

**Conservation Commission**  
**February 21, 2023**  
**Minutes**

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1. Chairman's Welcome and Media Notification: Mr. Haworth opened the meeting at 6:04p.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.

1. Quorum/Attendance

Geoff Haworth, Karen Isherwood, Gary Lavalette, Amy DeSalvatore, Jake Galary, Michael Kelly, Corey Pietraszek, and Jake Galary  
Non-voting Consultants: Chelsea Isherwood, Carrie Hawthorne, Ronnie Medina

2. Introduction of new Conservation Agent, Bruce Webb, Wetland Scientist
3. North Street remand: Morin v. Fairhaven, et al., 2173CV0374 (Bristol Superior Ct.).

Town Counsel, Heather White, was present for consultation and to hear the Commission's definition of aesthetics under the Fairhaven Wetlands Bylaw, Chapter 192.8. Karen Isherwood and Michael Kelly recused themselves, since they were not on the Commission for the original decision. (Quorum of four – Gary Lavalette, Corey Pietraszek, Amy DeSalvatore, and Geoff Haworth).

Geoff Haworth reiterated that the court has asked the Commission to weigh in on the aesthetics, only as it was listed as a resource value under the Town Bylaw at the time of the original decision.

Amy DeSalvatore shared her belief in a scenic view as a value of the resource area, which in this case is a salt marsh. The town places a monetary value on a scenic view, which she described as passive recreation. She also argued that in the areas where the view is of the salt marsh, not a private home, the view does not violate privacy considerations.

Ms. DeSalvatore would consider approving a fence that delineates the property line, but does not distort or impede upon the view of the salt marsh. This consideration could be an amendment to the existing Order of Conditions.

Ms. DeSalvatore asked Town Counsel if the Commission is amending the existing Order of Conditions or issuing a new Order of Conditions? Or can the Commission only approve or deny for aesthetics with all original conditions intact?

Mr. Haworth responded that at the Executive Session it was stated that the Commission is only giving a definition aesthetics. The Commission is not modifying existing conditions.

Ms. White read a few lines from the court's decision to reiterate what the court has instructed. The matter must be remanded to the Commission to discuss further detailed findings of fact and conclusions as to the applicability of the aesthetics value to the proposed project.

The first task of the Commission is to interpret the aesthetics value and determine how it applies to this proposed project. Hypothetically, if the Commission were inclined to find that the aesthetics value is not protected by the proposed project, then that would warrant further findings as to how that impacts the Commission's decision. This may conclude aesthetics is one factor to be weighed among others, and that may or may not be dispositive. If the Commission were to make other amendments, specifically related to the aesthetics value, then the court would consider that to be within the scope.

Gary Lavalette stated this case is the perfect application for aesthetics. The marsh should not be blocked. Mr. Lavalette shares Ms. DeSalvatore's belief in a scenic view constituting as passive recreation.

Mr. Haworth held the belief that private owners may erect a fence if they please, even if it hinders the neighbor's view of the marsh. He feels the fence preserves the salt marsh and aesthetics. He made assertions that the neighbors were throwing grass clippings and debris into the salt marsh and this 6-foot stockade fence would remedy the issue.

Mr. Haworth claimed that aesthetics is diminished when there are large amounts of debris along the marsh. He further added that a fence is a minor activity within conservation's jurisdiction, which only requires an RDA. He has the belief that this fence protects the environment.

Mr. Lavalette responded to Mr. Haworth and stated that he does not disagree, but added grass clippings can easily be thrown over a fence. Any debris thrown along the marsh could easily be monitored, controlled, and corrected without an oversized stockade fence. Residents in the neighborhood have lost beauty and aesthetics has decreased. These neighbors bought waterfront property for this resource; the value of their property has been diminished. Further, this fence hinders animal migrations.

Mr. Haworth believes if a resident does not own the property, then they do not have the rights to their view.

Ms. DeSalvatore made a motion to amend the motion for SE 023-1341, CON 023-194, North Street, Map 15, Lot 43, issued on April 12, 2021 (OOC issued April 28, 2021) to include the condition that the fence shall not block or distort the scenic view to protect the aesthetic value of the salt marsh, under the Fairhaven Wetlands Bylaw. The motion was seconded by Gary Lavalette.

