

Conservation Commission
July 17, 2023
Minutes

1. Chairman's Welcome and Media Notification: Acting Chair's Welcome and Media Notification. Ms. Isherwood opened the meeting at 6:08p.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: Karen Isherwood, Caroline Hawthorne, Jacob Galary, Anthony Couto, Ronnie Medina, Jay Simmons

Absent: Andrew Saunders

3. Approval of the June 26, 2023 and June 27, 2023 meeting minutes

Karen Isherwood made a motion to approve the meeting minutes of June 26, 2023 with the following amendment (under item 6b): change from Monday to Tuesday. The motion was seconded by Carrie Hawthorne and passed via roll call vote (6-0).

Karen Isherwood made a motion to approve the meeting minutes of June 27, 2023. The motion was seconded by Carrie Hawthorne and passed via roll call vote (6-0).

4. **Request for Certificate of Compliance**

- a. SE 023-1397, CON 023-316: 90 Seaview Avenue, Map 29D, Lot 100

Bruce Webb presented this Certificate of Compliance (COC) for an after-the-fact NOI to install a driveway and walkway. There have been two site visits, in which erosion issues were discovered. The owners were responsive and reseeded the bare soil. The agent recommended the Commission to approve this COC.

Karen Isherwood made a motion to issue a Certificate of Compliance for a complete certification under the Wetlands Protection Act and Fairhaven Wetlands Bylaw for SE 023-1397, CON 023-316, 90 Seaview Avenue, Map 29D, Lot 100 with (2) ongoing conditions: CHM-2 and DER-4, as listed in the order of conditions. The motion was seconded by Jay Simmons and passed via roll call vote (6-0).

- b. SE 023-657, CON 023-360: 19 Tanner Lane, Map 30, Lots 47C

Bruce Webb presented this COC. This lot in question was part of subdivision in the late 1990s to early 2000s. The office may no longer have access to documents and records, but the office does have an original paper copy of the plan. There is a Wetland boundary depicted (off the property to the west), but no resource areas are shown on the lot. Aerials depict a portion still forested,

but the commission will need a site visit to confirm. The applicant amended their application with lot 47C, which has been uploaded to the website.

The applicant, Steve Wood, is in the process of selling his property. In that process, it was noted that the Order of Conditions (OOC) from 24 years ago was never followed up with a COC. He is not the original applicant. The developer's business was dissolved in 2013; he is still trying to gain access to any of the information.

Jay Simmons made a motion to table SE 023-657, CON 023-360, 19 Tanner Lane, Map 30, Lots 47 & 48 until later in the meeting, once the agent indicates the applicant has obtained necessary information. The motion was seconded by Karen Isherwood and passed (6-0).

Bruce Webb commented on the photos brought in by the applicant, which show vegetation. The upland vegetation consists of sassafras, various upland shrubs, herbaceous species, and maple. They have not altered the western portion of the lot.

Karen Isherwood made a motion to issue a Certificate of Compliance for a complete certification under the Wetlands Protection Act and Fairhaven Wetlands Bylaw for SE 023-657, CON 023-360, 19 Tanner Lane, Map 30, Lot 47C. The motion was seconded by Jacob Galary and passed via roll call vote (6-0).

5. Request for Extension

a) SE 023-1257, CON 023-201: Union Wharf, Map 07, Lot 009

Tim Cox, Harbormaster, referred to Susan Nilson from Foth Engineering who requested the extension for the pier installation.

Agent, Bruce Webb recommended approval of the COC.

Jay Simmons made a motion to extend the OOC for SE 023-1257, CON 023-201, Union Wharf, Map 07, Lot 009 to the date of July 31, 2026 under the WPA. The motion was seconded by Karen Isherwood and passed via roll call vote (6-0).

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:

Request for Abbreviated Notice of Resource Area Delineation

a. SE 023-1408, CON 023-344: 481 Sconticut Neck Road, Assessor's Map 29, Lot 27

Abbreviated Notice of Resource Area Delineation filed by Antone Arruda to verify delineated wetlands. The location includes Bordering Vegetated Wetlands (BVW) and is located at Assessor's Map 29, Lot 27.

Karen Isherwood conducted a site visit and took soil samples in the area; it was inconclusive whether it was a BVW. The Commission made a previous motion for a peer review of the delineation line and a memorandum was submitted to the Commission by Arthur Allen of EcoTec dated June 1, 2023, which included suggestions on the flags. Farland Corp's revised plan accurately depicted what Arthur Allen found and a second memorandum dated June 23, 2023 confirmed the flag revisions.

Chris Gilbert of Farland Corp was available to answer questions and address concerns.

