

**Conservation Commission**  
**November 7, 2022**  
**Minutes**

FAIRHAVEN TOWN CLERK  
3007 2022 FEB 7 AM 10:00

1. Chairman's Welcome and Media Notification Mr. Haworth opened the meeting at 6:08 p.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:** Geoff Haworth, Karen Isherwood, Amy DeSalvatore, Gary Lavalette, Corey Pietraszek, Jake Galary, Michael Kelly. Non-voting members: Chelsea Isherwood, Ronnie Medina, and Carrie Hawthorne

3. Approval of September 19, 2022 & October 3, 2022 Meeting Minutes

Karen Isherwood made a motion to approve the September 19, 2022 meeting minutes and was seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote (7-0).

Karen Isherwood made a motion to approve the October 3, 2022 meeting minutes and was seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote (7-0).

4. **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.

Wetlands have been reflagged and will be continued.

Karen Isherwood made a motion to accept the continuance SE 023-1389, CON 023-284, Ebony Street, Assessor's Map 43C, Lots 389-400 to the November 21, 2022 meeting at the applicant's request. The motion was seconded by Amy DeSalvatore and passed unanimously via roll call vote (7-0).

**Requests for Determination of Applicability**

- b. CON 023-318: **4 Saltmarsh Road**

Request for Determination of Applicability filed by Walter DiGiusto to remove and replace current 4'x20' walkway with (3) steps and add a 10'x12' patio on the side yard located at Map 43, Lot 2. Work to take place in a Coastal Bank, VE Zone-23.

Branden Costa stated the plan is to replace the existing walkway with concrete pavers. The project occurs in two resource areas: (1) Land Subject to Coastal Storm Flowage and (2) the 50–100-foot Buffer Zone to the Coastal Bank. He does not feel it would pose a threat to flood control, but may impact storm damage prevention through the installation of pavers. The alteration to the resource area is deemed an acceptable activity according to the bylaw. The applicant has classified the project as a conversion of lawn to an accessory residential structure. Since the project occurs in two resource areas, it would require the filing of a Notice of Intent. The agent recommended issuing a Positive Determination of Applicability.

Karen Isherwood would like to see the boundaries to the resource areas and cautioned the materials used in the velocity flood zone. She is also concerned about impervious lot coverage for flood absorption.

Walter DiGiusto added the current walkway is slate, which is slippery. He accepts that there are problems regarding lot coverage for the proposed patio, but does not think the pathway is significant.

Branden Costa clarified there is nothing stated in the WPA regarding pavers, but Coastal Zone Management (CZM) does warn of pavers in a Velocity Flood Zone.

Amy DeSalvatore clarified that it is not the act perse, but the regulations which prohibit pavers in the Velocity Flood Zone.

Walter DiGiusto requested a vote on the steps and concrete walkway and would like to forego the patio.

Karen Isherwood made a motion to approve the replacement and maintenance of three stairs with brick and cement and to replace the walkway with concrete, not to exceed to existing dimensions of the current walkway and to remove the patio portion of the plans for CON 023-318, 4 Saltmarsh Road, Map 43, Lot 2. The motion was seconded by Gary Lavalette and passed unanimously via roll call vote (7-0).

#### **Notices of Intent**

- c. 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 to continue SE 023-1391, CON 023-291, Bridge Street, Map 36, Lot 15J to the November 21, 2022 meeting at the applicant's request. The motion was seconded by Gary Lavalette and passed unanimously via roll call vote (7-0).

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

John Rockwell stated the most recent plan is basically the same as before; the only difference lies in the location for the water/sewer line in conjunction with the BPW.

Attorney, Nick Gomes confirmed that the recent plan details the location of the water line in conjunction with the BPW. He disagrees with General Condition 3: ground water elevation in the October 3, 2022 staff report, which recommended 5.4 feet. He requests the Board to approve the original plan dated May 12, 2022 and the revision relative to the water line dated November 2, 2022, which labeled the seasonal groundwater elevation at 3.8 feet. Mr. Gomes requests the Board to consider his correspondence dated September 6, 2022, which included the reasoning as to why he disagreed. He would also like the Commission to consider the letter submitted by Farland Corporation dated September 29, 2022. This letter detailed that the original assessment was performed by the engineering firm and approved by the BOH agent, certified evaluator, and sanitarian. Attorney Gomes claimed the soil profile was not approved on a proper DEP log and that the ground was disturbed.