Ms. White added that the court has asked for guidance on how the Commission interprets the word aesthetics in the bylaw. The court is looking for what aesthetics means and, specifically, how it applies. This type of appeal involves review of an administrative record. The court will not review each commissioner's reasoning for the ultimate vote. What will be included in the text of the vote

will be the substance of what the court considers. This should be as detailed as possible for the court to understand intent.

Ms. DeSalvatore retracted her motion.

Jake Galary joined at 6:36pm and recused himself.

Mr. Lavalette stated the definition of aesthetics has not changed, nor has the Commission altered the definition of the word, but the Commission now has a better understanding of what the word means and its application.

Mr. DeSalvatore would like aesthetics considered in a case-by-case basis, as this is an evolving consideration.

Mr. Haworth added the bylaw had not defined aesthetics at the time of this filing. He reiterated his claims that blocking someone's view does not affect the environment.

Ms. DeSalvatore made a counterpoint to Mr. Haworth's statement that taxes are affected and increased to those who have views of the water. This is not a debate on whose taxes are more important. Taxes are not the purview of the Commission.

Ms. DeSalvatore made a motion to amend the motion from April 12, 2021 for CON 023-194, North Street, Map 15, Lot 43, to include the condition that the fence shall not block or distort the scenic view to protect the aesthetic value of the salt marsh, under the Fairhaven Bylaw.

*"At the time of the original permit of the fence, the Commission did not deliberate adequately on the question of aesthetics, which is why we voted to support the request that the judge remand to the Commission the review of the decision on the question of the aesthetics under the town bylaw. This case involves the question of the aesthetics of a scenic view, across a salt marsh, as a value of the resource area.*

*The town places a monetary value on a scenic view, and there is literature on the benefits to health and mental health of an intimacy with nature. A scenic view, moreover, offers a form of passive recreation, which can be enjoyed by anyone including the older and disabled.*

*In this case, we are talking about a view across a salt marsh, which for its enjoyment must be clear and undisturbed. This also protects the integrity of the salt marsh, and hence, is a value of the resource area. It is also commonly recognized that those who spend time in intimacy with nature often act to protect its pristine condition. In this case, neighbors, and to some extent the wider neighborhood, as they have had partial views of the salt marsh before the fence existed, have acted to protect and report significant violations to the salt marsh, that they witnessed being committed. Neighbors have also expressed to Commissioners a willingness to help clean up debris, which may be damaging to the salt marsh and also damaging to the scenic view. Hence, again, the symbiotic relationship between the scenic view and the protection of the salt marsh.*

*Aesthetics are also significant to the passive enjoyment of wildlife and the protection of their habitat.*

*Privacy is not a consideration on either side of the proposed fence for the affected properties where the view is of the salt marsh, not of a private home, lawn, or other area of activities. Physical recreation is not permitted in a salt marsh. For the property on Cherry Street, which already has a fence, the view there is of a driveway and parking lot and then the marsh. Thus, there is human activity and there may be privacy concerns on both sides of the fence in that area."*

The Commission would consider permitting a fence which delineates the property line and also gives a boundary for the accumulation of leaves and lawn clippings etcetera, but which does not block or distort the scenic view of the salt marsh. This could be a simple amendment to the existing order of conditions. Any number of fences might fulfill this condition. In this case with a wooden fence, the owner could presumably comply by cutting the height of the fence in half. The motion was seconded by Gary Lavalette. Amy DeSalvatore, Gary Lavalette, and Corey Pietraszek were in favor; Geoff Haworth was not in favor (3-1).

Geoff Haworth stated the vote did not pass because it does not meet quorum.

Ms. White stated the court has requested guidance, considering the findings and conclusions on the definition of aesthetics. The court involves a review of administrative record. Ms. White asked for a consensus on what the term aesthetics means. Once the Commission agrees on a definition, then the court will be able to make progress.

Jake Galary stated he was concerned that enforcing would set a precedent for other homeowners unable to build along the water when their construction may block a neighbor's view.

