

**November 6, 2023  
Minutes**FAIRHAVEN TOWN CLERK  
RCUD 2023 DEC 12 AM 10:20

1. **Chairman's Welcome and Media Notification:** Chair's Welcome and Media Notification. Jay Simmons opened the meeting at 6:09p.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:** Jay Simmons, Karen Isherwood, Andrew Saunders, Caroline Hawthorne, Anthony Couto, Ronnie medina and Anthony Couto

Absent: Jacob Galary

3. **Allen Decker of the Buzzards Bay Coalition (BBC) to discuss conservation restrictions:**

- a) **Carvalho Farm discussion** – Mr. Decker briefed the Board on the Carvalho Woods project and presented the open space context map. The BBC is currently under an agreement to acquire the land from private land owners. This additional land will close out development for the property, which includes wetlands and a stream, which cuts north to south through the property. The property will serve as a connection between the Phoenix Rail Trail (bike path) and the existing Carvalho Farm property on the south side of Shaw Road. The BBC intends to create a trail crossing through the stream and wetlands, as well as enhance habitat restoration. They plan create a parking area along Shaw Road, to increase accessibility and maintain safety.

Under the existing Carvalho Farm project, BBC owns the property and the Commission holds the conservation restriction; this project would be an extension of that partnership. Mr. Decker assured the commission that BBC will work with the town to create amenities. BBC applied for a state grant to assist with acquisition costs (conservation partnership grant); the grant is still pending at this time. BBC is looking for \$110,000 of Community Preservation Committee (CPC) funds to complete this project and purchase the conservation restriction. Once funding is officially approved at the spring town meeting, the BBC will come back before the Board and present the official conservation restriction document.

- b) **Douglass Tree Farm** – Mr. Decker spoke of the former Christmas tree farm owned by the Douglass family, located at the corner of Sconticut Neck Road and West Island. This property consists of 26.8 acres and abuts, or is part of, a much larger Conservation land. This project also consists of a partnership with conservation, but will not require CPC funding; the remainder of funds will be privately funded through the BBC.

Karen Isherwood made a motion to have the Conservation Commission accept the assignment of the conservation restriction held by Buzzards Bay Coalition, Inc. over 16.45± acres of the Douglass Farm located at 1 Douglass Drive, Sconticut Neck, Fairhaven, pending finalization of the

Assignment document with the Town of Fairhaven, as needed, and further to authorize the Chair of the Conservation Commission to sign said Assignment, once finalized, on behalf of the Conservation Commission. The motion was seconded by Andrew Saunders and passed (6-0).

4. Bennett Amos of Sediment Solutions, LLC to discuss the proposed bioamended activated carbon study in East Zone (4) of the New Bedford Harbor (test project under M.G.L. 310 CMR 10.05(11)).

(32:00-52:00) Mr. Amos presented a study funded by the National Institute of Environmental Health Services (NIEHS) as a Phase 2 small business innovative research grant. This grant was awarded to RemBac Environmental (represented by Mr. Amos) and the University of Maryland County. The goal of the study to determine the efficacy of bioremediation within the New Bedford Harbor superfund site (southern end of East Zone 4). The remediation in this area has recently been completed for marsh sediments with over 50 parts per million total PCBs.

This alternative remediation reduces the bioavailability of contaminants in sediments that could affect flora and fauna. The material consists of 50% powdered activated carbon (AC) pellets that are applied over the water, where they settle on sediments, hydrate, and break down over time. The activated carbon then releases to integrate into the sediment. In laboratory studies of bioavailability (pure water concentrations as well as tissue concentrations) organisms exposed to contaminated sediments have been reduced up to 100%. Pilot studies have also shown evidence of long-term activated carbon retention. It is important to note, the study will not interfere with the ongoing EPA remediation and the AC technique does not require equipment to enter the marsh.

As requested by the conservation agent, Mr. Amos will provide grain sizes as well as a list of all other compounds incorporated in the material. Mr. Amos added that as the EPA moves north there will be no interference with federal projects. Furthermore, they will be able to conduct a price comparison of bioamended carbon remediation versus the standard EPA procedures using excavators. This will demonstrate in situ remediation being a fraction of the cost of traditional methods.

Chair, Jay Simmons inquired if all this information is a precursor to a Notice of Intent?

Mr. Amos believes they may try to follow through as a limited project or attain allowances for a test project. He will then need further discussions with the Massachusetts Environmental Protection Act (MEPA). The EPA is aware of the study and they have stated a willingness to provide advice.

Andrew Saunders recommended Mr. Amos speak with the EPA or DEP to inquire grant permission under the State Enhancement Program, which may be an avenue to forgo traditional regulatory permissions. He understands this program is designed for Superfund Sites that are below 50 parts per million, since the EPA only deals with 50 parts per million or above.

