

**Conservation Commission**  
**April 24, 2023**  
**Minutes**

1. Chairman's Welcome and Media Notification Mr. Haworth opened the meeting at 6:05p.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 20 of the Acts of 2021. 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, Jake Galary, Corey Pietraszek. Non-voting consultants: Chelsea Isherwood, Carrie Hawthorne, Ron Medina

1. Approval of the February 21, 2023 and March 20, 2023 meeting minutes.

Karen Isherwood made a motion to approve the February 21, 2023 and was seconded by Gary Lavalette.

Karen Isherwood made a motion to approve the March 20, 2023 meeting minutes and was seconded by Amy DeSalvatore. The motion passed via roll call vote (6-0).

2. Continuances requested in advance

- a. SE 023-1385, CON 023-279: 27 Silver Shell Beach Drive, Map 41, Lot 54
- b. SE 023-1389, CON 023-284: Ebony Street, Assessor's Map 43C, Lots 389-400
- c. SE 023-1391, CON 023-291: Bridge Street, Map 36, Lot 15J
- d. SE 023-1403, CON 023-330: Rear Arsene Street, Map 28, Lot 008
- e. SE 023-1407, CON 023-337: 23 Goulart Memorial Drive, Assessor's Map 42, Lot 022B

3. **Certificate of Compliance**

- a. SE 023-920, CON 023-326, 10 Jeannette Street Map 34A, Lot 062Q – *Continued to May 15, 2023*
- b. SE 023-1090, CON 023-338, 7 Hickory Street, Map 24, Lot 189 – *Continued to May 15, 2023*

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:

**Notices of Intent****a. 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.

John Rockwell summarized updates on the project. He depicted a concept plan, but is still waiting on additional requested items. The proposed retaining walls will reduce the overall height of the septic. The grading and slab information has been provided for the construction of the homes. The plan proposes to build off the existing retaining wall on the adjoining property, which will add 18 feet and thereby create a larger mound for wave refraction. The existing plan does not meet FEMA Free-of-Obstruction Requirements. The height of the final system is uncertain. Mr. Rockwell requested feedback from the Commission.

Stevie Carvalho of Farland Corporation concurred they will be adding 18 feet, but reducing the proposed retaining wall from 208 feet to 18 feet; they will completely cover up the existing 80 foot retaining wall.

Applicant, Peter Armanetti, understands retaining walls are not preferred, but are allowed by local code and FEMA. He shared an email received February 2023 from MassDEP, which states that if a portion of the parcel is outside the V Zone, then septic should be cited as such. If no portion of the parcel was outside the V Zone, then it should be cited as far from the shore as possible.

Mr. Armanetti shared system upgrades on neighboring properties, which experience increased wave action. He believes his property should be reviewed with the same scrutiny and same merits as other applicants, as he meets all setback requirements and FEMA codes.

Mr. Armanetti stated the revised plan was formally approved by the Board of Health with a letter dated April 7, 2023.

Amy DeSalvatore expressed concerns that the plan does not demonstrate erosion mitigation.

Ms. Isherwood stated that if the retaining wall goes beyond 2 feet of the existing wall (11.2 feet) then the mound would need to be lowered. If flow exceeds the community's configuration deemed to comply to the full thickness threshold, or if the proposed configuration exceeds local grade heights beyond the two feet, then variations in engineering analysis on flood flow and waves may be required by the community. The submitted plan depicts exceedance in the velocity area.

Mr. Carvalho stated the top of field elevation is at 10.8 feet, with the original wall at 8.2 feet (will remain 8.2 and taper down). The top of the leeching field has to be 10.8 feet, which will be 11 feet away from the property line.

Karen Isherwood made a motion to continue SE 023-1395, CON 023-319, 1 Island View Road, Map 43, Lot 201 to the May 15, 2023 meeting at the applicant's request. The motion was seconded by Amy DeSalvatore and passed via roll call vote (6-0).

**b. 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 May 15, 2023 meeting at the applicant's request. The motion was seconded by Amy DeSalvatore and passed via roll call vote (6-0).

**c. 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 Arsenault 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.