Karen Isherwood stated that under Title 5/Septic Systems Policies and Guidance, the Commission is allowed to gather more information when the ground water is in question and may require a third-party evaluator. Also, she stated that resource areas are not appropriately delineated in this NOI, as required.

An email from Dave Flaherty on September 14, 2022 stated a consensus was reached and approved by the BOH and a revised plan depicting higher ground water elevation from the design engineer would be approved by the Board of Health. The Commission has correspondence stating the BOH does agree that the groundwater level was higher than an earlier analysis.

John Rockwell pointed out that the soil log submitted by Farland Corporation on the plan depicts 18" of fill, which by Attorney Gomes' reasoning would be an invalid test pit. It also does not warrant soil information beyond this test pit. Hence there is a need for a new test pit by a certified soil scientist with all parties present.

Attorney, Nicholas Gomes would like clarification on the DEP standard for third party review.

Karen Isherwood referred to Dave Flaherty's letter as the evidence for third party peer review.

Attorney Gomes requested continuance to confer with his client.

Karen Isherwood made a motion for SE 023-1385, CON 023-279, 27 Silver Shell Beach Drive, Map 41, Lot 54 for a resource delineation and third-party wetland geologist. The motion was seconded by Amy DeSalvatore and passed via roll call vote (7-0).

John Rockwell stated this was filed before peer review deposits were enacted; there is no peer review account on this and it will also require a \$2,500 deposit.

Karen Isherwood made a motion to continue SE 023-1385, CON 023-279, 27 Silver Shell Beach Drive, Map 41, Lot 54 to the November 21, 2022 meeting at the applicant's request. The motion was seconded by Amy DeSalvatore and passed via unanimous roll call vote (7-0).

- e. 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.

Rick Charon from Charon Associates stated there is 2.5-3 feet of clearance; the height of marsh is down to 3 feet. The planks have been changed to a north-south direction. There is believed to be an approved proposal for a 2-inch force main through the Board of Public Works (BPW), with plans to go out to bid by February 23, 2023. The cost of septic is close to \$40K; if sewer will be available in the near future, it would be futile for owners to go ahead with septic costs.

Karen Isherwood agreed there needs to be conditions with considerations in mind. The Commission requested some protection to the wetland (a fence and signage), which is still not depicted on the plan. Flags 11-14 at the 25-foot buffer should be taken into consideration.

Rick Charon stated the plan dated September 29, 2022 is the most current. The delineation of the rail fence along the edge of the wetlands has recently been renovated. Not looking to start the foundation until springtime.

Karen made a motion to continue SE 023-1393, CON 023-304, 2 Melpen Way, Map 29, Lot 002D to November 21, 2022 at the applicant's request seconded by Micheal Kelly. The motion passed via roll call vote (7-0).

- f. CON 023-321: **7 Alves Way**

Notice of Intent filed by Joshua Alves for the construction of a single-family residential dwelling, two-car attached garage, and additional improvements to include an elevation change of approximately 2 feet, installation of a boulder wall along the perimeter of the lot, pop up drains connected to roof leaders, and an irrigation system within 100-foot Buffer Zone to Bordering Vegetated Wetlands, located at Map 28, Lot 24.

Joshua Alves of Alexander Grey and Arsen Hambardzumian, the civil engineer for the project stated the driveway is pitched according to the original design – toward the replication area and serves its intended purpose.

Karen Isherwood stated she does not have a set of conditions to consider for the individual lot, only a set of conditions from the subdivision. This would change when separating to single family. On the DEP's WPA Form 5, OOC, section 19.C it states the landowner is responsible for VMP maintenance, until the issuing authority is notified and another party has assumed responsibility for VMP maintenance. Karen Isherwood asked if this is now exempt or does the condition carry over to the next owner? Water quality maintenance reports were required for ten years.