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 (Morin V. Fairhaven, et al., 2173 CV0374) Bristol Superior Court, (Armanetti V. Conservation Commission, 2373 CV00423) Bristol Superior Court, and (Mullen V. Conservation Commission, 2373 CV00201) Bristol Superior Court and to reconvene in an open session at the conclusion of the Executive Session. It will be detrimental to hear these in an open session. The motion was seconded by Andrew Saunders and passed (6-0).

**5. Executive Session**

- a) *G.L. c. 30A, s. 21(a)(3): meeting with counsel to discuss strategy with respect to litigation, Morin v. Fairhaven, et al., 2173CV00374 (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)*
- c) *G.L. c. 30A, s. 21(a)(3): meeting with counsel to discuss pending litigation Mullen v. Conservation Commission, 2373CV00201 (Bristol Superior Court)*

**6. Open Session**

- a) Discuss DEP file number SE 023-1341, CON 023-194: North Street, Map 15, Lot 43  
No action required at this time.
- b) Discuss DEP file number SE 023-1395 and 023-1396: 1 and 2 Island View Road, Assessor's Map 43, Lot 201  
No action required at this time.
- c) Discuss outstanding Enforcement Order 023-022: 344-346 New Boston Road, Map 40, Lot 23B & 23C  
Karen Isherwood made a motion to withdraw Enforcement Order 023-022 for 344 & 346 New Boston Road, Assessor's Map 40, Lot 23B and 23C, for Mary R. Mullen only. The motion was seconded by Caroline Hawthorne and passed (5-0; 1 abstention).

**7. Request for Extension**

- a) SE 023-1307, CON 023-090: 46 Charity Stevens Lane, MAP 40, Lot 008 - Continued to the November 20, 2023 meeting

**8. Request for Certificate of Compliance**

- a) SE 023-1325, CON 023-158: 1 Crow Island, Map 44, Lot 1 - Continued to the November 20, 2023 meeting
- b) SE 023-1299, CON 023-081: 250 Bridge Street, Map 36, Lot 15  
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 023-1299, CON 023-081, 250 Bridge Street, Map 36, Lot 15, with the following ongoing conditions, CHM-2, DER-4, SW-9, Condition Number 52, Condition Number 53, SW-1, SW-2, SW-3, SW-5, SW-6, and SW-7 as listed in the order of conditions. The motion was seconded by Caroline Hawthorne and passed (6-0).

**9. Public Hearings**

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 Determination of Applicability****a) 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.

(1:29) Bruce Webb discussed the project and explained there is a small portion in the Buffer Zone, but any runoff will be captured in a french drain. He does not see how the project will impact the stormwater basin or wetland. He recommended the Commission consider any controls, such as silt fences to minimize runoff. There is a catch basin on Alden Road; they will try to keep everything onsite.

Karen Isherwood suggested conditions for erosion and sediment controls. There is a resource area – vegetated wetland – across the street near the 711-gas station.

Karen Isherwood made a motion to close the public hearing for CON 023-375, 27 & 29 Alden Road, Map 26, Lots 13G & 13H, and issue a Positive Determination 2b for Buffer Zone to Boarding Vegetative Wetland, and Negative Determination 3, with the added conditions CAP-3, EC-1, SIL-1 (with erosion controls being placed at the limit of disturbance of project property), ADD-1, and that an After the Fact filing fee be submitted before work can begin, under the Wetlands Protection Act and Fairhaven Wetlands Bylaw. The motion was seconded by Caroline Hawthorne and passed (6-0).

**Notices of Intent****b) SE 023-1430, CON 023-376: 48-50 Fort Street, Map 5, Lot 16**

Notice of Intent filed by Kevin McLaughlin to install (4) 4" electrical conduits encased in a concrete rack system and (1) 2" water pipe that will provide power and water to the existing fixed pier and floating docks. To install utilities, the contractor will need to excavate a 900 linear foot, 4-foot-wide trench to meet the requirements for the utility spacing. The proposed project will impact Land Subject to Coastal Storm Flowage (LSCSF) and the 25', 50', and 100' Buffer Zones of Coastal Beach located at Assessor's Map 5, Lot 16.

SE 023-1430, CON 023-376: 48-50 Fort Street, Map 5, Lot 16 will be continued to the November 20, 2023 meeting

**c) SE 023-1413, CON 023-351: Cove Street Improvement, Assessor's Map 28B**

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.

Karen Isherwood made a motion to accept the withdrawal without prejudice for SE 023-1413, CON 023-351, Cove Street Improvement, Map 28B, Lot Cove Street Right-of-Way, at the applicant's request. The motion was seconded by Andrew Saunders and passed (6-0).

d) **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.

(1:44) Bruce Webb gave a brief overview of the project's improvements. There are no issues with the application or proposal, but horizontal directional drill projects are new to the Commission.

