

Conservation Commission
October 24, 2022
Minutes

FAIRHAVEN TOWN CLERK
RCVD 2022 DEC 18 AM 10:15

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.

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

3. Minutes

- a) Review and approve August 29, 2022 minutes

Karen Isherwood made a motion to approve the revised August 29, 2022 meeting minutes and was seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote (6-0).

1. **Requests for Certificate of Compliance**

- a. SE 023-521, CON 023-312: 2 Kacy Lane, Map 23, Lot 202

Branden Costa briefed the Board on this request for Certificate of Compliance (COC) for work permitted under an Order of Conditions (OOC) issued in 1995, which never began. The applicant is looking to close out the order with a COC. The agent recommended issuing a full certificate for an invalid Order of Conditions.

Blake Gardner represented his grandmother.

Karen Isherwood made a motion to issue a Certificate of Compliance for an invalid Order of Conditions, under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw for SE 023-521, CON 023-312, 2 Kacy Lane, Map 23, Lot 202 and was seconded by Jake Galary. The motion passed via roll call vote (6-0).

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

- a. SE 023-1198, CON 023-165, Morey Lane, Map 04, Lot 081

Agent, Branden Costa stated a cease and desist was placed on the property October 3, 2022, with an Enforcement Order. This project will require an Abbreviated Notice of Resource Area Delineation (ANRAD), before the work begins. A site visit was conducted on October 14, 2022 and confirmed the stock pile is no longer present. There are some invasives (Japanese knotweed) still present at the replication site. The agent discussed the replication with the representative, Mr. Madeira, and it was recommended to continue the conditions of the Enforcement Order – pertaining to the requirement of a new wetland delineation – performed by a professional wetland scientist before commencement of work.

Gary Lavalette added the original cease and desist was issued May 22, 2022.

Dave Davignon, of Schneider, Davignon and Leone represented Carl Madeira, Trustee of the property. As part of the Notice of Intent (NOI) submittal, he will engage LEC Environmental to mark the site with wetland flags. LEC was intricately involved in the original filing. Mark Manganello, Assistant Director of Ecological Services with LEC handled the NOI and Schneider, Davignon and Leone prepared the site plan.

This is a complicated replication in an upland area, which began with a proposal for a house nearby. Mr. Davignon stated they instituted erosion control a few years ago, which included stripping out the top soil and using gravel material to level the area proposed in the original Order of Conditions. LEC will flag the line around the edge of the fill, put together an NOI with a topographical survey, locate the wetland flags, and then submit a fresh site plan. Mr. Davignon does not understand the need for an ANRAD. He believes ANRADs are typically voluntary and a preliminary step. This site has already been developed and has a long-standing OOC. Mr. Davignon will submit a NOI filing for the December 12, 2022 meeting.

Karen Isherwood stated the delineation is dated March 18, 2014. She would like to see a current wetland line to be submitted with the new NOI.

Mr. Davignon reiterated LEC Environmental will locate the wetland line and in addition, the submitted NOI will present an as-built, including existing conditions and topography.

Karen Isherwood added the 25-foot Buffer Zone requires a variance request. She suggested Target Year 2050 throughout plan development.

Karen Isherwood made a motion for SE 023-1198, CON 023-165, Morey Lane, Map 04, Lot 081 to file a Notice of Intent within 60 days, which will include a new delineated wetland line. The motion was seconded by Amy DeSalvatore and passed via roll call vote (6-0).

- b. **344 & 346 New Boston Road, Map 40, Lots 023B & 023C:** Unpermitted vegetation clearing in a wetland are.

Agent, Branden Costa was informed the landowner will be utilizing Farland Corp. for a Restoration Plan.

Town Counsel has since informed the Board that under the Wetlands Protection Act, the Commission has the right to fine up to \$25,000, pursuant to M.G.L. Chapter 40, § 21.

Gary Lavalette stated Karen Isherwood, Chelsea Isherwood, and himself went out to the site and estimated 167 trees, 3 inch in diameter, or greater were knocked down. A Restoration Plan submitted by a third party is required in a case of this magnitude.