John Rockwell stated stormwater review currently going through the Planning Board. (The Planning Board includes different standards than Conservation.) The waiver request should state how the level of protection to the wetlands will not be diminished by the granting of a waiver. The project includes raising one of the smaller houses, with a construction of a subdivision road and retention basin, construction of septic system, and grading within limit of work. **(Discussion recorded: Conservation Commission Part 2: 01:07-08:00)**

Geoff Haworth stated that under Fairhaven Code, Subdivision of Land, Chapter 322.19: "In any area not protected by the U.S. Army Corps of Engineers hurricane barriers, each lot shall be serviced with streets providing a route out of the subdivision, no part of which route lies below the thirteen-foot elevation above mean sea level (M.S.L.)."

John Rockwell believes the Commission may waive that requirement.

Mr. Haworth added that only if within barrier then waiver does not apply.

Claire Hoozeboom of LEC Environmental Consultants, LLC represented the applicant and detailed the scope of work. The grading is limited to destruction of the road. LEC will depict this in supplemental package.

Dave Davignon cited that under Chapter 198.31 waivers are required (within the stormwater management plan).

Karen Isherwood asked if the 10-year stormwater calculation is met (Stormwater Report: page 6, number 3).

Keri spoke of the MassDEP stormwater standards, in order to address the Commission's comments. The best way to meet the ten-year volume is to determine outlook structure within infiltration basin, and infiltrate it. Due to low infiltration rate, it will be difficult to meet this ten-year volume. She stated they will summarize more in detail as to how they will meet all standards.

Dave Divignon does not intend to divert any water off lot; lot is separate from the development with relatively flat grass fields, with the exception of shrubs and scrub bush. When the lot is developed all impervious will consist of roof runoff that will be put into dry wells and then a gravel driveway. He does not anticipate run-off into the system (**Discussion recorded: Conservation Commission Part 2: 33:00-34:00**).

Karen Isherwood made a motion for additional peer review deposit of \$2500, if necessary for SE 023-1398, CON 023-315, 2 Starboard Drive, Map 42, Lots 9A, 9D, & 9E and seconded by Amy DeSalvatore. The motion was passed via roll call vote (6-0).

Karen Isherwood made a motion to continue SE 023-1398, CON 023-315, 2 Starboard Drive, Map 42, Lots 9A, 9D, & 9E to May 15, 2023 at the applicant's request. The motion was seconded by Amy DeSalvatore and passed via roll call vote (6-0).

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

- a. **344 & 346 New Boston Rd, Map 40, Lots 023B & 023C:** Review revised restoration plan submitted on March 29, 2023 by Environmental Consulting & Restoration, LLC to restore the impacted areas due to the result of test pits that were excavated within several areas of the site including associated access to these areas

Conservation agent, Bruce Webb, presented an overview of the restoration plan and concluded replication guideline standards are sufficiently met. A recent site visit with ECR Engineering, LLC and Farland Corporation resulted in a revised plan on March 29, 2023. The plan calls for 36 trees to be planted in clusters of 3, with approximately 10 to 15 feet on center spacing and 80 shrubs to be planted in clusters of 3, with approximately ten feet on center spacing. The planting is consistent with the replication restoration planting procedures given in the Massachusetts Inland Wetland Replication Guidelines.

The Commission received an assessment from G. Bourne Knowles, who is working on the behalf of the owners of the property and Attorney Gushue. They determined 155 trees were removed and believe the planting plan meets the standards set out by the replication guidelines and will additionally stabilize loose and disturbed earth. The also proposed planting the area with a wet meadow seed mix.

If the Commission deliberates too long and planting begins into the summer months, they may encounter drought conditions. The agent recommended that the Commission accept a planting plan and the monitoring be done for 2 years for 75% coverage under 310 C.M.R. § 55.

Karen Isherwood and Amy DeSalvatore preferred more detail in the restoration plan and would like a peer review; they did not feel the plan was adequate.

Mr. Webb stated that determining density after tree removal is difficult. He had concerns about missing a planting season, which will do a disservice to the disturbed soils. It is more advantageous to stabilize soils in place and get plantings in before the drought season.

Mr. Lavalette was in agreement and asked how the owners' opinion on the planting plan.

Owner, Patrick Mullen stated the Attorney Gushue wrote a letter, which is included in the administrative record. The letter, dated March 16, 2023, stated the property owner defers to the Conservation Commission with respect to assuring compliance with the Wetlands Act and the Bylaw and approval of the project, with regards to the March 13, 2022 Alternative Restoration Plan.

Jacob Galary suggested the Commission simply ask Farland Corp. and ECR for additional trees to be added to the plan.

Mr. Cameron Larson of ECR noted all of the concerns brought up by the Commission. He was in agreement that it is more advantageous to get disturbed areas stabilized within this growing season. This will reduce encroaching invasives.

