

Conservation Commission
November 21, 2022
Minutes

FAIRHAVEN - 7136 D.E.A.
NOV 2023 FEB 7 AM 3:13

1. Chairman's Welcome and Media Notification: Mr. Haworth opened the meeting at 6:03p.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, Gary Lavalette, Amy DeSalvatore, Michael Kelly, Jake Galary, Corey Pietrasek. Non-voting: Carrie Hawthorne, Chelsea Isherwood, Ronnie Medina

3. Approval of the October 24, 2022 meeting minutes

Karen Isherwood requested to table to the December 12, 2022 meeting.

4. Adoption of General Law Chapter 44, Section 53G

John Rockwell explained that 53G allows the Commission to hire consultants at any time. The consultant fee can be implemented at any time. The Commission searches for someone qualified and obtains a quote then the agent is to write to the applicant and request payment within 10 days to retain services.

Karen Isherwood made motion to accept the Fairhaven Conservation rules for hiring outside consultants under General Law Chapter 44, Section 53G as written. The motion was seconded by Amy DeSalvatore and passed unanimously via roll call vote (7-0).

5. Policy & Procedures for Administrative Approvals & General Commission Business

Geoff Haworth made the announcement that the agent, Branden Costa, is resigning, and has accepted another position.

Karen Isherwood made a motion to make all previous Administrative Approvals no longer valid, with the exception of percolation tests. No new Administrative Approvals will be allowed, with the exception of percolation tests and no future administrative approvals. The motion was seconded by Amy DeSalvatore and passed via roll call vote (7-0).

Amy DeSalvatore emphasized that percolation tests will only be approved when witnessed by the Commission or its consultant.

The WPA and Fairhaven Wetland Bylaw does not take into consideration Administrative Approvals; they are not legally bound.

6. Requests for Certificate of Compliance

a. SE 023-913, CON 023-324: 342 New Boston Road, Map 40, Lot 23

Karen Isherwood made a motion to issue a COC for complete certification under the WPA and the Fairhaven Wetlands Bylaw for SE 023-913, CON 023-324, 342 New Boston Road, Map 40, Lot 23. The motion was seconded by Amy DeSalvatore and passed unanimously via roll call vote (7-0).

b. SE 023-920, CON 023-326: 10 Jeannette Street, Map 34A, Lot 062Q

The applicant requested a continuance in advance to the December 12, 2022 meeting.

7. 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.

Karen Isherwood made a motion to continue SE 023-1389, CON 023-284, Ebony Street, Assessor's Map 43C, Lots 389-400 to the December 12, 2022 meeting at the applicant's request. The motion was seconded by Amy DeSalvatore and passed via roll call vote (7-0).

Requests for Determination of Applicability

b. CON 023-313: 74 Seaview Avenue

Request for Determination filed by Mark Rego for the replacement of 2 existing sheds with a single shed on a 12'x16' concrete pad located at Assessor's Map 29C, Lot 86, 87, 88, 89. Work to take place within Land Subject to Coastal Storm Flowage, Flood Zone VE-17.

Agent, Branden Costa discovered a concrete pad at the site visit and feels this application would require a NOI. He recommended a Positive Determination of 1, 3, and 5.

Marc Rego, of 58 Emerald Drive, Dartmouth and 74 Seaview Drive represented himself. He added they are rebuilding a 12x16, which is in disrepair.

Karen Isherwood explained they are in one resource area (VE-17), but the size and scope would constitute a Positive Determination. In accordance with FEMA regulations, accessory structures have size limits based on flood zones (no larger than 100 square feet).

John Rockwell offered an alternative stating the applicant could go down in size.

Karen made a motion to continue CON 023-313, 74 Seaview Avenue to the December 12, 2022 meeting at the applicant's request. The motion was seconded by Gary Lavalette and passed unanimously via roll call vote (7-0).

c. **CON 023-323: 7 Oxford Street**

Request for Determination filed by Nina Bonnoyer for the replacement of the existing wooden 5-foot, 6 inches by 11-foot, 6-inch deck, at the property located at 7 Oxford Street, Assessor's Map 13, Lot 23. The proposed deck will measure 8 feet by 15 feet and will include approximately 8 steps to the existing lawn. Work to take place within 100 feet from the Coastal Beach and area with Reduced Flood Risk due to Levee, Zone X.

Karen Isherwood made a motion to close the public hearing for CON 023-323, 7 Oxford Street, Map 13, Lot 23 and issue a Negative Determination 1. The motion was seconded by Amy DeSalvatore and passed unanimously via roll call vote (7-0).

Notices of Intent

d. **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.

Branden Costa stated the Commission received last minute correspondence from the applicant, which he has not had the opportunity to read.

John Rockwell stated the Commission had discussed obtaining a coastal geologist to conduct a beach delineation and establish a Buffer Zone. He sent out bids and received only one response from Woods Hole Group with a bid for \$5,500. He also reached out to wetland scientists and received response from Arthur Allen. Mr. Rockwell sent those responses to the Board utilizing General Law Chapter 44, Section 53G.