Karen Isherwood made a motion close the public hearing for SE 023-1408, CON 023-344, 481 Sconticut Neck Road, Map 29, Lot 27, and issue an Order of Resource Area Delineation under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw, approving the modified wetland resource area boundaries and associated flags shown on the Abbreviated Notice of Resource Area Delineation Assessor's Map 29, Lot 27, Fairhaven, Massachusetts, prepared by Farland Corp for Antone Arruda, as revised June 7, 2023. The plan expands the wetland delineation between flags A2 to A7 with pink "Wetland Boundary" flags labeled A1R to A6R. Flag A1R connects to A2 and A6R connects to A7. The motion was seconded by Caroline Hawthorne and passed via roll call vote (5-0).

Jacob Galary lost connection at 6:56pm.

Requests for Determination of Applicability

b. CON 023-349: 128 Balsam Street, Assessor's Map 43A, Lot 069

Request for Determination of Applicability filed by Matthew Brodo to add second floor master bedroom suite eliminating a first-floor bedroom which will convert to a stairwell. This project will require 8 concrete footings and piers to elevate and create a freestanding second floor above and out of the FEMA elevation criteria. Additionally, the request is for 4 smaller piers for a first-floor porch to create a second point of egress. Work located at Assessor's Map 43A, Lot 069.

CON 023-349: 128 Balsam Street, Assessor's Map 43A, Lot 069 was continued to August 7, 2023

c. CON 023-358: 24 Hathaway Street, Map 28B, Lot 016

Request for Determination of Applicability filed by Karen Diggins to build a 14'x14' 3-season room in place of existing 14'x14' deck rear of house with landing and stairs. Work to take place within FEMA Flood Zone AE (EL.14') at Assessor's Map 28B, Lot 016.

Bruce Webb explained this project will consist of removing the existing deck and replacing with a 3-season room of the same dimensions. The structure itself is supported by 4 concrete sonotubes; 3 to support the structure. The remainder will be cantilevered off the existing house. The room will not be in the Buffer Zone; located in FEMA Zone but AE EL.14'.

Dana Pickup of Carefree Homes stated the deck was torn down to fix rot. He stated this project consists of an in-kind replacement of sonotubes.

Jay Simmons was pleased with the way the project is presented. Karen Isherwood added the sonotubes are located in a minor AE Flood Zone and the structure is elevated; there was no indication of any impact on storm control.

Karen Isherwood made a motion to close the public hearing for CON 023-358, 24 Hathaway Street, Map 28B, Lot 016, and issue a Negative Determination 2, and a Negative Determination 6, with the added conditions CAP-3 and FZ-1 under the Wetlands Protection Act and Fairhaven Wetlands Bylaw. The motion was seconded by Jay Simmons and passed via roll call vote (6-0).

Jacob Galary was reconnected at 7:04pm.

Jay Simmons made a motion to revisit 19 Tanner Lane at 7:05pm. The motion was seconded by Karen Isherwood and passed via roll call vote (6-0).

Notices of Intent

d. **SE 023-1407, CON 023-337: 23 Goulart Memorial Drive, Assessor's Map 42, Lot 022B**

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'.

Bruce Webb stated the owner suffered damage to the ramp that allows access to the structure. Minor repairs were allowed through the building department, but additional repairs are needed to restore to prior conditions. The owner would like to bring back to industry standards with a more robust foundation than what is there now. The structure straddles the mean high-water line, prepared with Chapter 91. Currently, the applicant is not requesting to replace below the mean high-water line.

Owner, Chanda Kale, stated no activity proposed at the mean high-water line; no activity other than removing what is in poor condition.

Dave Davignon, of Schneider, Davignon, and Leone conducted a survey and drafted the site plan.

Dr. Kale stated that Chapter 91 gave him permission to remove the ramp.

Mr. Davignon presented the most recent plan and gave a summation. Several houses exist to the west of this site; this is the only house along the beach line. The entire property falls within Land Subject to Coastal Storm Flowage (LSCSF) and located in the Velocity Zone. The Coastal Beach consists of a jagged vegetation line towards the water.

The mean high-water line was surveyed in 2008 for the tight tank. Currently proposing to put fill over the tight tank. Other resource areas include Coastal Dune and marsh on the west side of the gravel driveway. The salt marsh is fed by a tidal creek, which was dug out in the 1970s by the Army Corps of Engineers. There is a perennial stream on the riverfront boundary due east. The entire lot falls within the 200-riverfront boundary.

Karen Isherwood questioned the riverfront boundary, since she did not see it listed in the staff report.

Action: Bruce Webb will check with circuit rider regarding the riverfront boundary.