Geoff Haworth concurred with Mr. Galary but asked him to hold comment as he had recused himself.

Karen Isherwood read the definition of aesthetics, under the Fairhaven Wetlands Bylaw, Chapter 192.8:

*AESTHETICS Includes, without limitation, the relevant qualities to be protected under the bylaw which are due to those natural and natively scenic impressions of all resource areas protected under this Bylaw, including but not limited to our shores, ponds, lakes, streams, rivers, harbors, and the lands bordering them. The aesthetic trust of the Commission shall be the preservation of a perception of the land which is most conducive to a natural aquatic system, a wildlife habitat, and a protective buffer between wetland resources and human development activities.*

Mr. Haworth made a motion stating the Commission did not have the definition of aesthetics at the time of the North Street decision, but it has since been defined. The motion was seconded by Amy DeSalvatore and passed via roll call vote by Geoff Haworth, Amy DeSalvatore, Gary Lavalette, and Corey Pietraszek (4-0). Jake Galary, Karen Isherwood, and Michael Kelly recused themselves.

4. Continuances requested in advance:

- a. SE 023-1389, CON 023-284: **Ebony Street, Assessor's Map 43C, Lots 389-400**
- b. SE 023-1391, CON 023-291: **Bridge Street, Map 36, Lot 15J**
- c. SE 023-1403, CON 023-330: **Rear Arsene Street, Map 28, Lot 008**
- d. SE 023-1385, CON 023-279: **27 Silver Shell Beach Drive, Map 41, Lot 54**

- e. SE 023-1398, CON 023-315: **2 Starboard Drive, Map 42, Lots 9A, 9D, & 9E**
- f. SE 023-1395, CON 023-319: **1 Island View, Map 43, Lot 201**
- g. SE 023-1396, CON 023-320: **2 Island View, Map 43, Lot 201**

5. **Certificate of Compliance**

- a. **SE 023-1305, CON 023-079:** 88 Fort Street, Map 5, Lot 4 & 5

Mr. Haworth stated the issues pertaining to the drain were fixed.

Karen Isherwood made a motion to issue a Certificate of Compliance for a complete certification under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw for a SE 023-1305, CON 023-079, 88 Fort Street, Map 5, Lot 4 & 5, with 3 ongoing conditions: CHM-2, DER-4, and if any of the planted vegetation should fail to establish, the Commission reserves the right to request it to be replanted with the same or similar native species, as listed in the Order of Conditions. The motion was seconded by Jake Galary and passed via roll call vote (7-0).

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

Geoff Haworth does not feel the WPA form for SE 023-920, CON 023-326, 10 Jeannette Street, Map 34A, Lot 062Q was filled out correctly or completely. He tabled the COC to the March 13, 2023 meeting.

- c. **SE 023-1090, CON 023-338:** 7 Hickory Street, Map 24, Lot 18

Chair, Geoff Haworth, tabled SE 023-1090, CON 023-338, 7 Hickory Street, Map 24, Lots 189-198 to the March 13, 2023 meeting, since an inspection has not been conducted.

6. **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:

**Notices of Intent**

- A. **SE 023-1406, CON 023-335: 40 Nelson Avenue, Map 43, Lot 233**

Notice of Intent filed by Christopher Wolkowicz to raze existing house and build new house on flood-compliant foundation with new septic system, town water supply and associated site work; located within buffer zone of coastal bank and within 100-year flood plain (FEMA Zone VE, EL.19'). Proposed septic system to include secondary treatment unit for di-nitrification of wastewater.

Rick Charon represented the applicant and stated the proposed system has a secondary treatment unit, due to its proximity to the shore line, in addition to a leeching field with full ground water separation. The proposed house footprint establishes a small decrease in building area. The ledge in front of the property is proposed to be used as a driveway. Essentially, the project offers greater improvements to water quality. This system includes a denitrification system comparable to the DEP standard, which is mandated by the state for sensitive areas along Buzzards Bay.

Gary Lavalette inquired whether the Commission may waive the variance, since this is a minor activity.

