

## September 25, 2023 Minutes

1. Chairman's Welcome and Media Notification: Chair's Welcome and Media Notification. Jay Simmons opened the meeting at 6:08p.m. Mr. Simmons read the protocol for Zoom meetings and open Public Meeting Law.

Mr. Simmons 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, Jay Simmons, Andrew Saunders, Anthony Couto, Caroline Hawthorne, Ronnie Medina and Jacob Galary

Karen Isherwood made a motion to go into Executive Session under General Law, Chapter 30A, Section 21(a)(3) to meet with counsel and discuss pending litigation (Mullen V. Conservation Commission, 2373 CV00201) Bristol Superior Court and (Armanetti V. Conservation Commission, 2373 CV00423) Bristol Superior Court and to reconvene in an open session at the conclusion of the Executive Session. The motion was seconded by Caroline Hawthorne and passed (5-0, with 1 abstention).

1. **Executive Session**

- a. *G.L. c. 30A, s. 21(a)(3): meeting with counsel to discuss pending litigation (Mullen v. Conservation Commission, 2373CV00201 (Bristol Superior Court))*
- b. *G.L. c. 30A, s. 21(a)(3): meeting with counsel to discuss pending litigation (Armanetti v. Conservation Commission, 2373CV00423 (Bristol Superior Court))*

Karen Isherwood made a motion to reconvene in an open session. The motion was seconded by Caroline Hawthorne and passed (7-0).

2. **Open Session**

- a. Discuss outstanding Enforcement Order 023-022: 344-346 New Boston Road, Assessor's Map 40, Lot 23B & 23C

Karen Isherwood made a motion to continue the Enforcement Order 023-022 for 344 and 346 New Boston Road, Assessors Map 40, Lots 23B and 23C to the October 10, 2023 meeting. The motion was seconded by Caroline Hawthorne and passed (6-0, with 1 abstention).

- b. Discuss appeal of DEP file Nos. 023-1395 and 023-1396: 1 and 2 Island View Road, Assessor's Map 43, Lot 201

### 3. 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 revised as-built plan

Karen Isherwood made a motion to reinstate the fines of \$300 per day as of September 25, 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 192-111 of the code of the Town of Fairhaven, until such time as an as-built plan with current conditions by a professional land surveyor is submitted. The motion was seconded by Caroline Hawthorne and passed via roll call vote (7-0).

- b. **4 Jeannette Street, Map 34A, Lot 062D & 062N:** Stockpiling of soil within a Bordering Vegetated Wetland

Bruce Webb stated this address received violation for materials being stored on the west end of the lot, possibly in the Bordering Vegetated Wetlands (BVW). He also became aware of soil on stabilized stockpiles for a permitted pool. A site visit revealed a deck and an impervious pool apron, which was not on the original OOC or on their approved plans. The office has sent a notice of violation citing all of the violations that need to be addressed. Mr. Webb suggested the Commission issue an Enforcement Order, if they do not take action and contact the office before the October 10, 2023 meeting.

**Action:** Jay Simmons requested an additional letter be sent that includes a deadline of contacting the office by October 3, 2023.

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

Bruce Webb confirmed that delineations have been done and he has spoken with the wetland scientist who did the delineation. The Commission will now need a plan set with the delineation depicted. At that point, Mr. Webb will conduct another site visit with the wetland scientist and compare existing vegetation with the plan.

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

Bruce Webb confirmed that delineations have been done and he has spoken with the wetland scientist who did the delineation. The Commission will now need a plan set with the delineation depicted. At that point, Mr. Webb will conduct another site visit with the wetland scientist and compare existing vegetation with the plan.

- e. **120 Balsam Street, Map 43A, Lot 023:** Unpermitted shed within Coastal Beach; agent to provide update on requested after-the-fact application

Bruce Webb conducted a site visit and described the application process to the owner. The owner was given the all paperwork for the Notice of Intent and intends to file within the next few weeks.

- f. **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 informed the Commission that the motor oil was removed from the beach. The owners stated the vehicle was repaired but due to further investigation determined mechanical portions of the vehicle had not been repaired, such as the coolant reservoir. Mr. Webb informed the owner that the bus must be removed.

Jay Simmons requested this be on the next agenda as a follow up.

- g. **266 Sconticut Neck Road, Map 29A, Lot 095:** Construction of a 260-foot boardwalk within Barrier Beach – Marsh and Flood Zone VE, El.16'; agent to discuss current conditions

The owner has removed the majority of material, but still in the process of removing the platform on the beach.