Arsen Hambardzumian stated the VMP maintenance is the responsibility of the Association. The wetland establishment and the monitoring of invasive species were established through the state and the developer has agreed to these provisions.

Karen Isherwood added whatever the Commission approves will need a set of conditions to be recorded on the deed. The Commission will need to motion perpetual conditions specifically for 7 and 8 Alves Way.

**Action:** Order of Conditions to be submitted for the next meeting on November 21, 2022.

Josh Alves, from Alexander Gray Development is amenable to a continuance. He did not oppose but wanted to understand the issue. Are the terms and conditions originally included in the subdivision too general to be applied to a single family? They were not informed on what the new conditions would be.

Geoff Haworth stated the original approval included conditions for the entire subdivision. Once the public hearing is closed the Commission is required to issue within 21 days.

Karen Isherwood to made a motion to continue CON 023-321, 7 Alves Way, Map 28, Lot 24 to the November 21, 2022 meeting at the applicant's request and was seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote (7-0).

**g. CON 023-322: 8 Alves Way**

Notice of Intent filed by Joshua Alves for the construction of a single-family residential dwelling, two-car attached garage, and additional improvements to include an elevation change of approximately 2 feet, installation of a boulder wall along the northern and western portions of the lot, and pop-up drains connected to roof leaders within 100-foot Buffer Zone to Bordering Vegetated Wetlands, located at Map 28, Lot 24.

Karen Isherwood stated the as-built plans do not depict the changes regarding the reversal of the garage.

Arsen Hambardzumian stated that one plan is the as-built, one a building permit plan, and the original subdivision plan. He suggested going by the as-built. The other documents were submitted for permitting purposes.

**Michael Kelly signed off at 8:12pm**

Karen Isherwood made a motion to continue CON 023-322, 8 Alves Way, Map 28, Lot 24 to November 21, 2022 at the applicant's request and seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote; Micheal Kelly not present (6-0).

h. SE 023-1394, CON 023-317: **21 Nelson Avenue**

Notice of Intent filed by Richard and Carol Reeve to upgrade an existing septic system to comply with Title 5 with the installation of a 1,000-gallon concrete pump chamber and chamber leaching area. Work will occur within Land Subject to Coastal Storm Flowage, Flood Zone VE-18, located at Map 43, Lot 68.

Branden Costa stated this project does meet the standards for Land Subject to Coastal Storm Flowage general provisions, since it does not pose a threat to flood control or storm damage prevention. It did require a variance from the Title 5 regulation. There is a Coastal Bank nearby, but in a Buffer Zone. There is an existing trench system and the applicant proposes to use stone walls around the property for erosion control. The agent recommended a continuance.

Dave Davignon, of Schneider, Davignon, and Leone represented the owners who have a purchase and sale to sell the house. The existing septic system, installed when the house was built, did not pass Title 5. They are now proposing to replace the leaching trenches, located below ground on the southeast side of the house with a new system to the southwest. The test pit and percolation test done on September 26, 2022 shows groundwater is 28 inches from the surface. He is proposing a chamber type leaching field, which is the most efficient way to reduce the size. The system would include installing a 1,000-gallon pump chamber weighed down with a ballast, in case of a storm event. The pump chamber will receive liquids from the septic tank and be pumped through a forced main to a leaching field and then to a distribution box. It would then be distributed to a chamber type leaching field.

A variance for ground water separation was received, in order to allow installation 3 feet above the water table. This is typical in a velocity zone to reduce the height of the mound. The system is located 12 feet off the street line of Nelson Avenue and 17 feet from property line. The stone wall on the property boundary (foot in height) will serve as erosion control. The mound is between 2.5 and 3 feet above grade and higher over the distribution box. The Board of Health (BOH) approved the plan and now looking for approval from the DEP.

Directly across street is a mounded system with retaining walls. The plan done by Ken Ferreira and witnessed by Patricia Fowl, depicted groundwater table to be 29 inches from surface; Davignon's assessment came to 28 inches from the surface. The same benchmark and elevation were obtained for groundwater which was 7.9.

