

Conservation Commission
March 20, 2023
Minutes

*Received from
Town of Bristol
March 20, 2023*

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.

2. Quorum/Attendance: Geoff Haworth, Karen Isherwood, Gary Lavalette, Amy DeSalvatore, Jake Galary, Michael Kelly, and Corey Pietraszek.

Non-voting Consultants: Chelsea Isherwood and Ronnie Medina

Non-voting absent: Carrie Hawthorne

3. Approval of the January 30, 2023 and the February 21, 2023 meeting minutes

Karen Isherwood made a motion to approve the January 30, 2023 meeting minutes. The motion was seconded by Jake Galary and passed via roll call vote (7-0).

Karen Isherwood and Amy DeSalvatore questioned the date referenced in the North Street remand. Amy DeSalvatore stated April 12, 2021 as the issuance date for SE 023-1341, CON 023-194, North Street, Map 15, Lot 43. The issuance date included in Bristol Superior Court's brief, as well as in town records depict April 28, 2021, but Ms. Isherwood and Ms. DeSalvatore would like the minutes to reflect Ms. DeSalvatore's motion. The February 21, 2023 minutes were tabled to the April 24, 2023 meeting, due to this date referenced.

4. Continuances requested in advance

- a) SE 023-1389, CON 023-284: **Ebony Street, Assessor's Map 43C, Lots 389-400** – *Continued from August 8, 2022*
- b) SE 023-1385, CON 023-279: **27 Silver Shell Beach Drive, Map 41, Lot 54** – *Continued from July 25, 2022*
- c) SE 023-1391, CON 023-291: **Bridge Street, Map 36, Lot 15J** – *Continued from August 8, 2022*
- d) SE 023-1403, CON 023-330: **Rear Arsene Street, Map 28, Lot 008** – *Continued from December 12, 2022*
- e) SE 023-1407, CON 023-337: **23 Goulart Memorial Drive** – *Continued from February 21, 2023*

5. **Certificate of Compliance**

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

Continued to the April 24, 2023 meeting.

- b. SE 023-1090, CON 023-338: 7 Hickory Street, Map 24, Lots 189-198

Continued to the April 24, 2023 meeting.

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:

Requests for Determination of Applicability

a. **CON 023-339: 12 Mark Drive, Assessor's Map 32, Lot 19L**

Request for Determination of Applicability filed by Maurine & Todd Rodrigues to remove a 14'x20' 3-season room, which is currently supported by sono-tubes & replace with an 18' by 20' living space expansion constructed on a crawlspace foundation. This will require a 4' wide expansion of the 3-season room footprint. Work to take place at 12 Mark Drive, Assessor's Map 32, Lot 19L. Work to take place in the 100' foot Buffer of Inland Bank (pond).

Bruce Webb conducted a site visit and upon review discovered the crawl space foundation would still need to be built; currently, there is no foundation under the 3-season room. This would require earth removal and other alterations. Also in question was the project area to the limit of disturbance. In addition, Mr. Webb is assessing the distance between the limit of disturbance to the bank of the pond.

There was question of a second resource area at the inlet to the pond to the north and the outlet of the pond to the south. Both areas show evidence of Bordering Vegetated Wetland (BVW). This would mean two resource areas are present and the project would warrant a NOI. Mr. Webb stated that the applicant did agree to modify/redesign the project – he would place the room on sono-tubes, but cantilever off the existing foundation. Mr. Webb recommended the applicant file a Notice of Intent (NOI) application.

Applicant and owner, Todd Rodrigues, requested the Commission accept the current plan. Mr. Rodrigues asserted this is a simple modification to an existing dwelling.

Mr. Rodrigues asked if the stream on his property has been identified as perennial or intermittent?

Mr. Webb stated the stream is not listed under the U.S. Geological Survey (USGS), but is protected under the Fairhaven town bylaw, which does not differentiate between a perennial and an intermittent stream. This stream would still need to be delineated.