Bruce Webb stated the applicant sourced an engineering firm to identify almost 85 percent of the sand; it was determined to be medium grain. The most recent application calls for coarse grain. The beach nourishment on the application does not match the material. The agent requested the applicant consolidate materials into a single plan, which depicts the elevation of dunes, etc.

Jay Simmons commented that the stream or river referred to is not on the DEP list as riverfront in Fairhaven.

Action: Karen Isherwood recommended another site visit to understand the dynamics.

Dave Davignon commented on the fill over the tight tank. He commented that coarse sand in the parking lot is coarser than on the beach. The SW Cole lab in Taunton advised coarse sand over the tank and to expand the driveway. He wanted to clarify that the material on the driveway differs than what is on the beach. The amount of fill is less than 4 yards (required to show the grading for proper cover per title 5). He agreed on a site visit for the new Board members and expressed this is a unique case that requires attention before the next storm.

Bruce Webb commented that the SIV analysis from SW Cole referred to 85 medium and 15 fine and did not see for coarse.

Action: Bruce Webb to coordinate and discuss questions and concerns with Dave Davignon.

Jay Simmons agrees that there are complexities with this project, but believes it is approvable and should be permitted before the hurricane season is in full force.

Action: Conservation office to establish a date for an additional site visit.

Karen Isherwood made motion to continue SE 023-1407, CON 023-337, 23 Goulart Memorial Drive, Assessor's Map 42, Lot 022B to the August 7, 2023 meeting at the applicant's request. The motion was seconded by Jay Simmons and passed via roll call vote (6-0).

e. **SE 023-1410, CON 023-347: Bonney Street, Assessor's Map 28B, Lots 488 & 489**

Notice of Intent filed by David Menard to construct a single-family residence, sewer and water connections and associated site work located within the 100-year flood plain (F.E.M.A. Zone VE, El.16') and partially within the Buffer Zone of Bordering Vegetated Wetlands (BVW). Work to take place at Assessor's Map 28B, Lots 488 & 489.

*SE 023-1410, CON 023-347: Bonney Street, Assessor's Map 28B, Lots 488 & 489
continued to the August 7, 2023*

f. **SE 023-1412, CON 023-350: Littleneck Road, Assessor's Map 43A, Lot, Littleneck Road Right-of-way**

Notice of Intent filed by Vincent Furtado of the Fairhaven Board of Public Works (BPW) to pave existing gravel roadway (Littleneck Road) and installation of four drain manholes, six basins, convert four catch basins to drain manholes and one stormceptor unit, connecting to the existing drainage system for drainage improvement located at Assessor's Map 43A, Lot, Littleneck Road Right-of-Way.

Karen Isherwood made a motion to close the public hearing for SE 023-1412, CON 023-350, Littleneck Road, Map 43A, Lot Littleneck Road Right-of-way, approving the plan titled "Proposed Drainage Improvements West Island Fairhaven Massachusetts" (approving sheet 5 of 15 only) with the revised date June 20, 2023 and issue an Order of Conditions outlined in Attachment A

with the staff report dated July 17, 2023, under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw. The motion was seconded by Caroline Hawthorne and passed via roll call vote (6-0).

g. SE 023-1413, CON 023-351: Cove Street Improvement, Assessor's Map 28B, Lot Cove Street Right-of-Way

Notice of Intent filed by Vincent Furtado of the Board of Public Works (BPW) to install two new catch basins and convert an existing drop inlet structure to drainage manhole for drainage improvements. New water main to loop the existing water network. Paving existing gravel roadway (Cove Street) with hot mix asphalt pavement. Work to take place Assessor's Map 28B, Lot Cove Street Right-of-Way.

SE 023-1413, CON 023-351: Cove Street Improvement, Assessor's Map 28B, Lot Cove Street Right-of-Way continued to August 7, 2023

h. SE 023-1416, CON 023-352: Phoenix Rail Trail, Assessor's Map 27, Lot 14

Notice of Intent filed by Vincent Furtado of the Board of Public Works (BPW) to replace failed existing 36" wide by 27" high. Stone box enclosed 36" diameter corrugated metal pipe (CMP) drainage ditch crossing culvert with new 36" diameter HDPE pipe culvert and two end wing headwalls on the Phoenix Rail Trail (Bike Trail), Assessor's Map 27, Lot 14 (between Tripp Street and Egypt Lane - approximately 320' West of Egypt Lane).

Bruce Webb informed the Commission that this is a straight forward culvert replacement in a previous disturbance. He expressed concerns with erosion controls and proposed waiting for a letter from the Natural Heritage & Endangered Species Program, considering a portion is listed as Priority Heritage. Any issues were addressed by the applicant and is now approvable.