Attorney, Nicholas Gomes represented the applicant. He recommended the Commission approve the NOI, with the condition that the ground water elevation is to be determined by a licensed soil evaluator within 90 days of this meeting. He informed the Commission that his client has contacted a licensed soil evaluator, Jamie Bissonnette, through Zenith consulting. The client would contract directly with the excavation company as well as Zenith and these findings would set the groundwater elevation.

Attorney Gomes brought up an email correspondence between Stevie Carvalho of Farland Corporation and the former Conservation agent, which took place during the preplanning stage in April 2022. The former agent stated a NOI was required and further recommended taking the 100-foot Buffer Zone line off of the Coastal Beach as shown on Mass GIS, since this property does not directly affect the beach nor have a coastline. The plans presented by Farland Corp show the septic barely touching the Buffer Zone and the coastal dune buffer barely touches upon the septic layout.

Several Commission members agreed the soil evaluator should be chosen by the Commission and not the client.

Nick Gomes stated the applicant had no intention in creating adversarial atmosphere with the Commission. Over the past several meetings had suggested alternative methods and offered to put differences aside, in order to get to a solid ground water determination. His client would like to put differences aside and have a soil evaluator resolve this issue. Additionally, he does not believe a coastal geologist is required or appropriate.

John Rockwell stated there is currently dune delineation to review, which is the main problem.

Attorney Gomes added this is a long-standing resident who wishes to make repairs to an existing development. He believes a soil evaluator from a different county is enough evidence of impartiality.

Amy DeSalvatore reiterated that the Commission has been strongly advised by the DEP to delineate the resource areas.

Geoff Haworth recommended not continuing this any further. The Commission will put out the proper RFP for a soil evaluator. The Commission has determined Mass GIS is not sufficient, which is the will of the Commission. It would not be a fair or equitable process for the applicant to hire the soil evaluator. Client has a right to appeal the Commission's decision.

Nicholas Gomes requested to continue to the December 12, 2022 meeting.

Karen Isherwood made a motion to retain the services under M.G.L., Chapter 44, Section 53G of EcoTech Inc. at the amount of \$1,500 for the purpose of evaluation of soil conditions for SE 023-1385, CON 023-279, 27 Silver Shell Beach Drive, Map 41, Lot 54 and to notify the applicant, Nancy Blouin, of the same. The motion was seconded by Amy DeSalvatore and passed via roll call vote (7-0).

Karen Isherwood made a motion to continue SE 023-1385, CON 023-279, 27 Silver Shell Beach Drive, Map 41, Lot 54 to the December 12, 2022 meeting at the applicant's request. The motion was seconded by Amy DeSalvatore and passed via roll call vote (7-0).

- e. 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 December 12, 2022 at the applicants request. The motion was seconded by Amy DeSalvatore and passed via roll call vote (7-0).

- f. 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.

Karen Isherwood made a motion to continue SE 023-1393, CON 023-304, 2 Melpen Way, Map 29, Lot 002D to December 12, 2022 at the applicants request. The motion was seconded by Amy DeSalvatore and passed via roll call vote (7-0).

- g. SE 023-1400, CON 023-321: **7 Alves Way** – *Continued from November 7, 2022*

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.

Karen Isherwood is satisfied with the conditions for this project. This has been checked many times for erosion control and stormwater runoff and rectified and now have proper elevations on the plans submitted to us. Conditions we were asking for properly recorded on the deed. Finally have green light.

Karen made a motion to close the public hearing for SE 023-1400, CON 023-321, 7 Alves Way, Map 28, Lot 24 and issue OOC under the WPA and the Fairhaven Wetlands Bylaw approving the final as-built plans dated October 10, 2022, with findings and conditions as outlined in Attachment A in the November 21, 2022 staff report. The motion was seconded by Gary Lavalette and passed via roll call vote (7-0).

- h. SE 023-1399, CON 023-322: **8 Alves Way** – *Continued from November 7, 2022*

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 made a motion to close the public hearing for SE 023-1399, CON 023-322, 8 Alves Way Map 28, Lot 24 and issue an OOC under the WPA and the Fairhaven Wetlands Bylaw approving the final as-built plans dated October 10, 2022 with the findings and conditions as outlined in Attachment A in the November 21, 2022 staff report and was seconded by Gary Lavalette. The motion passed unanimously via roll call vote (7-0).

- i. SE 023-1394, CON 023-317: **21 Nelson Avenue** – *Continued from November 7, 2022*

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.

Karen Isherwood made a motion to issue an Order of Conditions (OOC) for SE 023-1394, CON 023-317, 21 Nelson Avenue, Map 43, Lot 68 under the WPA and the Fairhaven Wetlands Bylaw approving plans dated October 11, 2022 with the findings and conditions as outlined in attachment A in the staff report dated November 21, 2022. The motion was seconded by Amy DeSalvatore and passed unanimously via roll call vote (7-0).

j. SE 023-1395, CON 023-319: **1 Island View** – *Continued from November 7, 2022*

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 – VE Zone.