Karen Isherwood stated the retaining wall falls under a minor buffer zone activity. The 50-to-100-foot buffer zone needs to be 30 percent impervious. For mitigation factors, it is advantageous to maintain impervious areas down to 30 percent of lot coverage.

Karen Isherwood stated that although the impervious coverage ideally should not be greater than the 30% maximum allowed in the bylaw within the 50-100' zone, it is permissible as it matches a preexisting disturbance. Also, proposed work in the 0-20' zone would qualify as a minor activity and a variance could be waived.

Rick Charon's goal is to increase pervious areas.

Karen Isherwood made a motion to continue SE 023-1406, CON 023-335, 40 Nelson Avenue, Map 43, Lot 233 to the March 13, 2023 meeting at the applicant's request. The motion was seconded by Amy DeSalvatore and passed via roll call vote (7-0).

**B. CON 023-337: 23 Goulart Memorial Drive**

Notice of Intent filed by Chanda Kale to repair frame and replace the supported concrete and timber pilings for the handicapped ramp at deck level. Also, to repair and replace timber frame, support, and surface for the walkway. Work to take place for the property located at 23 Goulart Memorial Drive, Assessor's Map 42, Lot 022B. Work to take place within Barrier Beach and FEMA Zone VE, EL.19'.

CON 023-337, 23 Goulart Memorial Drive will be continued to the April 3, 2023 meeting.

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

**A. CON 19-007, SE 023-1269: 20 Yankee Lane, Map 39, Lot 016:** Discuss Phase 2 timeline

CON 19-007, SE 023-1269, 20 Yankee Lane, Map 39, Lot 016 will be continued to the March 13, 2023 meeting.

Applicant, Brian Lopes stated the representative from Goddard Consulting had changed and he apologized for the late revision, which was a consequence of this change.

**B. CON 023-181, SE 1333: 18 Point St, Map 28B, Lot 207:** Discuss the alteration of coastal engineering structure

Rick Charon discussed how the amendment to the Order of Conditions was to ensure proper placement of rocks in the groin area. He acknowledged the applicant did not place the stones in the location specified in the OOC. This was resolved through further discussions with the Shellfish Warden, Tim Cox, who stated no stones shall be placed below the mean high-water line. There has been a reduction in scope to operate under the original OOC. Mr. Charon did not feel another amendment is necessary.

**Action:** Geoff Haworth to conduct an inspection of the current conditions with the Conservation Agent and report back to the Commission at the next meeting on March 13, 2023.

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

Agent, Bruce Webb, recused himself since he had worked on this property through the private sector.

**Action:** For the Conservation office to send an additional letter and to reach out to town counsel regarding retroactive fines; the Commission would like proper protocol under Chapter 192.11.

Karen Isherwood stated the state examines all historical records and it behooves the Commission to properly fine retroactively. The Commission must show proof of due diligence to the state.

Karen Isherwood made a motion to send a certified letter requesting the applicant to appear at the March 20, 2023 enforcement meeting, or fines shall accrue under Chapter 192.11 for SE 023-1302, CON 19-066, 6 Emerson Ave, Map 29A, Lot 119. The motion was seconded by Gary Lavalette and passed via roll call vote (7-0).

Karen Isherwood made a motion that Kelly Camara requests town counsel's advice for SE 023-1302, CON 19-066, 6 Emerson Ave, Map 29A, Lot 119. The motion was seconded by Gary Lavalette and passed via roll call vote (7-0).

Geoff Haworth stated all enforcements will be heard at the March 20<sup>th</sup> meeting.

**9. Correspondence**

**10. General Business**

- a. Bills
  - \$49.99 W.B.Mason - printer paper
  - \$41.49 Verizon - February cell phone bill
  - \$2,482.00 John Rockwell - Bridge Street peer review
  - \$155.00 FNN legal ad for January 30, 2023
  - \$90 FNN legal ad for February 21, 2023
  - \$96.95 Eversource
  - \$2,940.00 John Rockwell - January Peer review services

- b. Next Meeting: Monday, March 13, 2023

**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 8:37pm and was seconded by Karen Isherwood. The motion passed via roll call vote (7-0).

Sincerely submitted,

Kelly Camara, Recording Secretary