Karen Isherwood made a motion to close the public hearing for SE 023-1394, CON 023-317, 21 Nelson Avenue, Map 43, Lot 68 and approve the plan dated October 11, 2022 with an Order of Conditions to be issued within 21 days. The motion was seconded by Gary Lavalette and passed via roll call vote (6-0).

i. SE 023-1398, CON 023-315: **2 Starboard Drive**

Notice of Intent filed by Dennis Arsenaault for the construction of a residential 8-lot subdivision, including the demolition of 1 existing dwelling, a paved roadway, and grading and site

development within the 100-foot Buffer Zone and Land Subject to Coastal Storm Flowage (LSCSF), Flood Zone VE-20, located at Map 42, Lots 9A, 9D, and 9E.

Branden Costa stated, in his opinion, this does not pose any threats to flood control or storm damage prevention and no increase in impervious surfaces, so the project meets the general provisions of the LSCSF. The Coastal Dune does not have a Buffer Zone or delineation depicted on the subdivision. The septic system will not likely to fall within buffer to the dune, and dwellings will be linked to the leaching area. The only alteration to the 20-50 feet Buffer Zone is temporary erosion control.

Claire Hoozeboom, wetland scientist with LEC Consulting addressed the Board. She expanded on the Agent's summary, stating there are 5 existing dwellings associated with the gravel roadway. The existing leaching field provides septic support for all 5 structures. The proposed project includes paving the road and currently raising one building to comply with local regulations; all homes will eventually be raised, with 8 additional structures to be built. The current application is seeking to construct the paved roadway, associated grading, storm water basin, vegetation clearing, utility upgrades, and lot preparation. Permitting for the specific individual lots for residential development will be separate NOIs; lots 1, 2, and 8 will all have a singular septic system, while the leaching field will be reconfigured to support 5 dwellings on the site. The entire site is categorized as LSCSF with the VE zone up to E-20. The Project itself is located in the Buffer Zone.

Ms. Hoozeboom stated there is still a need to clarify the Coastal Dune boundary and buffer zones. This will all be addressed on the revised plans. The resource delineation was performed in March 2021. There are missing flags in the field, which she was happy to have reestablished.

Gary Lavalette asked if there is something in the OOC to maintain the septic field; a maintenance plan?

Karen Isherwood stated the Commission requires an accurate boundary for a Coastal Dune. She witnessed drifted sand, may not be depicted properly. They cannot build within 100 feet of a Coastal Dune; need to know boundaries before proceeding further. The Commission should be absolutely positive the area is not Barrier Beach.

Claire Hoozeboom will place flags in the field for the peer reviewer to ensure proper delineation.

Gary Lavalette stated there should be revegetation on the dune.

Claire Hoozeboom was not aware of any clearing will research historic aerials.

Dave Davignon, of Scheider Davignon, and Leone prepared plans that were presented by LEC. He stated the Planning Board sends projects of this size to the Community Development Block Grant (CDBG) for review. That report should be due any day. He respectfully asked the Commission not to duplicate expenditures.

Geoff Haworth asked for a copy of the Planning Board's stormwater review; should go out for peer review if not being done by Planning Board.

Karen Isherwood made a motion to receive a copy of the stormwater peer review report from the Planning Board and to have a third-party coastal geologist to be coordinated and approved between the Chair and the agent; a peer review will determine the coastal resource area boundaries on the property as well as ensure compliance with the WPA and the Fairhaven Wetlands Bylaw for CON 023-315, 2 Starboard Drive, Map 42, Lots 9A, 9B, and 9E. The motion was seconded by Gary Lavalette and passed unanimously via roll call vote (6-0).

Karen Isherwood made a motion to continue CON 023-315, 2 Starboard Drive, Map 42, Lots 9A, 9B, and 9E to the December 12, 2022 meeting at the applicants request. The motion was seconded by Amy DeSalvatore and passed unanimously via roll call vote (6-0).

j. **SE 023-1395, CON 023-319: 1 Island View**

Notice of Intent filed by Peter Armanetti to construct a single-family dwelling with associated gravel driveway, grading and utilities located at Map 43, Lot 201. Work to take place within 100 feet of a Bordering Vegetated Wetland (BVW) and Bordering Land Subject to Flooding.