Karen Isherwood made a motion to assign John Rockwell as the peer reviewer for SE 023-1395, CON 023-319, 1 Island View Map 43, Lot 201. The motion was seconded by Amy DeSalvatore and passed via roll call vote (7-0).

Karen Isherwood made a motion to continue SE 023-1395, CON 023-319, 1 Island View Map 43, Lot 201 to the December 12, 2022 at the applicants request. The motion was seconded by Amy DeSalvatore and passed via roll call vote (7-0).

k. SE 023-1396, CON 023-320: **2 Island View** – *Continued from November 7, 2022*

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 – VE Zone.

Karen Isherwood made a motion to assign John Rockwell as the peer reviewer for SE 023-1396, CON 023-320, 2 Island View Map 43, Lot 201. The motion was seconded by Amy DeSalvatore and passed unanimously via roll call vote (7-0).

Karen Isherwood made a motion to continue SE 023-1396, CON 023-320, 2 Island View Map 43, Lot 201 to the December 12, 2022 meeting at the applicant's request. The motion was seconded by Amy DeSalvatore and passed unanimously via roll call vote (7-0).

l. SE 023-1397, CON 023-316: **90 Seaview Avenue** – *Continued from November 7, 2022*

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.

Agent, Branden Costa stated the applicant has provided materials on the revised plan.

Applicant, Sara Rawson stated the walkway will include 4-inch concrete with one inch of mortar and 1.5-inch blue stone (bonded to the concrete) to mitigate the stones becoming projectiles.

Karen Isherwood made a motion to close the public hearing for SE 023-1397, CON 023-316, 90 Seaview Avenue, Map 29D, Lot 100 and issue an Order of Conditions under the WPA and the Fairhaven Wetlands Bylaw, approving the revised plans dated November 16, 2022 with the

findings and conditions as outlined in Attachment A in the October 31, 2022 the staff report. The motion was seconded by Gary Lavalette and passed via roll call vote (7-0).

Amended Order of Conditions

8. Violations/Enforcement Orders/Cease and Desist Notices

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

Agent, Branden Costa stated a site visit was conducted but no resolution was made. There is confusion and conflicting opinions on the Administrative Approval from May 2022, issued by the former agent. The agent recommended the owner sign an agreement to revegetate the dune or order an Enforcement Order.

Karen Isherwood discussed that the Administrative Approval from the previous agent is no longer valid. She believes the Administrative Approval was misinterpreted and pertained to the areas between 10 Point Street and 18 Point Street; where the water is combining and pooling up. She spoke with DEP Circuit Rider, Andrew Poyant, and he would be happy to go out to the site. But would need written approval to go on the property. This may offer further clarification and offer a resolution to the violation.

The Commission decided to place this address on the agenda for the December 12, 2022 meeting to allow the owner to meet with the Circuit Rider.

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

Branden Costa cited the letter from the landowners' counsel submitted just prior to the meeting.

The Board decided they did not have adequate time to review the letter.

Patrick Mullen, speaking for the owner, requests continuance to the December 12, 2022 meeting.

Karen Isherwood made motion to approve the Enforcement Order for 344 & 346 New Boston Road, Map 40, Lots 023B & 023C as outlined in Appendix A in the November 16, 2022 staff report and mail certified to the owner on record at the time of violation and to Farland Corporation Inc. The motion was seconded by Amy DeSalvatore and passed via roll call vote (7-0).

Amy DeSalvatore asked that a restoration plan be submitted by November 28, 2022.

Action: Branden Costa to send a Notice to Appear for the December 12, 2022 meeting to Farland Corp.

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

Action: Branden Costa to send a Notice to Appear for the December 12, 2022 meeting.

- d. **7 Summer St, Map 08, Lot 037:** Fence was installed without permit within Flood Zone AE-7.

Branden Costa stated they were sent a Notice to Appear and Notice of Violation.

Karen Isherwood made a motion to issue an Enforcement Order for 7 Summer St, Map 08, Lot 037, to be ratified at the December 12, 2022 meeting and send a Notice to Appear to the December 12, 2022 meeting. The motion was seconded by Amy DeSalvatore and passed unanimously via roll call vote (7-0).

9. Correspondence

- a. Notices to Appear Sent

Karen Isherwood asked Branden Costa to send 20 Yankee Lane a Notice to Appear.

10. General Business

- a. Bills

\$6 Eversource

- b. Budget Overview

- c. Next Meeting: Monday, December 12, 2022

Action: Conservation office to email rough dates for the 2023 meeting schedule.

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

11. Motion to adjourn

Amy DeSalvatore made a motion to adjourn at 9:01p.m. and was seconded by Gary Lavalette. The motion passed unanimously via roll call vote (7-0).

Respectfully Submitted,

Kelly Camara, Recording Secretary