Mr. Webb added he had valuable experience on the largest restoration project in the region. He feels he is competent to declare this as an adequate restoration plan and added that soils cannot be restored, only stabilized.

Mr. Webb stated the plan proposes a difference of 37 trees and shrubs and does not believe that would dramatically affect the wetlands.

Mr. Larson stated he is willing to add additional trees.

Christian Farland stated he is willing to fund for additional trees.

Mr. Webb suggested the plan convert 3 tree clusters to 4 tree clusters to increase density.

Geoff Haworth made a motion that we accept restoration plan dated March 3, 2023 for 344 & 346 New Boston Rd, Map 40, Lots 023B & 023C with the addition of all clusters of trees must be clusters of (4) and clusters of bushes or shrubs must be clusters of (4); therefore, adding 40 additional plantings. Farland Corporation or ECR will provide the Commission a copy of the amended plan by May 1, 2023, showing that it will be approved by both the Conservation Chair and Conservation Agent prior to work beginning. The motion was seconded by Jacob Galary. The motion carried (4-2); Amy DeSalvatore and Karen Isherwood were not in favor of the motion.

- b. **20 Yankee Lane** – Tom Schultz walked property with Bruce Webb and approved Phases 1-5. In Phases 1 removal stream that connects another wetland done June 1, 2023 to July 1, 2023. Phase 1.2 to remove brush piles some saved for wildlife habitat.

Tom Schutz of Goddard Consulting presented all Phases in detail (**Discussion recorded: Conservation Commission Part 1: 2:05-2:15**).

Originally Phases 1 and 2 were approved by the Commission, which entailed the removal of the manmade stream and included the Invasives Management Report, and the removal of fill piles. Phases 3,4, and 5 have not been approved yet. To slow the speed of the flow will be utilizing some of the rocks found currently in the fill piles and put them in the stream. The stream will follow same historical path; will have same topography.

Ms. Isherwood believes 3,4,5 need to be peer reviewed.

Karen Isherwood made a motion to approve Phases 1 and 2 of the wetland replication, Buffer Zone and stream Restoration Plan revision dated April 4, 2023 for 20 Yankee Lane, EO 023-014, Map 39, Lot 016. The motion was seconded by Gary Lavalette and passed via roll call vote (6-0).

- c. **EO 023-015: 217 Alden Road, Map 36, Lot 085:** Discuss the Spring 2023 planting plan (proposed tree & shrub species) addressed in the Revision 2 report (to satisfy EO issued August 19, 2021) submitted December 27, 2022 by Ivas Environmental

Conservation Agent, Bruce Webb, gave an update on the phases of the project with Phase 2 consisting of revegetation beginning spring 2023. Steve Ivas will contact conservation office when the next phase of work begins.

Bruce Webb stated work conducted to remove fill and for erosion controls were inspected on April 12, 2023 and are deemed adequate.

- d. **SE 023-850, CON 023-021: 51 Cedar Street, Map 04, Lot 155:** Review planting plan and fence proposal submitted by Steve Chmiel; Discuss site visit

Bruce Webb responded to Mr. Chmiel's restoration plan with concerns raised by the Commission. There would not be a gate on the proposed fence and no access to vehicles. The recommendation is approval without the delineation line as depicted.

Karen Isherwood made a motion to approve the wetland restoration plan, titled Site Restoration Plan, dated September 20, 2022, and the attached plan by Zenith Land Surveyors LLC, dated September 14, 2020 for SE 023-850, CON 023-021, 51 Cedar Street, Map 04, Lot 155 with the understanding of the seven conditions in the original Attachment A of Enforcement Order 023-021 must be complied with and the wetland line not officially approved. The motion was seconded by Gary Lavalette and passed via roll call vote (6-0).

- e. **SE 023-1302, CON 19-066: 6 Emerson Ave, Map 29A, Lot 119-122:** Unpermitted deviation from approved plan; awaiting a restoration plan

Natalie Reis stated Eco System Solutions reviewed the site in November 2022. She will retain revised as-built from her engineer.

Geoff Haworth recommended a current as-built by the June 5, 2023 meeting.

Ms. Isherwood added that violations found on property would not be approved under an amendment. Specifically, the creation of a groin was not permitted.

Mr. Lavalette stated that historical photos depict changes.