Agent, Branden Costa recommended the Commission vote to continue to review additional materials recently submitted. Initially, FEMA maps were missing. In addition, the project narrative described alterations in Bordering Land Subject to Flooding instead of Land Subject to Coastal Storm Flooding. The 100-foot buffer was not depicted with wetland flagging.

Nick Dufresne represented Farland Corp and briefly gave updates on the project. The parcel in question is located on Sconticut Neck Road. Wetlands do exist throughout the site and were delineated by Steve Schmiel in 2014, with an ANRAD conducted at that time. The flags were reestablished by Zenith Land Surveying, under the guidance of John Rockwell.

Peter Armanetti, 23 Mattapoisett Road, Rochester also a seasonal resident at 877 Sconticut Neck Road. He is attempting to build a permanent residence, once the property is subdivided. John Rockwell did a peer review in 2017.

Geoff Haworth added there could have been changes since 2017. A proper current delineation is best; approval for three years.

Karen Isherwood stated there are Bordering Vegetated Wetlands (BVW) in the area. The Commission will also need proper review of the salt marsh.

Nick Dufresne added the salt marsh was identified on the east side (to the right of the gravel road) and was flagged in the spring. All three roads form a triangle around the marsh land.

Karen Isherwood made a motion to continue SE 023-1395, CON 023-319: 1 Island View, Map 43, Lot 201 to the November 21, 2022 meeting at the applicant's request. The motion was seconded by Gary Lavalette and passed unanimously via roll call vote (6-0).

k. **SE 023-1396, CON 023-320: 2 Island View**

Notice of Intent filed by Peter Armanetti to construct a single-family dwelling with associated gravel driveway, grading and utilities located at Map 43, Lot 201. Work to take place within 100 feet of a Bordering Vegetated Wetland (BVW) and Bordering Land Subject to Flooding.



**Action:** Commission to consult with John Rockwell since he conducted peer review in 2017. The Commission Chair/Agent to review filing with John Rockwell to see if further peer review is required.

Karen Isherwood made a motion to continue SE 023-1396, CON 023-320: 2 Island View, Map 43, Lot 201 to the November 21, 2022 meeting at the applicant's request. The motion was seconded by Gary Lavalette and passed unanimously via roll call vote (6-0).

**I. CON 023-316: 90 Seaview Avenue**

Notice of Intent filed by Eugene Nowak to relocate driveway & walkway, with the addition of a generator and landscaping located at Map 29D, Lot 100. Work to take place within Land Subject to Coastal Storm Flowage, Flood Zone VE-17.

No SE number has been assigned yet. Geoff Haworth mentioned that this case cannot be closed in the meeting due to no SE number.

Branden Costa explained this is an after-the-fact filing for relocating a driveway & walkway, with additional landscaping and installation of a generator pad. Any alteration to the resource areas is LSCF, deemed as regulated activity under the Fairhaven Wetlands Bylaw.

A cease and desist was issued by the Commission's Chair on September 8, 2022 for the unpermitted construction of the driveway. The overall increase in impervious surface is approximately 400 square feet. Impervious comprises of approximately 36.9 percent of the total lot area. The applicant has submitted a plant list that does include a few invasive species. The agent proposed working with the applicant to come up with a list that is more indigenous to the area. The Buffer Zone to the Coastal Dune is not depicted on this site plan. The agent recommended a continuance.

Sara Rawson, owner at 90 Seaview Avenue stated she was given inaccurate information about re-paving an existing driveway and was unaware of filing with the Commission. She had done nothing intentionally.

Karen Isherwood expressed concern that the driveway is in a different location. She believes the Commission will need a proper delineation of the resource areas. During the site visit she did notice there is a man-made path through the marsh and a pile of pavers that need to be discussed. She also had concerns over materials to be used.

Sara Rawson explained her old driveway included a car port that was in disrepair and needed to be replaced. They have decided to use the other side of the house for the driveway. In regards to the path it existed long before they purchased the property (located off Shore Road and not on their property).

