

**October 10, 2023
Minutes**FAIRHAVEN TOWN CLERK
RCUD 2023 NOV 29 AM 10:20

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 and Jacob Galary

Absent: Ronnie Medina

3. **Approval of Public Hearing Minutes**

Karen Isherwood made a motion to accept September 5, 2023 the minutes. The motion was seconded by Caroline Hawthorne and passed via roll call vote (6-0).

4. 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. **CON 023-372: 29 Silver Shell Beach Drive, Map 41, Lot 53 – RDA Spring 2024**

5. **Request for Certificate of Compliance**

- d. **SE 023-1325, CON 023-158: 1 Crow Island, Map 44, Lot 1 - Continued to October 30, 2023**
- e. **SE 023-1299, CON 023-081: 250 Bridge Street, Map 36, Lot 15 - Continued to October 30, 2023**

Karen Isherwood made a motion to take Item 9(a) out of order and was seconded by Andrew Saunders. The motion 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 Amendment

- a. **SE 023-1369, CON 023-255: 10 Diamond, Map 29, Lots 46 & 72**

Request for an amendment filed by Ruby and Jaime Medeiros to construct a 12'x12' deck to be attached to the proposed dwelling. The structure would be an open deck with no impervious roof cover and would be supported by concrete pier foundations. The deck would be located in the 25-50-foot buffer zone located at Assessor's Map 29, Lots 46 and 72.

(28:00-29:00) Agent, Bruce Webb, presented an overview of the project and affirmed the project is just outside the 0-25 No Touch Zone. The area is previously disturbed, so there would be no need to cut native vegetation.

Karen Isherwood made a motion to close the public hearing for SE 023-1369, CON 023-255, 10 Diamond Street, Map 29, Lots 46 & 72 and issue an Amended Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the conditions outlined in the original Attachment A and the approved revised plan titled "Proposed Site Development, stamped by James Medeiros" dated 8/18/2023, with the added construction of a 12 foot by 12 foot deck on 10 concrete tube supports and the added conditions ADD-4a, ACC-1, ADD-4c, ADD-5 and to add to the narrative in ADD-2 the words "12 foot by 12 foot deck on 10 concrete tube supports." The motion was seconded by Andrew Saunders and passed via roll call vote (6-0).

Requests for Determination of Applicability

b. CON 023-362: 61 Nakata Avenue, Map 43, Lot 103-104

Request for Determination of Applicability filed by Jinny Kimball to re-install 5-foot fence with steel posts to property boundaries on south and north sides. Work to take place within FEMA Flood Zone VE (El.20') at Assessor's map 43, Lots 103-104.

(39:00-41:00) Bruce Webb stated the applicant lacked a plan during the last hearing. That has been provided with a rudimentary plan including a name, date, and property boundaries. Additionally, the applicant has paid the after-the-fact fees.

Karen Isherwood still affirms solid fences impede storm water in Velocity Zones. She believes it is important for the Commission to enforce the shadow box design.

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 CON 023-362, 61 Nakata Avenue, Map 43, Lots 103-104. The motion was seconded by Carrie Hawthorne and passed via roll call vote (6-0).

Karen Isherwood made a Motion to close the public hearing for CON 023-362, 61 Nakata Avenue, Map 43, Lots 103-104, and issue a Positive 2b for Coastal Beach and Buffer Zone to Coastal Beach, a Negative Determination 3, and a Negative Determination 6, with the added conditions CAP-3, FZ-1, and the fence within the velocity flood zone shall be at least 50% open using a shadow box fence or equivalent. No object or structure may impede the primary function of the shadowbox fence which is to allow for coastal storm flowage and runoff. Under the Wetlands Protection Act and Fairhaven Wetlands Bylaw. The motion was seconded by Jay Simmons; (4-2) Andrew Saunders and Anthony Couto were opposed.

c. CON 023-374: 54 Reservation Road, Map 29A, Lot 316

Request for Determination of Applicability filed by Sandeep Gupta to place a shed in FEMA Flood Zone VE, El.17' and Buffer Zone to a Bordering Vegetated Wetland, located at Assessor's Map 29A, lot 316.

