvatore and passed via roll call vote (6-0). (Corey Left for work).

7. Correspondence

- a. Letter from James Clancy of Eversource, dated September 26, 2022, informing the Commission of maintenance work that will be performed on Brookview Street and Brook Drive, involving the replacement of an existing natural gas main. Beginning on October 17th, 2022, this project will likely require 4-6 weeks to complete.
- b. Letter from The Department of the US Army Corps of Engineers New England District outlining conditions for the project located at 2 Winslow Court, regarding the new construction of a privately owned pile-supported pier.

8. Ongoing Projects

a. **18 Point St, Map 28B, Lot 207**: project manager is addressing existing conditions to ensure compliance with Order of Conditions.

Action: Branden Costa to notify Geoff Haworth when the site is ready for an inspection.

b. **39 Nelson Ave, Map 43, Lot 224:** demolition of existing single-family dwelling to build a new flood zone-compliant structure with a Title 5-compliant septic system, associated grading, and driveway.

Geoff Haworth completed the house inspection.

9. Upcoming Projects

a. No new upcoming projects have been filed.

10. General Business

a. Land Donation: Washburn Ave, Map 27, Lot 334

Branden Costa informed the Board this property is 0.61 acres (2,614 square feet) and valued at \$5,200 with a tax balance of \$2,792.40. The lot contains several resource areas including Land Subject to Coastal Strom Flowage, Salt Marsh, Coastal Dune and Beach, and Barrier Beach.

b. Land Donation: Shore Drive, Map 29C, Lot 606

Branden Costa informed the Board this lot is 0.21 acres (9,148 square feet) and valued at \$17, 300 with a tax balance of \$40.88. This land is subject to Coastal Storm Flowage and consists of Salt Marsh (and Buffer Zone). The lot has a hydrologic connection with town owned property across the street.

Any outstanding taxes will need to be paid before the town will acquire land.

Action: Branden Costa to look into adjacent land and determine if it is a replication area.

c. Discussion about Staff Reports, Enforcement Letters and SOP.

Geoff Haworth created policy with timelines for clerical deadlines. He will discuss in greater detail at the next meeting.

- d. Discussion about status of the Conservation Commission Office priorities.
- e. Discussion about adding an additional meeting.

Geoff Haworth added an additional meeting on October 24, 2022 to discuss violations.

f. Target Year: The year specified by the Conservation Commission for projections of sea level rise and flood risk for the new change in the bylaw Chapter 192-8 Definitions: Target Year

The Commission chose 2050 as the Target Year. Karen Isherwood has contacted the state to present flooding models to the Commission.

Karen Isherwood made a motion to adopt the Target Year in the bylaw, Chapter 192-8, under definitions as 2050. The motion was seconded by Amy DeSalvatore and passed via roll call vote (6-0).

g. Bills

\$63.00 Monaghan Printing

\$20.00 FY23 Agent Membership for MSMCP

\$130.00 MACC Fall Conference for Kelly Camara

\$130.00 MACC Fall Conference for Branden Costa

\$240.00 MACC Fundamental Units – Branden Costa

\$170.00 Fairhaven Neighborhood News 9-19-22 Legal Ad

\$170.00 Fairhaven Neighborhood News 8-29-22 Legal Ad

\$176.02 W.B. Mason office supplies

\$1428.00 Peer Review 28 Fort Street – Foth Engineering

- h. Budget Overview
- i. Next Meeting: Monday, October 24, 2022
- 11. **Any other business** that may properly come before the Commission not reasonably anticipated 48 hours in advance of the meeting.

12. Motion to adjourn

Jake Galary made a motion to adjourn at 9:55p.m. and was seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote (6-0).

Respectfully submitted,

Kelly Camara, Recording Secretary