Mr. Webb agreed with the Commission on a request for a delineation. An inlet and outlet to the pond could indicate 3 resource areas, including one with a 200-foot riverfront area.

Geoff Haworth inquired about the stone wall that extends to corner of the 3-season room. The current plan does not reflect any modification to the stone wall.

Mr. Rodrigues stated it will be a step wall, with the addition extending into the wall.

Karen Isherwood asked if the project will require a cement truck?

Mr. Rodrigues added that the crawl space will require a full foundation with a frost wall. Creating the foundation will require removing approximately 30-40 yards of material out of the area.

Karen Isherwood explained to Mr. Rodrigues that if he is within the 50-foot buffer zone of a bank, stipulations and conditions would be applied, in order to protect the resource area. Ms. Isherwood is hesitant to condition under an RDA.

Amy DeSalvatore would like everything delineated properly to determine with certainty the type of stream. She questioned the sand brought to the pond and had concerns about wildlife habitat, since it is not native. There should be no disturbance within 25-feet to the resource area.

Mr. Lavalette had concerns about the rise of the water table, once the foundation is closer to the pond. Potentially, water could flood the crawl space.

Mr. Rodrigues stated this a man-made cow pond that was created in the 1970s. He also stated there is already a foundation here; he is only looking to extend out by 18 feet. There will be drains to the street and a sump pump.

Geoff Haworth added a revised plan would need to be submitted by April 3rd at noon.

Ms. Isherwood recommended that the applicant withdraw the RDA and file an NOI.

Mr. Rodrigues felt as long as the plan indicates the limit of work, he would like to continue as an RDA.

Mr. Haworth advised that if the plan does not indicate the wall modifications, he would need to come back for an Amended Order. He believes this is an approvable project, but not approvable under an RDA, according to the town regulations.

Mr. Haworth recommended the applicant withdraw to avoid a Positive Determination. The applicant may continue the RDA to the next meeting, and subsequently file an NOI. The RDA could be withdrawn at the next meeting and the applicant could move forward with the NOI.

Amy DeSalvatore added the plan should indicate the distance to the top of the bank and not the edge of the water.

The applicant, Todd Rodrigues, asked for a continuance to the April 24, 2023 meeting.

Karen Isherwood made a motion to continue CON 023-339, 12 Mark Drive, Assessor's Map 32, Lot 19L to the April 24, 2023 meeting, at the applicant's request. The motion was seconded by Gary Lavalette and passed via roll call vote (7-0).

b. **CON 023-340: 12 Lincoln Drive, Assessor's Map 30A, Lot 85N**

Request for Determination of Applicability filed by Seaport Homes, LLC to construct a new 25' by 55' single-family dwelling with private driveway, and a bio-retention area located at 12 Lincoln

Drive, Assessor's Map 30A, Lot 85N. To determine if property at 12 Lincoln Drive is jurisdictional under the Wetlands Protection Act or the Buffer Zone and Fairhaven Wetlands Bylaw.

Bruce Webb visited the site, which consists of fill overgrown with invasives. There is no functional drainage easement, only the remains of one not hydrologically connected. The applicant's wetland scientist submitted a letter concurring with this assessment.

Karen Isherwood made a motion to close the public hearing for CON 023-340, 12 Lincoln Drive, Assessor's Map 30A, Lot 85N and issue a Negative Determination 1, under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw. The motion was seconded by Gary Lavalette and passed via roll call vote; Amy DeSalvatore abstained (6-1).

c. **CON 023-341: Jason Terrace, Assessor's Map 30A, Lot 85M**

Request for Determination of Applicability filed by Seaport Homes, LLC to construct a new 25' by 55' single-family dwelling with private driveway, and a bio-retention area located at Jason Terrace, Assessor's Map 30A, Lot 85M To determine if property at Jason Terrace is jurisdictional under the Wetlands Protection Act or the Buffer Zone and Fairhaven Wetlands Bylaw.

Karen Isherwood made a motion to close the public hearing for CON 023-341, Jason Terrace, Assessor's Map 30A, Lot 85M and issue a Negative Determination 1, under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw. The motion was seconded by Gary Lavalette and passed via roll call vote; Amy DeSalvatore abstained (6-1).