(1:04) Owner and applicant, Sandeep Gupta, will be securing the shed with 4-inch arrowhead anchors (4 on each corner; soil class 4) in lieu of helical piles. This will enable the shed to be built off site and significantly reduce cost.

Mr. Gupta discussed shed location and plan with neighbor at 43 Reservation Road. He provided an updated site plan with the new shed location. The updated plan depicts the proposed shed on the south side of the house. New location is adjacent to the wetland, with clearance for the arrowhead anchors.

Bruce Webb confirmed USGS map does not show intermittent stream in 2021.

Natalie Caetano, owner of 43 Reservation Road asked applicant to move shed to the south side. The original location would be in front of her kitchen window impeding a water view.

Karen Isherwood made motion to grant the "Buffer Zone Regulations Variance Request" under the Fairhaven Wetlands Bylaw, Chapter 192, Section 8, of the Buffer Zone Regulations, for CON 023-374, 54 Reservation Road, Map 29A, Lot 316. The motion was seconded by Carrie Hawthorne and passed via roll call vote (6-0).

Karen Isherwood made a Motion to close the public hearing for CON 023-374, 54 Reservation Road, Map 29A, Lot 316, and issue a Positive 2b for Coastal Beach, Coastal Dune, Salt Marsh, and Buffer Zone, a Negative Determination 3, 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 Carrie Hawthorne via roll call vote (6-0).

d. CON 023-375: 27 & 29 Alden Road, Map 26, Lots 13G & 13H

Request for Determination of Applicability filed by Michael Panagakos for removal and replacement of the entrance along Alden Road to include the installation of a trench drain to prevent stormwater run-off. A 100-foot buffer from the limits of the stormwater management basin impacts approximately 1,075 square feet of 29 Alden Road and 178 square feet of 27 Alden Road at Assessor's Map 26, lots 13G & 13H.

CON 023-375: 27 & 29 Alden Road, Map 26, Lots 13G & 13H continued to October 30, 2023

Notices of Intent

e. SE 023-1391, CON 023-291: Bridge Street, Map 36, Lot 15J – Continued from August 8, 2022

Notice of Intent filed by Fairhaven Properties, LLC to redevelop the site into a two-building self-storage facility. Development includes landscaping, as well as stormwater and utility infrastructure improvements. A portion of the proposed work is located within 100 feet of a wetland resource area, previously delineated and approved under an Order of Resource Area Determination (ORAD), issued in January 2022. Work located at Assessor's Map 36, Lot 15J.

SE 023-1391, CON 023-291: Bridge Street, Map 36, Lot 15J continued to October 30, 2023

f. 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) located 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 October 30, 2023

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 located at Assessor's Map 28B, 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 October 30, 2023

h. SE 023-1424, CON 023-367: 11 Alexander Lane, Map 30, Lot 045U

Notice of Intent filed by Thomas Ferreira and Nicole Bourgeois to remove previously placed debris (i.e., yard and household items) within the Buffer Zone to a Bordering Vegetated Wetland (BVW) located on the southerly portion of the site; and the construction of an addition onto the existing single-family dwelling that will be within the Buffer Zone to the BVW. All work located at Assessor's Map 30, Lot 045U.

SE 023-1424, CON 023-367: 11 Alexander Lane, Map 30, Lot 045U continued to October 30, 2023

i. SE 023-1423, CON 023-364: Bridge Street, Map 30A, Lot 87 & 87A

Notice of Intent filed by Carricorp Industries, Ltd. proposing a 5,850-sf commercial style building. A driveway and parking lot with approximately 34 parking spaces to service the proposed building. Stormwater from all proposed paved areas will be collected by deep sump catch basins sent to a subsurface infiltration system. Other proposed utilities include municipal water and sewer and an enclosed dumpster with pad. Work to take place at Assessor's Map 30A, Lots 87 & 87A.

SE 023-1423, CON 023-364: Bridge Street, Map 30A, Lot 87 & 87A continued to October 30, 2023

j. SE 023-1428, CON 023-368: 43 Reservation Road, Map 29A, Lot 351

Notice of Intent filed by Natalie Caetano for a retroactive approval of a paved driveway and to construct a circular area approximately 16'x16' landing for sitting and bird watching. Work to take place in Land Subject to Coastal Storm Flowage (LSCSF), FEMA Flood Zone VE (El.16'), Buffer to BVW, Coastal Dune, Salt Marsh, and Coastal Beach all at Assessor's Map 29A, Lot 351.

