

TOWN OF BARNSTABLE
COMMISSIONERS
JULY 2023

Conservation Commission
June 27, 2023
Minutes

1. Chairman's Welcome and Media Notification: Acting Chair's Welcome and Media Notification. Ms. Isherwood opened the meeting at 6:03p.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.

1. Quorum/Attendance: Karen Isherwood, Carrie Hawthorne, Jake Galary, Anthony Couto, Andrew Saunders, Ronnie Medina, Jay Simmons
2. Approval of the June 5, 2023 meeting minutes

Jay Simmons made a motion to approve the June 5, 2023 meeting minutes and was seconded by Jake Galary. The motion passed via roll call vote with two abstentions (5-0).

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

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

Bruce Webb informed the Commission that the property suffered sediment erosion during a winter storm. There were reports of a skid steer on the beach. The owner has been very cooperative and proactive. Site visits have been performed by Commission members and the Conservation Agent and it has been determined that the beach has self-restored. There are currently no signs of a vehicle being driven on, or near the beach, and there is ample vegetation. The agent recommended closing this matter and to encourage the Commission to lift the cease-and-desist order. **(9:41-11:25)**

Karen Isherwood concurred that the vegetation has grown back beautifully.

Jay Simmons had concerns that this may happen again, since this has happened several times in the past. He would like the owner to ensure that no other incidents like this happen again and that they come before the Commission prior to proceeding with any other work.

Attorney Jim Marsh represented the client and will pass the concerns of the Commission to the client.

Karen Isherwood made a motion to officially lift the cease-and-desist order that was issued in December 2022 for 17 Turner Avenue, Map 02, Lot 275. The motion was seconded by Carrie Hawthorne and the motion carried (7-0).

Jay Simmons made a motion to take (item 4.I) 10 Point Street, Map 28B, Lot 211 out of order. The motion was seconded by Andrew Saunders and carried (7-0).

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

Karen Isherwood informed the Commission that there is an open Enforcement Order from July 19, 2021. The owner has not come into compliance with this enforcement and several certified letters have been mailed. The owner was present at the April 24, 2023 meeting to hear of the violations and what is required to be in compliance with her Order of Conditions that was issued March 27, 2020.

Karen Isherwood made a motion to issue fines of \$300 per day as of June 27, 2023 for failure to comply with conditions associated with the project permitted under SE 023-1302, CON 19-066, 6 Emerson Ave, Map 29A, Lots 119-122, pursuant to the Fairhaven Wetlands Bylaw Chapter 192-11 of the Code of the Town of Fairhaven, until such time as the property is in compliance with the enforcement order issued on July 19, 2021. The motion was seconded by Jake Galary and passed via roll call vote (7-0).

Jay Simmons made a motion to give Administrative Assistant, Kelly Camara, authority to issue fines relating to 6 Emerson Avenue, Map 29A, Lot 119-122. The motion was seconded by Andrew Saunders and passed via roll call vote (7-0).

Action: Kelly Camara to issue fines to 6 Emerson Avenue, Map 29A, Lot 119-122

- c. 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.

The owner resurfaced an existing driveway, which was followed up by a retroactive RDA, issued in September 2022, with a Positive Determination 1, 2b, and 5. The Conservation has never received a Notice of Intent application and the homeowner has had sufficient time to file. The agent recommended issuing a second Enforcement Order, which will require the owner to submit a restoration plan.

Action: For the office to reach out to the owner of 43 Reservation Road, Map 29A, Lot 351 and set up a site visit.

Jay Simmons made a motion to not take enforcement on 43 Reservation Avenue, Map 29A, Lot 351 until a site visit has been conducted, in order to determine if the Commission should pursue further. The motion was seconded by Andrew Saunders and passed via roll call vote (7-0).

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

Bruce Webb discussed the issues on 6 & 8 Jeannette Street. There was a deck constructed without a permit, which was done in an existing lawn area. The Commission issued two Enforcement Orders: (1) 6 Jeannette Street; and (2) 8 Jeannette Street. Both properties bisect the area of fill. The Commission asked for a wetland delineation to be done before April 2022 and a Notice of Intent filed by October 2022. The homeowner did reach out this spring and the agent

inspected the site and noticed wetland vegetation around the fill. The agent advised the property owners that a delineation or restoration plan would be the best way forward. Since the original violation, a shed has been placed in Bordering Vegetated Wetlands (BVW) and a fence was installed adjacent to the BVW. **(1:48-1:50)**

Andrew Saunders made a motion to issue fines of not more than 300 dollars a day until restoration plan, which includes a component which satisfies the Conservation Agent on how the owner will undertake the violation, including not less than two years of observation of the restoration for the property located at 6 Jeannette Street, Map 34A, Lot 62K.

Andrew Saunders withdrew his motion.