Karen Isherwood made a motion for an as-built plan with current conditions by a professional land surveyor to be submitted by the June 5, 2023 meeting deadline (May 22, 2023 by noon) for SE 023-1302, CON 19-066, 6 Emerson Ave, Map 29A, Lot 119-122. The motion was seconded by Amy DeSalvatore and passed via roll call vote (6-0).

- f. EO 023-019: 6 Jeannette Street, Map 34A, 62K:** BVW Delineation Spring 2023; Commission awaiting restoration plan

EO 023-019: 6 Jeannette Street, Map 34A, 62K tabled to the May 15, 2023 meeting.

Conservation office to reach out to owner regarding spring delineation information.

- g. EO 023-020: 8 Jeannette Street, Map 34A, Lot 62P:** BVW Delineation Spring 2023; Commission awaiting restoration plan

EO 023-020: 8 Jeannette Street, Map 34A, Lot 62P tabled to the May 15, 2023 meeting.

- h. EO 023-023: 43 Reservation Road, Map 29A, Lot 351:** Unpermitted driveway in LSCSF (FEMA Zone VE, EL.16'), BVW, Coastal Dune, Salt Marsh, Coastal Beach, and Buffer Zone

After-the-fact NOI requested but has not been filed yet.

Karen Isherwood made a motion that the applicant file an NOI within the next 30 days or remove driveway and return to original conditions. Failure to do so will result in \$300 a day fine. The motion was seconded by Amy DeSalvatore and passed via roll call vote (6-0).

- i. 746 Sconticut Neck Road, Map 42, Lot 007:** Unpermitted path and alterations to marsh vegetation; discuss what was witnessed on site visit and provide updates

The Commission received documents but a site visit is recommended.

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

Mr. Webb recommended a site visit.

Property owner, Easterly was present. They retained services from Charon Engineering.

Geoff Haworth advised to have Charon Associates submit an NOI.

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

Boardwalk that goes back to 1995. Recommended scheduling a site visit.

- l. 17 Turner Avenue, Map 02, Lot 275:** Operation of a skid steer on beach; alteration of resource area, including filling and grading

The Conservation Agent recommended site visit.

James Marsh represented the owners of 17 Turner Avenue. He stated no engineer has been hired yet and requested the property be placed on the next meeting agenda.

Gary Lavalette recused himself from discussions on the property.

**m. 61 Nakata Avenue, Map 43, Lot 103: Unpermitted fence in a velocity zone**

Bruce Webb stated this is straight forward. The owners constructed an unpermitted fence in El.20.

Karen motioned to issue an EO for unpermitted fence at 61 Nakata Avenue, Map 43, Lot 103 in a resource area. The motion was seconded by Gary Lavalette and passed via roll call vote (6-0).

**n. 4 Indian Way, Map 29, Lot 14: Unpermitted clearing of vegetation within a Buffer Zone**

Mr. Webb presented photos with significant clearing.

**Action:** Karen Isherwood asked the Conservation office to reach out for a site visit.

**6. Correspondence**

6 Emerson Avenue – Notice to Appear  
4 Monondach Avenue – Notice of Violation  
4 Indian Way – Notice of Violation  
43 Reservation Avenue – Notice to Appear  
61 Nakata Avenue – Notice of Violation & to Appear  
6 & 8 Jeannette Street – Notice to Appear

**7. General Business**

- a. Allen Decker, Director of Land Protection with the Buzzards Bay Coalition (BBC) to discuss a Conservation Restriction project at 736 Sconticut Neck Road and neighboring land

Mr. Decker spoke regarding the 5.6-acre parcel across from the Acushnet Land Trust and its associated conservation values to be protected by the town. A portion consisting of 3.3 acres was sold to the abutter. Areas of the property include agricultural use with prime soils as well as hayfields, woods, and trail access to Buzzards Bay. He requested to come back to the Commission after the town meeting (12F Article in Town Meeting). Closing planned for July 2023.

- b. Approval of the revised 2023 (2<sup>nd</sup> half) meeting schedule

Karen Isherwood made a motion to approve the 2023 (2<sup>nd</sup> half) meeting schedule. The motion was seconded by Gary Lavalette and passed via roll call vote (6-0).

- c. Next Meeting: Monday, May 15, 2023

Amy DeSalvatore made a motion to adjourn at 10:44p.m. and was seconded by Karen Isherwood. The motion passed via roll call vote (6-0).



Respectfully submitted,

Kelly Camara, Recording Secretary