Geoff Haworth suggested an impartial, third party to review and physically note restoration work. He recommended the Commission speak with Farland Corp. before taking monetary action and suggested this be tabled until the November 7, 2022 meeting.

Karen Isherwood felt a restoration plan deadline should be proposed with an official Enforcement Order.

On September 19, 2022 the Commission approved a motion to have the Conservation agent issue an Enforcement Order for 344-346 New Boston Road. The Commission decided the letter was to be reviewed/ratified at the next meeting.

Branden Costa reported the he had sent Farland Corp an Enforcement Order on October 4, 2022 and Chair, Geoff Haworth read the letter to the Commission.

Karen Isherwood pointed out that the Enforcement Order had not been ratified by the Commission and suggested it be modified with timelines and planting plans.

The Commission agreed to review an Enforcement Order for ratification at the November 7, 2022 meeting and discuss a civil penalty when all parties are present.

c. 217 Alden Road, Map 36, Lot 085:

Branden Costa recommended approval of the proposed Restoration Plan and to allow the applicant to begin the process of removing fill, following an erosion inspection, and that the restoration process occur under the following conditions (pursuant to 310 CMR 10.00, the Wetlands Protection Act, and Chapter 192, the Fairhaven Wetlands Bylaw): (1) After erosion control inspection approval and removal of fill, the Commission or its Agent verify the delineated line's accuracy, based on the more precise identification of the pre-disturbance surface layer; (2) Allow subsequent regrading of the slope at 3:1 ratio (just up-gradient of the delineated line), parallel to the stream and the planting of the proposed native trees, shrubs, and New England wetland seed mix; and (3) require that all plantings be completed by November 14, 2022 and is inspected by the Commission or its Agent.

Karen Isherwood believes the first phase included removal of fill. Holes were dug to identify the exact location of the wetland line, but the process was unsuccessful. She stated the Commission cannot proceed until Phase 1 is complete.

Shaun DeGrace responded that he was told not to remove fill, until a meeting with the Commission. He has since submitted a Restoration Plan.

Ms. Isherwood stated Steve Ivas was to oversee this project. She would like details on the removal of fill, before approving a planting plan. A wetland line cannot be established until fill is removed.

Geoff Haworth suggested approving only the removal of the fill, down to original depth, until further evaluated by a wetland scientist.

Karen Isherwood referred to the report from Steve Ivas dated September 19, 2021. The approved phases included: (1) removal of the fill from the easterly slope and then move towards the residence; (2) fill to be removed to an offsite location after a possible staging on the site ringed with erosion controls; (3) removal operator, and or consultant, would be required to identify the original top soil and; (4) Conservation Commission, wetland scientist, and the owner required to agree on the limit of fill, to ensure the slope would be an upgrading of the wetland delineation line, parallel to the stream.

Geoff Haworth notified the applicant the he will be on the December 12, 2022 agenda.

Karen Isherwood made a motion for CON 019-023, SE 023-0761, 217 Alden Road, Map 36, Lot 085 to submit a definitive timeline to remove fill by December 12, 2022, and approve removal of fill with the oversight by a wetland scientist as Phase 1. The motion was seconded by Gary Lavalette and passed via roll call vote (6-0).

d. 29 Mangham Way, Map 31A, Lot 300A:

Branden Costa conducted a site visit and noted there were a series of paths that went to/from the restoration area from the suspected ATV use. A reduced amount of Japanese knotweed was noted, but there were some small patches and shoots still present (Condition 13 on Approval Memo). The placement of one Red Maple was questioned (Condition 14, 15 and 17) as to its use as a natural barrier, so as not to disturb the restoration area.

The agent recommended the approval of the landowners Restoration Plan, pertaining to the planting of 8 additional Mountain Laurel shrubs in lieu of the approved 8 flowering Dogwood shrubs.

Bruce Webb, from Ecosystem Solutions stated everything is coming along nicely; the drought has not impacted the overall outcome. He understands the Commission has an issue with the location of one tree planted within the restoration area. He advised the owner to extend fencing around the tree to create a physical barrier to the pathway.

Bruce Webb additionally inquired about repairs to an irrigation system, which is completely in the upland and within the lawn area.

