

Conservation Commission
May 25, 2023
Minutes

RECEIVED TOWN CLERK
MAY 25 2023 11:11 AM

1. Chairman's Welcome and Media Notification Ms. Isherwood opened the meeting at 6:00p.m. Karen Isherwood read the protocol for Zoom meetings and open Public Meeting Law.

Ms. Isherwood advised that the meeting was being conducted remotely, pursuant to Chapter 20 of the Acts of 2021, this meeting will be conducted in person and via remote means, in accordance with applicable law. This means that members of the public body as well as members of the public may access this meeting in person, or via virtual means. It is possible that any or all members of the public body may attend remotely, with in-person attendance consisting of members of the public. MGL, Ch. 30A, § 20(f) requires anyone that intends to record any portions of a public meeting, either by audio or video, or both, to notify the Chair at the beginning of the meeting.

2. **Quorum/Attendance:** Present: Karen Isherwood, Corey Pietraszek, Amy DeSalvatore, Jacob Galary, Carrie Hawthorne.
Non-voting consultants, Chelsea Isherwood and Ronnie Medina

Karen Isherwood announced the resignation of the Conservation Chair, Geoff Haworth.

3. **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 023-1403, CON 023-330: Rear Arsene Street, Map 28, Lot 008 – Continued from December 12, 2022**

Notice of Intent filed by Vincent Furtado (Board of Public Works) for various improvements to the Water Pollution Control Facility to replace aging infrastructure and install additional treatment to comply with regulatory nitrogen limits, issued by the EPA and the current NPDES permit requirements, located at Rear Arsene Street, Assessor's Map 28, Lot 008. The proposed activities are subject to the Town of Fairhaven Wetlands Bylaw, work to impact Bordering Vegetated Wetlands (BVW), 0-25 Foot Buffer Zone, 25-50-foot Buffer Zone, and the 50-100 Foot Buffer Zone Resource Area.

Amanda Houle of Tighe and Bond reviewed responses to a stormwater peer review. **(7:26)**

Karen Isherwood announced to the Commission that the Order of Conditions were included in the staff report for review. Also included in the staff report is the Buffer Zone Variance Request. The May 15, 2023 peer review was sent to the Commission for review with plans attached.

Caitlin DeWolfe, Stormwater Engineer and Kayla Larson, Project Engineer with Tighe and Bond were present to answer any questions.

Carrie Hawthorne recused herself from Rear Arsene Street, Map 28, Lot 008.

Karen Isherwood made a motion to approve the request for the Buffer Zone Variance dated May 25, 2023 pursuant to section 8.0 of the Buffer Zone Regulations under the Fairhaven Wetlands Bylaw, Chapter 192. The motion was seconded by Amy DeSalvatore and passed via roll call vote (4-0).

Karen Isherwood made a motion to grant the 2 waiver requests as stated in the Requested Waivers Section in the May 15, 2023 Notice of Intent Addendum Tighe & Bond's Response to Peer Review document, for SE 023-1403, CON 023-330, Rear Arsene Street, Map 28, Lot 008. The motion was seconded by Amy DeSalvatore and passed via roll call vote (4-0).

Karen Isherwood made a motion to close the public hearing for SE 023-1403, CON 023-330, Rear Arsene Street, Map 28, Lot 008, and issue the Order of Conditions as attached in the Staff Report dated May 25, 2023 and approving the Fairhaven Wastewater Facility Improvements Stormwater Management Plan Peer Review Dated May 15, 2023 and the plan set titled Fairhaven Water Pollution Control Facility Upgrade 90% Design Set, dated February 2023, under the Wetlands Protection Act and Fairhaven Wetlands Bylaw. The motion was seconded by Amy DeSalvatore and passed via roll call vote (4-0).

4. Violations/Enforcement Orders/Cease and Desist Notices

- a. **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

Conservation Agent, Bruce Webb, conducted a site visit and noted material removed on the path leading to the beach. Mr. Webb determined that no restoration is required. The culverts that allow water flow into the marsh are obstructed. The Board of Public Works (BPW) agreed to approach the property owner to clean out the culverts.

Mr. Webb stated the culverts are 18-inch corrugated plastic.

Action: Ms. Isherwood to investigate who is responsible for culvert replacement or improvement. She did not believe it is the responsibility of the property owner.

Amy DeSalvatore inquired whether the culvert size is up to code to allow fish to swim through. Culverts connect the salt marsh and permit transitive amphibian and fish to flow through. These culverts were built in 2001 and standards may have changed since then.

Mr. Webb answered that to his understanding the culvert project was done between the Army Corps of Engineers and MassDEP, as well as the Buzzards Bay Coalition.

Action: Mr. Webb will confirm his statement regarding culvert project.

Action: To follow up with the Board of Public Works and coordinate time with the owner and BPW; Bruce Webb will be present during any work to the culverts.

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

Bruce Webb stated the owner constructed a path and added a platform for exercise; some of these structures are located within the salt marsh. Additionally, there is an accessory structure (yurt) on the property with a staircase and deck. The accessory structure itself is just outside the salt marsh.

None of the structures were permitted; some were placed in the salt marsh and some are in need of repair. Mr. Webb presented the western extent of the boardwalk, which supports healthy native vegetation. The historic stone wall does not need to be removed. The final extension of the path is only a foot path, which is permissible under the bylaw.

The agent recommended removing the structure attached to the yurt, along with sections of boardwalk that are within the salt marsh, not built in compliance in regards to spacing and elevation. He also recommended the removal of the yoga platform built on Barrier Beach or Coastal Dune. **(24:00-30:00)**

A delineation of the resource areas is needed and the owner would be amenable to a portion rebuilt outside the salt marsh.

Ms. Isherwood added any structure proposed would require a filing.

Mr. Webb added that the railroad ties are coated with creosote, which is considered toxic to aquatic or marine life.

Karen Isherwood stated the owner, Lisa Murphy, would need to show the path is historical and would need to be built to certain standards. She suggested the Commission revisit the property in approximately 60 days.

Amy DeSalvatore suggested Ms. Murphy add bittersweet mitigation in her proposal for any construction within the 25 no touch zone.

c. 4 Monondach, Map 42A, Lot 212: Material (sand/soil) brought into Coastal Beach/Coastal Dune

Agent, Bruce Webb informed the Board that the property suffered erosion during a winter storm. This created a divot approximately 2 cubic yards. In an effort to remedy the erosion, the owner brought in 2 cubic yards from offsite, unaware of the requirements for matching grain size and beach nourishment. The agent recommended the area to be covered with a tarp and to set up erosion controls. Mr. Webb reached out to the BPW and Highway Department to see if they can use excess native sediment.

Ms. Isherwood would like the agent present while the BPW moves and disturbs sediment.

Amy DeSalvatore concurred regarding oversight and suggested some of the work to be done by hand.

Owner, Phil LaMarre was present with nothing further to add. He is willing to cooperate and assist during the movement of sediment.

5. Correspondence

61 Nakata Ave – Letter of Violation & Notice to Appear at the June 5th meeting

4 Indian Way – Letter of Violation & Notice to Appear at the June 5th meeting

120 Balsam Street – Letter of Violation & Notice to Appear at the June 5th meeting

6. General Business

a. Next Public Hearing: Monday, June 5, 2023

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

10. Motion to adjourn

Amy DeSalvatore made a motion to adjourn 6:55pm. The motion was seconded by Jake Galary and passed via roll call vote (5-0).

Respectfully submitted,

Kelly Camara, Administrative Assistant