(1:26) Bruce Webb addressed the Commission and stated this NOI is for an existing driveway and seating area within lawn area (existing disturbance). A variance request has been received from the applicant and Mr. Webb believes this is an approvable project.

Natalie Caetano apologized for resurfacing the driveway.

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

023-1428, CON 023-368, 43 Reservation Road, Map 29A, Lot 351. 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 023-1428, CON 023-368, 43 Reservation Road, Map 29A, Lot 351, approving the plan titled "43 Reservation Road" dated August 29, 2022, sheets 1 and 2, and issue an Order of Conditions outlined in Attachment A dated 10/10/2023 under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw with the added conditions ACC-1, ADD-4b, ADD-5, and to replace the language in the Findings Page Number 5 from resurfacing to reconstruction of paved driveway to concrete. The motion was seconded by Caroline Hawthorne and passed via roll call vote (6-0).

k. SE 023-1426, CON 023-369: Goulart Memorial/Causeway, Map 43A

Notice of Intent filed by James Clancy of Eversource Energy for the construction, reconstruction, and maintenance of the following structures associated with and essential to an electric generating facility. Work to take place within Land Under the Ocean (LUO), Coastal Beach, Coastal Dune, Coastal Bank, Salt Marsh, Land Containing Shellfish, Isolated Land Subject to Flooding (ISLF), and Land Subject to Coastal Storm Flowage (LSCSF) at Assessor's Map 43A.

SE 023-1426, CON 023-369: Goulart Memorial/Causeway, Map 43A continued to October 30, 2023

l. SE 023-14___, CON 023-371: 217 Alden Road, Map 36, Lot 085

Notice of Intent filed by Shaun DeGrace for a concrete patio (13'x47') with drainage in the back of the house, an extension of the asphalt driveway (30'x15') and add a 6' fence within 100 ft. to the Bordering Vegetated Wetlands (BVW). Work to take place within Buffer Zone to BVW at Assessor's Map 36, Lot 085.

SE 023-14___, CON 023-371: 217 Alden Road, Map 36, Lot 085 continued to October 30, 2023

m. SE 023-1427, CON 023-373: (Lot 2) Sconticut Neck Road, Map 29, Lot 27

Notice of Intent filed by Antone & Donna Arruda to construct a single-family dwelling, including a paved driveway, utilities, and grading. The wetland boundary was approved by the Conservation Commission under an Order of Resource Area Delineation (ORAD) issued July 26, 2023; much of the lot is located within the 100-foot wetland buffer at Assessor's Map 29, Lot 27.

- n. (1:42) Chris Gilbert of Farland Corporation stated 481 Sconticut Neck Road had recently been subdivided into lots 1 and 2 (Lot 2 is mostly wooded). A post and rail fence and subsurface recharge area behind the lawn are proposed. Farland and the applicant agree to the Commission's suggestion of trees along the water.

Applicant and owner, Donna Arruda, plans on preserving as much vegetation as possible.

Karen Isherwood made a motion to close the public hearing for SE 023-1427, CON 023-373, (Lot 2) Sconticut Neck Road, Map 29, Lot 27, approving the revised plan titled "(Lot 2) Sconticut Neck Road" dated September 29, 2023 and issue an Order of Conditions outlined in Attachment A dated 10/10/2023 under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw with the amendment to Attachment A, condition number 6 ADD-2 to add a Post and Rail fence along the 25 foot Buffer Zone as depicted on the revised plan, and to add the title "(Lot 2) Sconticut

Neck Road" to ADD-4a. The motion was seconded by Carrie Hawthorne and passed via roll call vote (6-0).

Karen Isherwood made a point to remind Chris Gilbert of condition TRP-3 for tree protection. She asked him to reach out to the office to inspect erosion controls before the removal of trees.

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; received as-built as of October 3, 2023.