Karen Isherwood made a motion to allow the owner to repair/replace the irrigation system with work kept within the 100-foot to 50-foot buffer to the vegetated wetland at 29 Mangham Way, Map 31A, Lot 300A and was seconded by Gary Lavalette. The motion passed unanimously via roll call vote (6-0).

e. 20 Yankee Lane, Map 39, Lot 016:

Branden Costa stated there has been significant vegetation cleared within the Riverfront Area and Bordering Vegetated Wetland (BVW). He noted evidence of machinery and impact to the perennial stream.

Tim McGuire, Wildlife Biologist and Wetland Scientist with Goddard Consulting represented Brian Lopes, who received the Enforcement Order. They have received approval of Phases 1 and 2 of the Restoration Plan, which involved filling in a ditch that was dug out from the main perennial stream. Phase 1 also includes removal of Phragmites and other invasive species. The plan is still in peer review process for phases 3, 4, and 5, which involve regrading, replanting, etc. Goddard Consulting has addressed most of Matt Burns' comments, including the request for the existing condition plan and to set site grades on the site plan. Goddard Consulting is working with aerial imaging companies, such as Capture Map and Atlantic Design Engineers, in attempt to save money by targeting down to 1-foot contours. There is a lack of accuracy, due to thick vegetation (5-foot contour accuracy). The overall goal is to reach 2017 conditions.

f. 14 Nelson Ave., Map 43, Lot 42:

Branden Costa addressed the violation as it was occurring. The contractor on site was very agreeable. The owner, Dan Braga, was also very agreeable to the permitting process.

The agent noted there were no erosion controls present and would like to allow the resident to submit a NOI, before the Commission takes enforcement action.

Dan Braga apologized and stated the Building Department approved the patio, being more than 8 feet from the street, but he was unaware of the conservation rules. He will retain Bob Fields to properly submit materials for the October 31, 2022 deadline.

Karen Isherwood questioned materials and lot coverage. She expressed concerns about the proximity of the patio to the seawall. She also added this is a 25-foot buffer and would require a variance to a resource area. According to FEMA codes, this is a VE-19. When vegetation is removed, wave energy will not be dispersed.

Gary Lavalette and Amy DeSalvatore shared Karen Isherwood's sentiments.

Geoff Haworth believes there could be a compromise to allow the applicant to have some sort of patio; this may include scaling back and making modifications.

Dan Braga was grateful for the Commission's inputs and will reflect prior to filing.

Geoff Haworth advised planting a fast-growing rye grass to stabilize temporarily.

Geoff Haworth suggested Branden Costa speak with the Building Department for insight. The Commission will need to examine the site in the next couple of weeks to make sure the soil is being stabilized.

7. Correspondence

- a. Letter from the Buzzards Bay Coalition, received October 19, 2022, detailing the results of the Annual Conservation Restriction Monitoring for the New Boston Conservation Area

Branden Costa stated the Buzzards Bay Coalition included a monitoring report for the conservation area. The property follows the conditions of the restriction.

8. General Business**a. Bills**

\$115.00 Fairhaven Neighborhood News

\$6.00 Eversource

\$42.02 Verizon

\$5.45 W.B. Mason

Agenda item: contracted services

Karen Isherwood questioned the contracted budget and would like further discussion at the next meeting.

Branden Costa stated John Rockwell's invoice was to be paid via contracting services, which was voted on at a Select Board meeting

Branden Costa stated there is an article request to replenish that account to be voted on at the Town Meeting November 15, 2022.

b. Next Meeting: Monday, November 7, 2022**11. Any other business** that may properly come before the Commission not reasonably anticipated 48 hours in advance of the meeting.

Karen Isherwood would like an update for 4 Jeanette Street. The owners have inquired about correspondence, in regards to the pool permitted by the Commission.

She also inquired about an update on Summer Street.

Branden Costa responded that he did contact the landowner of 4 Jeannette Street by email and let them know the property was in violation.

Branden Costa did send a violation letter to 7 Summer Street, but they do require a follow up.

12. Motion to adjourn

Amy DeSalvatore made a motion to adjourn at 9:32p.m. and was seconded by Gary Lavalette. The motion passed unanimously via roll call vote (6-0).

Respectfully submitted,

Kelly Camara, Recording Secretary