Karen Isherwood would like the Board to establish history of path before approval. The area should be vegetated. The Commission will need to establish lot coverage identifying impervious to pervious and where boundaries are located. There is a BVW across the way, which was measured as 39 feet. This would mean the driveway is within a 100-foot buffer to the BVW. If the materials are pavers, then they are not allowed in velocity zone. The path needs to

revegetated and can no longer continue to be a foot path. The boundaries will determine lot coverage.

Gary Lavalette had concerns over lot coverage. Materials should consist of cement pavers; impervious. He cautioned the applicant of the generator in a flood zone.

The new driveway only covers 36.9% of lot, which is below the 50% threshold. The resident requested to discuss with the agent on appropriate materials. The Commission cannot finalize until DEP establishes SE number.

Karen Isherwood made a motion to continue CON 023-316, 90 Seaview Avenue, Map 29D, Lot 100 until the November 21, 2022 meeting at the applicant's request. The motion was seconded by Gary Lavalette and passed unanimously via roll call vote (6-0).

#### **Amended Order of Conditions**

**m. SE 023-1351, CON 023-224: Overlook Lane**

Request for an Amended Order of Conditions filed by Sean & Susan Olson requesting approval for changes in the Site Plan which will result in a reduction of size in the house/porch footprint in the 100-foot Buffer Zone, removal of a paved driveway within the 50-foot Buffer Zone, relocation of the barn outside of the 50-foot Buffer Zone, and a fence to enclose the backyard, located at Map 29, Lot 1D.

Karen Isherwood made a motion to accept the withdrawal without prejudice for the request for an Amended Order of conditions for SE 023-1351, CON 023-224, Overlook Lane, Map 29, Lot 1D. The motion was seconded by Amy DeSalvatore and passed unanimously via roll call vote (7-0).

#### **5. Violations/Enforcement Orders/Cease and Desist Notices**

**a. EO 023-018: 3 North Street, Map 15, Lot 43: restoration progress update and fence construction**

Branden Costa stated Steve Gioiosa submitted a partial as-built plan dated October 17, 2022, along with a memorandum requesting to resume work on the fence. Based on the site photos submitted, the restoration as a partial as-built plan appears to have been followed and the plan appears to depict the conditions. A site visit confirming current conditions has not yet been conducted.

Geoff Haworth has done two site visits and is comfortable it meets the as-built plan, which confirmed grades. He believes the Enforcement Order has been complied with and the cease and desist should be lifted.

Lee Miguel, owner of 3 North Street agreed with Geoff Haworth.

Amy DeSalvatore added there were a number of conditions to continue the work. She suggested the owner meet with the agent to go over conditions so they are reinforced.

Karen Isherwood made a motion to accept the partial as-built plan dated October 17, 2022 for the restoration of the parking area as complete, and to lift the cease and desist on the property for 3 North Street, Map 15, Lot 43. The motion was seconded by Amy DeSalvatore and passed via roll call vote with all Board members present (6-0).

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

Branden Costa received email correspondence from Christian Farland on November 4, 2022. The area was not mapped as a wetland; a wetland is mapped to northwest corner of 344 New Boston Road. This area mapped is hydric soil according to the NRCS soil website and map GIS layer.

Karen Isherwood read letter from 11-4-22 stating that Farland Corp was hired by the applicant Benny Olmeda and Patrick Walsh to perform soil testing on the above noted property. They claim that the applicants had permission to access the site from the owner. Farland proceeded by filing a percolation test with the Board of Health, prior to filing the percolation test with the professional soil evaluator. Christopher Gilbert reviewed the site's GIS data soil maps to determine any wetlands depicted. The soils mapped were sandy loam typically upland soils.

On September 1, 2022 Mr. Gilbert met with the Fairhaven BOH agent to perform a percolation test for onsite sewage disposal system and the percolation test passed Title 5 requirements. The soil logs did not indicate hydric soil. Farland Corp feels that the violator on the Enforcement Order should be the owner of the property. Farland Corp is willing to assist in any way to help restore the wetland but would like to be removed as the violator.