Notices of Intent

d. **SE 023-1395, CON 023-319: 1 Island View Road, Map 43, Lot 201 – 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 18 & 19

Karen Isherwood made a motion to continue SE 023-1395, CON 023-319, 1 Island View Road, Map 43, Lot 201 to the April 24, 2023 meeting at the applicant's request. The motion was seconded by Amy DeSalvatore and passed via roll call vote (7-0).

e. **SE 023-1396, CON 023-320: 2 Island View Road, Map 43, Lot 201 – 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 18 & 19.

Karen Isherwood made a motion to continue SE 023-1396, CON 023-320, 2 Island View Road, Map 43, Lot 201 to the April 24, 2023 meeting at the applicant's request. The motion was seconded by Amy DeSalvatore and passed via roll call vote (7-0).

- f. SE 023-1398, CON 023-315: **2 Starboard Drive, Map 42, Lots 9A, 9D, & 9E** – *Continued from November 7, 2022*

Notice of Intent filed by Dennis Asrenault 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.

Claire Hoozeboom, Coastal Geologist with LEC Environmental Consultants, Inc. is currently working on revised plans that address adjustments to the flags. LEC placed wooden stakes in the field to demarcate the Coastal Dune boundary, in order to clarify Coastal Wetland Resource Area Boundaries and augment the review conducted by Woods Hole Group.

John Rockwell stated the Commission and LEC are still waiting for a summary report from Woods Hole Group, evaluating coastal Wetland Resource Area Boundaries. The stormwater report was peer reviewed by GCG Associates, Inc. on behalf of the Planning Board. The Conservation Commission voted to receive a copy of the stormwater peer review report from the Planning Board, in an effort to avoid duplication of review efforts.

Karen Isherwood made a motion to continue SE 023-1398, CON 023-315, 2 Starboard Drive, Map 42, Lots 9A, 9D, & 9E to the April 24, 2023 meeting at the applicant's request. The motion was seconded by Amy DeSalvatore and passed via roll call vote (7-0).

- g. 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.

Bruce Webb informed the Commission that a denitrification system and a retaining wall will be constructed towards the change in grade (south of the property line).

Karen Isherwood made a motion to close the public hearing for SE 023-1406, CON 023-335, 40 Nelson Avenue, Map 43, Lot 233, and issue an Order of Conditions (OOC) under the WPA and Fairhaven Wetlands Bylaw, approving plans dated December 27, 2022, titled "Plan of Site, Proposed House and Repair of Subsurface Sewage Disposal," with conditions as outlined in the March 9, 2023 staff report. The motion was seconded by Gary Lavalette and passed via roll call vote (7-0).

7. Violations/Enforcement Orders/Cease and Desist Notices

- a. **EO 023-014: 20 Yankee Lane, Map 39, Lot 016:** Discussion on the phase 2 revision; submitted by Goddard Consulting

Tom Schutz, of Goddard Consulting is still waiting on a site plan with topographic imagery. The Commission requested a timeline for phases 1 and 2.

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

Agent, Mr. Webb, presented photos from the most recent site visit. The work has been completed in significant compliance with the OOC and the final plan. Mr. Webb authorized the applicant to apply for a Certificate of Compliance.

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

Karen Isherwood recommended an additional certified letter to appear.

- d. **SE 023-850, CON 023-021: 51 Cedar Street, Map 04, Lot 155:** Review restoration plan submitted by Steve Chmiel

Bruce Webb performed a site visit and reviewed the restoration plan. He witnessed visible surface vegetation and recommended approval as currently proposed.

Action: Conservation office to arrange for a site visit within the next month.

- e. **270 Sconticut Neck Road, Map 29A, Lot 101:** Alteration of the salt marsh with unpermitted 112-foot boardwalk.

Owner requested appearance at the April 24, 2023 meeting.