(1:46) Kelan Koncewicz, of VHB provided comments to the Board's questions. He provided the requested revised mapping and a project timeline, as well as specification of proposed bentonite. There is a link to this memo on the website.

Mr. Webb mentioned that issues arose while writing the conditions. He would like a stamped plan by a certified engineer.

Mr. Koncewicz stated underground utility projects would create a multitude of plans; the contractor is extremely experienced and this is standard for Eversource. The specifications submitted are in lieu of stamped plans.

Bruce Webb also questioned any concerns with the Division of Marine Fisheries (DMF); the riser pole may or may not be in the salt marsh. It is marked as such in ArcGIS as a salt marsh, which is a more protected resource area.

**Action:** A wetland scientist delineate and submit a revised plan.

Bruce Webb added one other requirement under limited projects: an Operation and Maintenance plan that includes basic information to meet the limited project performance standard.

Mr. Webb requested future information to be sent to the Harbor Master.

Karen Isherwood made a motion to continue SE 023-1426, CON 023-369, Goulart Memorial/Causeway, Map 43A, to the November 20th, 2023 meeting at the applicant's request. The motion was seconded by Caroline Hawthorne and passed (6-0).

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

- a) **EO 023-015: 217 Alden Road, Map 36, Lot 085:** Discuss the Spring 2023 planting plan (proposed tree & shrub species) addressed in the Revision 2 report (to satisfy EO issued August 19, 2021) submitted December 27, 2022 by Ivas Environmental

(2:55) Bruce Webb informed the Commission that the owner was shown the correct depths to excavate. The property owner had started unpermitted work in the meantime to build a concrete patio within the 25-no touch Buffer Zone. The agent recently received a response and is in the process of scheduling an appointment with the excavator operator and property owner. This

meeting will be to review proper excavation depth. It is currently outside the herbaceous growing season and cannot stabilize excavation; the agent recommended work to be held off until spring.

- b) **4 Jeannette Street, Map 34A, Lot 062D & 062N:** Stockpiling of soil within a Bordering Vegetated Wetland; agent to provide update on restoration efforts

(3:01) Bruce Webb stated an unpermitted impervious pool apron was not installed. The agent suggested an Enforcement Order.

**Action:** Conservation office to inform property owner that fines are a possibility.

Karen Isherwood agreed the correspondence is necessary, but suggested an EO prior to issuing fines.

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

(3:06) Bruce Webb addressed the Commission and stated the property owner has had a delineation completed and is now waiting for a plan set. He will then go to the site with their wetland scientist to review the flagged line in the field. As of last week, no fines have been paid.

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

- e) **EO 023-022: 344-346 New Boston Road, Map 40, Lots 23B & 23C:** Agent to provide an update on restoration efforts

A site visit was conducted recently and it was discovered that no restoration work has taken place at this time. Farland Corp has reached out to the Commission stating there is an issue outside the purview of the commission that prevents them from beginning the restoration work.

Property owner, Patrick Mullen stated Christian Farland promised to commence submitted restoration plan in April 2023. They signed agreement on April 28<sup>th</sup> with the appropriate conditions to implement a restoration plan. The Mullen's are interested in having their property restored.

**Action:** Bruce Webb will reach out to DEP for further advisement.

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

(3:08) The agent provided an update; he has been in touch with the property owner and provided them with the RDA application.

- 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

(3:09) Mr. Webb reiterated they had an unpermitted boardwalk through a salt marsh and an unpermitted structure on Barrier Beach and Coastal Dune. All of the material has been removed, which has been physically confirmed.

- h) **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.

(3:11) Mr. Webb explained this had been mostly resolved over the summer except for a roll of dune fence stuck into salt marsh, adjacent to the path. The agent contacted the BPW who is willing to assist the owner. No further action needed at this time.

- i) **10 Point Street, Map 28B, Lot 210 & 211:** Motion to modify letter dated September 18, 2023 addressed to Attorney Marsh to include both lots 210 & 211

(3:12) Bruce Webb stated the Commission needs to make a motion reflecting both lots.

Andrew Saunders made a motion to modify the letter dated September 18, 2023 addressed to attorney Marsh to include both lots 210 and 211. The motion was seconded by Karen Isherwood and passed (6-0).

- j) **111 Cedar Street, Map 04, Lot 124:** Discuss a motion to remove cease and desist

(3:17) Bruce Webb informed the commission this is regarding a small compost bin approximately 3 feet by 3 feet. It is placed at the edge of existing lawn (previously disturbed) and not in the salt marsh. The property owner would like the cease and desist lifted.

Karen Isherwood made a motion to lift a cease-and-desist order for 111 Cedar Street, Map 04 Lot 124 for a compost bin. The motion was seconded by Andrew Saunders and passed (6-0).