Geoff Haworth requested a restoration plan by December 2, 2022. He stated that who ordered what can be settled in court. When the violator is in question, the Commission holds the property owner responsible for the violation.

Attorney, Patrick Mullen represented Mary Mullen.

Christian Farland, principal engineer and president of Farland Corp, apologized to the Board. Farland followed protocol, but unfortunately the dry summer conditions led to a passing percolation test.

Karen Isherwood consulted the DEP circuit rider. The Commission was advised to go to the state if they do not reach compliance.

Karen Isherwood made a motion to require a submission for a restoration plan that meets all of the Commission's requirements of the November 7, 2022 meeting for 344 & 346 New Boston Rd, Map 40, Lots 023B & 023C Enforcement Order 023-022. If the Restoration Plan is not submitted by December 2, 2022 a \$300 a day fine will accrue retroactively from the day of the cease-and-desist dated September 2, 2022 until such time as a restoration plan is submitted under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw Chapter 192.11. The motion was seconded by Amy DeSalvatore and passed via roll call vote (6-0).

- c. **CON 023-119, SE 023-1315: Rt 240 & Bridge St, Map 30A, 86B:** debris in wetland and buffer zone;

Jamie Bissonnette with Zenith Consulting spoke with the property owners and they have had clippings removed as of today.

Karen Isherwood would like to continue monitoring, but no motion at this time.

- d. **CON 023-278: 6 Jeanette St, Map 34A, Lot 062K:** fill to be removed from wetland

Branden Costa spoke with the representative to discuss the history of the site and what is expected of the applicant's moving forward. He will be working with the representative on restoration plan to submit to the Commission.

- e. **CON 023-278: 8 Jeanette St, Map 34A, Lot 062P:** fill to be removed from wetland

Branden Costa spoke with Bruce Matheson, representative for both properties. He will be working on a restoration plan to submit to the Commission.

- f. **SE 023-1302, CON 19-066: 6 Emerson Ave, Map 29A, Lot 119:** unpermitted deviation from approved plan, awaiting restoration plan

Bruce Webb, with Ecosystem Solutions represented 6 Emerson Avenue. He conducted site visit and is now reviewing the file.

Karen Isherwood wants to be sure of the elevation of the site before work begins; the original fill amounts need to be determined.

Amy DeSalvatore would like verification of the as-built and elevations by a land surveyor.

Geoff Haworth stated the Commission would need a restoration plan; rocks were pulled out to form a jetty, which was unpermitted.

Bruce Webb requested to continue.

- g. **10 Point St, Map 28B, Lot 211:** Dune scalped as a result of mowing

Branden Costa gave the Board an overview and recommended Mr. Clarke to replant to restore the dune and limit the lawn area to size approved by the Commission. The Administrative Approval by the previous agent did not approve removal of vegetation, only minor grading. A site visit is proposed.

## 7. Correspondence

- a. Correspondences Sent

128 Huttleston Avenue will commence work on the car wash. Silt fence and waddling was discussed during the preconstruction meeting. Their building permit has been approved.

Geoff Haworth stated the Commission should have received a Stormwater Management Plan and the invasive species plan.

- b. Marsh Island Memorandum

**8. General Business****a. Bills**

N/A

**b. Budget Overview**

The Commission requested an itemized list with contracted services. There will be more discussion after the Special Town Meeting.

**c. Next Meeting: Monday, November 21, 2022****9. Any other business** that may properly come before the Commission not reasonably anticipated 48 hours in advance of the meeting.

Karen Isherwood stated 4 Jeannette Street is still waiting on a violation letter regarding filling in a wetland and buffer to a Vegetated Wetland. The original RDA was CON 023-278.

**Action:** Branden Costa to send letter notice to appear and notice of violation for the 11-21-22 meeting.

7 Summer Street filing deadline is November 18, 2022.

**Action:** Branden Costa to discuss 56 Goulart at the next meeting.

**10. Motion to adjourn**

Amy DeSalvatore made a motion to adjourn at 10:35pm and was seconded by Karen Isherwood. The motion passed via roll call vote (6-0).

Respectfully submitted,

Kelly Camara, Recording Secretary