- f. **266 Sconticut Neck Road, Map 29A, Lot 095:** Alteration to the salt marsh with unpermitted 260-foot boardwalk

Mr. Webb stated the owner placed wood on a preexisting path; this work was unpermitted. He recommended a retroactive NOI or a plan to restore to preexisting conditions.

Karen Isherwood recommended an Enforcement Order (EO) to be ratified at the next meeting. Ms. Isherwood believes paths cause a cumulative effect.

Geoff Haworth added there is a high standard set in order to permit a boardwalk.

Action: Bruce Webb to produce an EO and to coordinate a site visit.

- g. **746 Sconticut Neck Road, Map 42, Lot 007:** Unpermitted path and alterations to salt marsh vegetation

Bruce Webb stated snow fencing was laid down in the marsh, and in some sections, boards were placed on top. Historical photos indicate a maintained path through the marsh.

Owner, Deb Smoske, stated the former Conservation agent visited her property numerous times. She shared with the Commission that after Hurricane Sandy water within the marsh began to rise. The culverts under the property are clogged, which is preventing proper flowage.

Action: For the Conservation Agent to visit the site and place on a monitoring list.

- h. **17 Turner Avenue, Map 02, Lot 275:** Alteration of coastal dune, including operation of a skid steer on beach and alteration of the resource area, including filling and grading.

Owner requested appearance at the April 24, 2023 meeting.

8. Correspondence

a. Notices to Appear Sent

- 1. 6 Emerson Avenue
- 2. 17 Turner Avenue
- 3. 266 Sconticut Neck Road
- 4. 270 Sconticut Neck Road
- 5. 746 Sconticut Neck Road

9. General Business

a. Bills

- 1. Verizon **\$41.49**
- 2. Kelly Camara - Municipal Conference **\$55.00**
- 3. Eversource **\$79.58**
- 4. FNN Legal Advertisement **\$125.00**
- 5. MACC Bruce Fundamentals - 8 Units **\$440.00**

b. Approval of the 2023 (2nd half) meeting schedule

Action: The Conservation office will confirm again with Fairhaven Neighborhood News any weeks in 2023 they will not be publishing.

c. The Commission to discuss removing the required \$2,500 peer review fee for Notices of Intent and Abbreviated Notices of Resource Area Delineation

Karen Isherwood made a motion to remove the \$2,500 peer review fee for Notices of Intent and Abbreviated Notices of Resource Area Delineation, effective immediately. The motion was seconded by Gary Lavalette and passed via roll call vote (7-0).

d. The Commission to discuss possible extension of remote meetings.

Geoff Haworth announced that unless the Commission is notified of an extension, the April 24, 2023 meeting will be conducted at Town Hall. After the April 24, 2023 meeting, the Commission will motion for hybrid meetings, if legislation does not extend Chapter 22 of the Acts of 2022.

Amy DeSalvatore made a motion that in the event the state passes an extension to remain remote then the Board will remain remote. The meeting was seconded by Karen Isherwood and passed via roll call vote (7-0).

e. The Commission to discuss requiring posting of CON numbers at properties with approved RDAs.

Geoff Haworth would like to maintain transparency and that the Commission would benefit from posting the CON number at property locations. Mr. Haworth recommended this policy to avoid mistaking violations from permitted work.

Karen Isherwood made a motion to require with approved Requests for Applicability, that a sign be posted at the job site, that is clearly visible from the road, not less than 2 square feet or more than 3 square feet, with the words "Fairhaven Conservation Commission or FCC and the CON file number" written on it. This sign shall be weather proofed and any necessary replacement and maintenance of this sign shall be the sole responsibility of the applicant. The motion was seconded by Amy DeSalvatore and passed via roll call vote (7-0).

Michael Kelly resigned from his position on the Conservation Commission. The Commission thanked Mr. Kelly for his time and commitment.

f. Next Meeting: Monday, April 24, 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 8:23pm. The motion was seconded by Michael Kelly and passed via roll call vote (7-0).

Sincerely submitted,

Kelly Camara, Recording Secretary