- h. **270 Sconticut Neck Road, Map 29A, Lot 101:** Construction of a 112-foot boardwalk within Barrier Beach – Marsh and Flood Zone VE, El 16'

Bruce Webb stated the owners have hired an engineer and will submit a Notice of Intent to approve the boardwalk as it exists, with minor improvements.

- i. **746 Sconticut Neck Road, Map 42, Lot 007:** Placement of snow/sand fence within a protected resource area and contains Barrier Beach – Marsh and Flood Zone VE, El 18'; agent to discuss current conditions

The owners have removed most of the snow fence, but a portion that was rolled up blew into the salt marsh that is on town property.

- j. **0 Beachwood Street, Map 28B, Lot 122:** Filling of an isolated Vegetated Wetland; agent to provide an update on progress with engineer

Bruce Webb stated this involves fill being brought into a vacant lot. There is an Isolated Wetland protected under the bylaw; the owner was notified and has been very responsive.

(50:00-53:00) Lori McDonald, with LAM Ecological represented the owners and discussed restoration plans.

Karen Isherwood made a motion to approve the restoration plan dated September 19, 2023 by LAM Ecological for 0 Beachwood Street Map 28B, Lot 122 with the condition that all fill proposed to be removed shall be removed off-site. The motion was seconded Andrew Saunders and passed via roll call vote (7-0).

- k. **EO 023-017: 29 Mangham Way:** Clearing and fill within a resource area; conservation office to provide restoration plan update; will need follow-up site visit for current conditions and restoration progress

The Commission decided to conduct a site visit to assess the restoration efforts.

- i. **EO 023-014: 20 Yankee Lane, Map 39, Lot 16:** Removal of vegetation and fill within BVW and RFA; review next phase of restoration plan

Bruce Webb updated the Commission on the multi-stage restoration project that includes removal of an artificially created stream, removal of invasives, creation of a wetland restoration area; 4 phases in total. The first two phases have gone forward, but other phases will require the Commission's approval. Mr. Webb conducted site visit with representative, Tom Schutz of Goddard Consulting. An invasives expert will visit the site in the next few weeks.

Tom Schutz, of Goddard Consulting confirmed that they have found an invasives species manager, Ruby Environmental Services, who will be removing all phragmites. He also stated it will be more beneficial to remove invasives before removing the stream.

Property owner, Brian Lopes, spoke on behalf of the restoration project.

Bruce Webb asked Mr. Lopes for a timeline on the project. He also stated he would discuss agricultural exemptions that are in the Wetlands Protection Act.

Karen Isherwood stated that phase 1 must be approved by a supervising scientist, which is written out in the restoration plan.

Tom Schutz confirmed someone from Goddard Consulting will be onsite during the restoration.

Karen Isherwood would like this property back on the agenda in November to review phase 1. She believes fines would be the next step if not complete in November.

- m. **EO 023-021: 51 Cedar, Map 04, Lot 155:** Fill of BVW in violation of OOC; review planting plan

Bruce Webb conducted a site visit last week and verified the restoration area is still fenced off; vegetation is also thriving. Mr. Webb is waiting on an end-of-season report from Steven Schmiel, the wetland scientist that performed the restoration.

- n. **EO 023-024: 3 Shawmut, Map 32, Lot 53:** Disturbances (including unpermitted bridge, wood, and boat) within a Fairhaven-Acushnet Land Preservation Trust-owned Salt Marsh; agent to discuss progress

**Action:** Bruce Webb will follow up and conduct a site visit.

- o. **18 Almond, Map** digging and use of machinery in a Land Subject to Coastal Storm Flowage (Flood Zone) and the 100-foot buffer zone to Salt Marsh without a permit; agent to provide updates

Bruce Webb stated he has been in contact with the representative and has sent them the information needed to file with the office.

**Action:** Bruce Webb will follow up within 21 days, if they have not submitted an application.

The office did discover a letter sent May 2, 2022 that requested fines of \$300 a day if a Notice of Intent was not filed in 90 days.

**Action:** Office to check if any fines have been paid on this violation.

4. **General Business**

a. Next Public Hearing: October 10, 2023

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

6. **Motion to adjourn**

Caroline Hawthorne made a motion to adjourn at 9:29pm and was seconded by Karen Isherwood. The motion passed via roll call vote (7-0).

**Jay Simmons, Chair**

Fairhaven Conservation Commission

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