Karen Isherwood made a motion to issue a \$300 a day fine as of June 27, 2023 for 6 Jeannette Street, Map 34A, Lot 062K, until such time as the property in in compliance with the Enforcement Order 023-019 issued on February 23, 2022, pursuant to Fairhaven Wetlands Bylaw Chapter 192-11 of the Code of the Town of Fairhaven. The motion was seconded by Andrew Saunders and passed via roll call vote (7-0).

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

Karen Isherwood made a motion to issue a \$300 a day fine as of June 27, 2023 for 8 Jeannette Street, Map 34A, Lot 062P, until such time as the property in in compliance with the Enforcement Order 023-020 issued on February 23, 2022, pursuant to Fairhaven Wetlands Bylaw Chapter 192-11 of the Code of the Town of Fairhaven. The motion was seconded by Andrew Saunders and passed via roll call vote (7-0).

- f. **270 Sconticut Neck Road, 29A, Lot 101:** Unpermitted path and alterations to marsh vegetation; discuss what was witnessed on site visit and provide updates.

Bruce Webb stated a boardwalk leading to the beach was built/repared on the property. Aerial photos present evidence. It has been discovered that the boardwalk is not for public access. The owner is working on a NOI application, in order to make the entire boardwalk permittable. The agent recommended holding off any further action until the office receives the NOI.

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

Conservation Agent, Bruce Webb, stated this property faced issues due to the severe December storm. A fence was knocked down leading to Coastal Storm damage. The new stockade fence was installed to protect their dogs, although this was performed without a permit. They did not believe it was required, since there was an existing fence already in the same location. The agent recommended contacting the homeowner and requesting them to file an RDA.

Action: The Conservation office to contact the homeowner and request an after-the-fact RDA.

Jay Simmons made a motion to request the property owner of 61 Nakata Avenue, Map 43, Lot 103 to formally apply for an after-the-fact RDA within 60 days, otherwise an Enforcement Order will be issued. The motion was seconded by Karen Isherwood and passed via roll call vote (7-0).

- h. **25 Shore Drive, Map 29C, Lot 615:** Bus parked in the Buffer Zone of a resource area (Coastal Beach and Coastal Dune) and is leaking fluids, including motor oil onto the sand. All leaks from the vehicle's mechanical and plumbing systems (engine, drivetrain, holding tanks, etc.) must be repaired as to no longer discharge/leak any fluids, or the vehicle must be removed from the Buffer Zone.

Bruce Webb received a complaint regarding a vehicle parked on the property. Mr. Webb verified motor oil on the sand and took photos. The office sent a Notice of Violation to the trustee on record. The office has been informed that the vehicle has been repaired, but the agent has not gone back to verify. Mr. Webb advised the property owner to remove any oil-soaked sand and take to an appropriate facility.

- i. **36 Balsam Street, Map 43C, Lot 023:** Unpermitted clearing within Coastal Beach, Coastal Dune, Rocky Intertidal Shore, and Land Subject to Coastal Storm Flowage (LSCSF).

Bruce Webb stated the property owners cleared vegetation in front of their house (west side). The extent of the clearing did not go all the way to the beach or into the resource area. The property is located in the Buffer Zone to Coastal Dune, but not in the Coastal Dune itself. Aerials indicated clearing previously existed. Due to health issues, the owner has been unable to maintain the yard since 2019, so the area has begun to grow back. An approved site plan detailing the construction of a new structure depicts this area of clearing as 60 feet from the edge of the deck to the edge of vegetation. The agent recommends not pursuing Enforcement. **(56:56-59:49)**

Joan Califf, owner in the Trust, stated a fire destroyed the original house in 2011. The new construction required stilts, pursuant to FEMA regulations. The site plan was approved in 2012; however, a Certificate of Occupancy was not obtained at that time and there was no one to maintain the property. A Certificate of Occupancy was issued last year. Ms. Califf is prepared to file an RDA to clear trees on the eastern portion of the property, towards Balsam Street.

Jay Simmons believes the Commission should rescind the order and hold the owners to the plan of record. The owners should speak to the agent, regarding any additional work that is not on the plan.

Andrew Saunders made a motion for the Commission not to pursue enforcement, due to the previously approved site plan showing the area maintained and the homeowner's recent inability to maintain the yard. The Commission to revisit this potential violation should additional facts come to light in the future. The motion was seconded by Jay Simmons. The motion passed via roll call vote (7-0).

Jay Simmons asked if there is any disturbance outside the flood zone?

Mr. Webb stated it is within the AE Flood Zone (small north portion in the VE flood zone).

j. 4 Indian Way, Map 29, Lot 14: Unpermitted clearing within Flood Zone.