Attorney, James Marsh stated an as-built prepared by Zenith Consulting has been submitted to the Commission. Attorney Marsh will be meeting with Ms. Reis next week to go through the as-built and list everything that was originally approved. A restoration plan will subsequently be submitted. Attorney Marsh requested to go before the Commission to amend the Order of Conditions by November, including a revised restoration plan. Once Jamie Bissonnette from Zenith Consulting and attorney Marsh meet with the client, they would like to meet with the Conservation Commission and staff to discuss the next steps.

Action: Attorney Marsh to meet with Conservation Chair, Jay Simmons, Vice Chair, Karen Isherwood, and staff, Kelly Camara.

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. Motion. The motion was seconded by Carrie Hawthorne and passed via roll call vote (6-0).

Jim Marsh requested to be on the November 20, 2023 meeting.

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

Karen Isherwood made a motion to continue the stay on the issuance of fines of not more than \$300 a day for Enforcement Order 023-019, 6 Jeanette Street, Map 34A, Lot 62K until the October 30th, 2023 meeting with the condition that commission members have had the opportunity to review the flagging in the field. The motion was seconded by Andrew Saunders and passed via roll call vote (6-0).

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

Karen Isherwood made a motion to continue the stay on the issuance of fines of not more than \$300 a day for Enforcement Order 023-020, 8 Jeanette Street, Map 34A, Lot 62P until the October 30th, 2023 meeting with the condition that commission members have had the opportunity to review the flagging in the field. The motion was seconded by Andrew Saunders and passed via roll call vote (6-0).

8. General Business

- a. Resident, Sallie Johnson, to address mowing concerns at the Little Bay Conservation Area

(16:55-25:00) Resident, Sallie Johnson, brought up concerns regarding vegetation removal within the Little Bay Conservation Area. She has spoken with the Board of Public Works about this area leading to the jetty. She estimates they are cutting back at least 40 feet on the south side. The Little Bay Conservation land consists of 70 acres and is protected with a state program agreement.

Ms. Johnson requested a site walk with the Conservation Commission to observe the cutting back of vegetation.

- b. Discuss updated fee structure

Bruce Webb presented the current fee structures of neighboring coastal towns and those towns which are immediately adjacent to coastal municipalities.

Action: Mr. Webb to send out Excel spreadsheet to the Commission depicting these comparisons. Mr. Webb also suggested Commercial fees for NOIs (Categories 1-4).

Jay Simmons raised concerns that he would rather see lower fees and compliance, than higher fees and avoidance, especially on simple projects.

Mr. Webb suggested that smaller projects not warranting an RDA or NOI be given a CON file number and listed as Administrative Approvals (or whatever title the Commission prefers) and be presented regularly to the Commission.

Karen Isherwood asked if the Commission will require Town Counsel on any of these fees? Is this something the Commission is allowed to change when they feel it is necessary?

Mr. Webb stated this is more of a discussion topic than an actual approval. The ultimate decision is up to the department, Town Administrator, Financial Committee, and lastly an official vote at town meeting.

- c. Discuss and approve the timeline policy for residents to respond to notices of violation or to file after-the-fact filings.

Mr. Webb believes 42 days is adequate to have engineering firms provide a plan. As long as the applicant or representative is proactively communicating with the department, then the Commission can always vote to allow an extension.

- d. Approve tentative 2024 meeting schedule

Action: Kelly Camara to revise 2024 schedule with suggestions presented by the Commission.

e. Bills

\$120 - Fairhaven Neighborhood News for 9-18 meeting

\$440.00 - MACC John Rockwell's Wetland Delineation Course for Kelly and Karen

\$41.49 - Verizon Aug 11- Sept 10

Karen Isherwood made a motion to accept the bills as presented by Kelly Camara. The motion was seconded by Andrew Saunders and passed via roll call vote (6-0).

Next Scheduled Site Visit: October 17, 2023

Next Public Hearing: October 30, 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**

Jake Galary made a motion to adjourn and the motion was seconded by Andrew Saunders at 9:21pm. The motion was passed via roll call vote (6-0).

Jay Simmons, Chair

Fairhaven Conservation Commission

Posted by the Town Clerk: www.fairhaven-ma.gov