Karen Isherwood made a motion to close the public hearing for SE 023-1416, CON 023-352, Phoenix Rail Trail, Map 27, Lot 14, approving the plan titled Town of Fairhaven, Massachusetts Phoenix Rail Trail Culvert Replacement Project sheets 1 through 6 with the revised date May 11, 2023 and issue an Order of Conditions outlined in Attachment A with the staff report dated July 17, 2023 under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw. The motion was seconded by Caroline Hawthorne and passed via roll call vote (6-0).

i. SE 023-1415, CON 023-354: 837 Sconticut Neck Road, Assessor's Map 42, Lot 015R

Notice of Intent filed by Marc & Donna Oliveira to install a 28' x 26' carport with associated grading. This area is currently a paved driveway and part landscaped area. Work to take place within Land Subject to Coastal Storm Flowage (LSCSF) and located at Assessor's Map 42, Lot 015R.

Bruce Webb stated the carport is within a VE Zone and is elevated above the flood stage. The remainder of the carport is open and supported on columns, which are structurally fixed in place. The applicant has changed dimensions to 26 by 26 and moved 2 feet farther from the wetlands. This will still require a variance from the Buffer Zone regulations. The revised plans were received July 13, 2023. The project is approvable but the Commission still needs time to review the revised plans.

Karen Isherwood would like to review the Variance request and if it has an alternative analysis?

Jay Simmons motioned for recess at 8:05pm. The motion was seconded by Karen Isherwood and passed via roll call (6-0).

Jay Simmons made motion to reconvene at 8:11pm. The motion was seconded by Caroline Hawthorne motion carried (5-0); Jacob Galary absent for roll call.

Kaern Isherwood made a motion to continue SE 023-1415, CON 023-354, 837 Sconticut Neck Road, Assessor's Map 42, Lot 015R to the August 7, 2023 meeting. The motion was seconded by Caroline Hawthorne and passed via roll call vote (6-0); Jacob Galary was back online at 8:15pm.

j. **SE 023-1417, CON 023-355: 88 Fort Street, Assessor's Map 5, Lot 4&5**

Notice of Intent filed by Terje Tonnessen Revocable Trust to construct a 4' wide x 104' long-pile supported timber pier with a 4' x 28' aluminum gangway and two- 10' x 14' floats at it terminus. The pier supports will consist of 12" diameter pressure treated timber installed in pairs at 20' on center. The landward end of the pier will be supported by a 6' x 5' x 12" poured concrete pad. Work to take place within Land Subject to Coastal Storm Flowage (LSCSF), Flood Zone AE (EI.6.0) and contains a Coastal Bank at Assessor's Map 5, Lot 4&5.

Karen Isherwood made a motion to grant the "Buffer Zone Regulations Variance Request" under the Fairhaven Wetlands Bylaw, Chapter 192, Section 8, of the Buffer Zone Regulations, for SE 023-1417, CON 023-355, 88 Fort Street, Map 5, Lot 4 & 5. The motion was seconded by Caroline Hawthorne and passed via roll call vote (6-0).

Karen Isherwood made a motion to close the public hearing for SE 023-1417, CON 023-355, 88 Fort Street, Map 5, Lots 4 & 5, approving the plan titled "Pier Construction Plan" with the revised date June 12, 2023 and issue an Order of Conditions outlined in Attachment A with the staff report dated July 17, 2023 under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw. The motion was seconded by Anthony Couto and passed via roll call vote 5-0; Caroline Hawthorne disconnected.

k. **SE 023-1419, CON 023-357: 28 Welcome Street, Map 31B, Lot 1D**

Notice of Intent filed by Robert J. Rogers to construct a 20'x60' paved driveway and installation of a 10'x16' shed within the Buffer Zone to Bordering Vegetated Wetlands at Assessor's Map 31B, Lot 1D.

Caroline Hawthorne was back online at 8:25pm.

Bruce Webb stated this is an after-the-fact filing and that the area is within the USGS perennial stream that flows into a pond. The entire area is within the inner riparian area. The agent reached out to the DEP circuit rider and was advised that as long as the original subdivision was permitted then this is permissible.

Karen Isherwood inquired about replication in the driveway, which is close to the riverfront.

Bruce Webb stated the applicant is willing to address storm water in their proposal. He is confident that the project is approvable.

Representative, Bob Rogers of G.A.F. Engineering stated there was an ORAD filed in 2004, which did not state riverfront. The subdivision was approved in 2007. The replication done in 2010 was on the subdivision roadway; no additional filling of wetlands was proposed. The office received plans from a prior engineer, but no as-built plan required for the COC request. The COC was issued in November 2010 and not recorded until 2012. The current owner, Armand Rebello, purchased the property in 2022. There are no existing documents stating he is required to conform to the riverfront area. Bob Rogers noted an inch of runoff from paved surface. The shed has been raised allowing for infiltration.