- k) **0 Beachwood Street, Map 28B, Lot 122:** Filling of an isolated Vegetated Wetland; restoration approved

(3:19) The agent advised them to wait until spring for soil removal. The representative has been responsive and does not fear this violation will go stagnant.

**Action:** Conservation office to reach out in March 2024

- l) **EO 023-017: 29 Mangham Way:** Clearing and fill within a resource area; conservation office to provide restoration plan update; discuss conditions noted at recent site visit

(3:21) Karen Isherwood gave an update and stated that during the last site visit the restoration site had 75% or more growth.

**Action:** Plan one more site visit in spring 2024 to conclude.

- m) **CON 19-007, SE 023-1269: 20 Yankee Lane, Map 39, Lot 16:** Discuss recent site visit and the Spring & Fall, Wetland Replication Monitoring Report by Goddard Consulting, LLC dated October 20, 2023

(2:30) The fill in the wetlands altered stream hydrology. The property owners and representative have been very responsive and are willing to discuss. Mr. Webb has discussed the treatment of phragmites with the representative. They did confirm that the licensed applicator did treat for phragmites and after the initial application reached out on how to proceed further. Otherwise, have not seen any earth movements as part of restoration.

Mr. Webb recommended that restoration must take place during the end of March or beginning of April, so that all soil disturbance is completed by April 15<sup>th</sup> and seeding completed as soon as growing season begins.

Tom Shultz of Goddard Consulting presented the project as the representative for 20 Yankee Lane.

Karen Isherwood stated the EO was issued May 6, 2021.

Tom Schultz confirmed phragmites have been sprayed; the rest of site has been not disturbed by machinery. The second round of treatment will be conducted in the spring.

Jay Simmons suggested Goddard Consulting send invoices to the conservation office to prove activity has taken place.

Karen Isherwood concurred and would like to see photos of any work done in the restoration area.

Mr. Shultz assured the Commission that a licensed applicator treated the invasives on the property. There will be a site walk set up with Goddard Consulting, Mr. Webb, Rich Ruby from Ruby Environmental, and any Commissioners who wish to join.

**Action:** Goddard Consulting to provide photos of and work completed.

**Action:** Andrew Saunders suggested Goddard Consulting submit the scope of work, the invoice, and payment of the invoice.

(2:44) Property owner, Brian Lopes, stated the solar company was responsible for any restoration necessary on the land. Mr. Lopes stated the former agent permitted him to cut back the woods toward Mill Road. Everything he had had done was for agricultural purposes. The solar company installed the panels and then left; they did not restore.

n) **EO 023-014: 20 Yankee Lane, Map 39, Lot 16:** Discuss recent site visit and current conditions

o) **EO 023-021: 51 Cedar, Map 04, Lot 155:** Fill of BVW in violation of OOC; awaiting end-of-season report from Steven Schmiel, the wetland scientist that performed the restoration

(3:23) The office received the end of season report; site visit conducted two weeks prior. The site has 75% coverage or greater. No further needed action at this time.

p) **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



(3:24) Karen Isherwood gave update on the site; after the last site visit the owner had complied with the EO and the marsh is growing back nicely.

**Action:** One more site visit spring 2024 to close out.

- q) **34 Balsam Street, Map 43C, Lot 24:** Vegetative clearing in Coastal Dune and Buffer Zone of Coastal Beach and Rocky Intertidal Shore without a permit; letter of violation sent September 25<sup>th</sup>

(3:25) The agent informed the Commission that a contractor was hired to do landscaping and yard work and that the contractor cleared more than expected; however, they did not remove dune vegetation and no further action is needed at this time since it will self-restore.

#### 11. General Business

a. **Bills**

Verizon \$41.49

FNN \$135.00

Eversource electricity for \$379.00

Karen Isherwood made a motion to accept the bills as presented by the Conservation Agent, Bruce Webb. The motion was seconded by Caroline Hawthorne and passed (6-0).

b. **2024 meeting schedule options**

Karen Isherwood made a motion to approve the tentative 2024 meeting schedule for the 1<sup>st</sup> and 3<sup>rd</sup> Monday. The motion was seconded by Caroline Hawthorne and passed (6-0).

c. **New submission deadlines**

Karen Isherwood made a motion to approve the Town of Fairhaven Wetlands Submission Timeline Guidelines October 2023. The motion was seconded by Caroline Hawthorne and passed (6-0).

d. Next scheduled site visits: November 7, 2023

e. Next Public Hearing: November 20, 2023

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

#### 13. **Motion to adjourn**

Karen Isherwood made a motion to adjourn at 10:44pm and the motion was seconded by Caroline Hawthorne and passed (6-0).

**Jay Simmons, Chair**

Fairhaven Conservation Commission

Posted by the Town Clerk: [www.fairhaven-ma.gov](http://www.fairhaven-ma.gov)