Bruce Webb received a public complaint and a site visit revealed a large area of vegetated clearing. A Notice of Violation was sent to the owner. It was clear that the area of wetland plants was an anomaly due to runoff; no other wetland vegetation in the area. Large bamboo is invasive and has dominated all the other native vegetation. The closest resource area is a Salt Marsh and LSCSF. Mr. Webb recommended not to pursue enforcement, since the area is not in a resource area.

k. 120 Balsam Street, Map 43A, Lot 023: Unpermitted shed within Coastal Beach.

Bruce Webb presented on the project and stated a shed was placed in close proximity to the property line, within the buffer zone to Coastal Beach and LSCSF. At this point, the agent does not have sufficient answers and recommended reaching out to the property owners to schedule a site visit.

Action: Bruce Webb to reach out to the owner of 120 Balsam Street and schedule a site visit.

Beth Tollas, of 123 Balsam Street was concerned that the shed is not anchored down; it is placed on cinder blocks. The shed is also blocking the view of numerous neighbors. She is asking that the owner relocate the shed and would gladly help the owner in order gain privacy, but unfortunately the owner is not amenable to relocating the shed.

Bruce Webb commented the property owner on record at Assessor's office has recently changed.

Jay Simmons agreed with the neighbor that the shed should be anchored; believes they should file an RDA within 60 days.

l. 10 Point Street, Map 28B, Lot 211: Clearing of vegetation in Buffer Zone of Coastal Beach

Bruce Webb stated the property owner obtained an Administrative Approval from the former Conservation Agent in May 2022 and based on that approval a vegetative clearing was done within the Buffer Zone and Coastal Dune. The owner received Notice of Violation in the fall of 2022. The property owner and representative are requesting the Commission to view the clearing as a minor exempt activity. The agent recommended that the Commission accept that explanation; however, any work outside of this Administrative Approval would require a permit application. **(16:55-18:33)**

Attorney, Jim Marsh added that in addition to retracting the approval, the owner would like to mow the existing lawn in the front parcel and prune the areas along the Coastal Dune. This work was in front of the Commission in 2013 and a Negative Determination was issued. In 2017, the owner filed an additional RDA to install a driveway, which was also approved with a Negative Determination.

Bruce Webb read the Administrative Approval, dated May 19, 2022. The project description consisted of clearing loam off the sand dune from the back yard on 10 Point Street, clear 1 inch of entire yard, and make a drainage swale on 18 Point Street yard.

Karen Isherwood would like it clarified that the Administrative Approval of May 2022 has nothing to do with the clearing of vegetation or pruning. This approval was related to a new dwelling being constructed next door and an excess of loam that had to spread around. The Administrative Approval was given to resolve that situation. That being said, the Commission may permit clearing and was unaware of the 2013 RDA.

Andrew Saunders asked the Commission if there is an outstanding EO to be resolved?

Andrew Saunders stated that procedurally, the Commission should rescind the EO vote and the October violation.

Jay Simmons stated there should a possible limit of work and recommended an RDA.

Karen Isherwood made a motion to rescind the Notice of Violation from October 31, 2022 and the vote to ratify the EO on December 12, 2022 for 10 Point Street, Map 28B, Lot 211. The motion was seconded by Andrew Saunders.

It was brought to the Commission's attention that the December 12, 2022 vote was only to draft an EO and it was never ratified.

Karen Isherwood rescinded the above motion.

Andrew Saunders made a motion to regard the vegetation clearing at 10 Point Street, Map 28B, Lot 211, as referred to in the Notice to Appear on January 4, 2023 as a minor activity in this situation and to consider any enforcement action for the alteration referred to in the Notice to Appear of January 4, 2023, including to rescind the Notice of Violation of October 31, 2022, and to rescind the authorization of an EO dated December 12, 2022, with the understanding that the additional vegetation clearing or other alterations outside that request of the June 22, 2023 letter from Attorney Marsh will require a permit issued by the Commission. Jay Simmons seconded the motion and the motion passed via roll call vote (7-0).

Jay Simmons made a motion take (item i) 36 Balsam Street, Map 43C, Lot 023 out of order as the next item on the agenda. The motion was seconded by Carrie Hawthorne and passed via roll call vote (7-0).

4. General Business

a. Next Meeting: Monday, July 17, 2023

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

a. Karen Isherwood made a motion to approve the plan, titled "Wetland Remediation" with the revision date of May 11, 2023 and issue an Order of Conditions as outlined in Attachment A of the staff report dated June 27, 2023 under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw for SE 023-1418, CON 023-342, 1 Pavillion Way, Assessor's Map 29, Lots 004H & 41-60 and Map 41, Lots 60-67 & 74-81. The motion was seconded by Carrie Hawthorne and passed via roll call vote (7-0).

10. Motion to adjourn

Jay Simmons made a motion to adjourn at 8:35pm. The motion was seconded by Carrie Hawthorne and passed via roll call vote (7-0).