Bruce Webb added that the staff report requests additional materials. The Commission is seeking a discussion for applicable performance standards.

Action: Karen Isherwood would like to see the original OOC, COC, and an alternative analysis.

Caroline Hawthorne out of zoom at 8:44pm back at 8:45pm

Bob Rogers willing to mitigate impervious surface.

Karen Isherwood made a motion to continue SE 023-1419, CON 023-357, 28 Welcome Street, Map 31B, Lot 1D to the August 7, 2023 meeting at the applicant's request. The motion was seconded by Anthony Couto and passed via roll call vote 6-0.

I. SE 023-1420, CON 023-359: 110 Middle Street, Map 12, Lot 17

Notice of Intent filed by Uday Patel to install six, 12-inch diameter greenheart piles, which are replacements for worn piles and those previously removed due to wear. Work to take place within Land Under the Ocean, Land Containing Shellfish, and Land Subject to Coastal Storm Flowage at Assessor's Map 12, Lot 17.

Karen Isherwood made a motion to close the public hearing for SE 023-1420, CON 023-359, 110 Middle Street, Map 12, Lot 17, approving the plan titled "Plan to Accompany Notice of Intent for Seaport Resort and Marina" dated June 5, 2023 and issue an Order of Conditions outlined in Attachment A with the staff report dated July 17, 2023 under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw. The motion was seconded by Jacob Galary and passed via roll call vote (6-0).

7. Violations/Enforcement Orders/Cease and Desist Notices

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

Attorney Jim Marsh represented Natalie Reis. Zenith Consulting agreed to prepare existing conditions plan. Attorney Jim Marsh requested that the Commission vote to stop daily fines as the applicant is working towards a resolution.

Karen Isherwood made a motion to put a stay on the \$300 a day fine until such time as it is necessary to reinstate the fine if the property does not come back into compliance with the

Enforcement Order for SE 023-1302, CON 19-066, 6 Emerson Ave, Map 29A, Lots 119-122. Jay Simmons seconded the motion and passed via roll call vote 6-0.

Action: Jim Marsh will submit timeline on the as-built Later this week.

- b) **CON 023-303: 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; Commission awaiting a NOI filing.

Bruce Webb stated the driveway is already complete (within previous disturbance). Removing the driveway would be more damaging.

Karen agreed that a NOI will take care of this, but enforcement necessary if filing does not take place.

Jay Simmons made a motion to require CON 023-303, 43 Reservation Road, Map 29A, Lot 351 60 days to file an NOI. The motion was seconded by Jacob Galary and passed via roll call vote (6-0).

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

Bruce Webb conferred with the Town Administrator that the owners should be notified of impending fines. The agent notified owner and began issuing fines on July 17, 2023.

Action: For the conservation office to keep this address on future agendas.

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

- e) **0 Beachwood, Map 28B, Lot 122:** Filling of an Isolated Vegetated Wetland; Notice of Violation mailed on 7-5-2023.

Bruce Webb received notification from the public of an area being cut back and fill brought in. As a result, there is now elevated standing water (Isolated Vegetated Wetland (IVW) with phragmites). Historical aerials from June 2022 depict a vegetated area that is now cleared, with exception of the tree. The office contacted the property owner with a Notice of Violation and they have been very responsive. They have hired a wetland scientist to delineate the IVW.

Action: Conservation office to check on the current owner's length of ownership.

8. Correspondence

There are (2) Conservation restriction properties that require support by the Conservation Commission. Allen Decker, of the Buzzards Bay Coalition reached out to the commission for letters of support.

Jay Simmons commented that there are multiple restrictions on the Carvalho Farm property.

9. General Business**a. Bills**

\$6.99 Pet Depot - Tick Key

\$465.00 MACC annual membership

Jay Simmons made a motion to accept bills. The motion was seconded by Karen Isherwood and passed via roll call vote (6-0).

b. Next Meeting: Monday, August 7, 2023**10. Any other business** that may properly come before the Commission not reasonably anticipated 48 hours in advance of the meeting.

Bruce Webb informed the commission that no restoration work has been performed on 344-346 New Boston Road. He reached out to Christian Farland in regards to entering the property.

Action: Post the New Boston Road EO online for new members.

11. Motion to adjourn

Caroline Hawthorne made a motion to adjourn at 9:40pm. The motion was seconded by Jay Simmons and passed via roll call vote (6-0).