

**Conservation Commission
August 19, 2024**

FAIRHAVEN TOWN CLERK
RCUD 2024 OCT 8 AM 9:10

1. **Chairman's Welcome and Media Notification:** Karen Isherwood opened the meeting at 6:04p.m.
Ms. 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, Jake Galary, Wendy Drumm, Erik Baumann, Anthony Couto, Ronnie Medina
Absent: Carrie Hawthorne

3. **Continuances requested in advance:**

- a. **CON 023-372: 29 Silver Shell Beach Drive, Map 41, Lot 53**
- b. **SE 023-1391, CON 023-291: Bridge Street, Map 36, Lot 15J**
- c. **SE 023-1436, CON 023-390: 6 Emerson Avenue, Map 29A, Lots 119-122**
- d. **SE 023-1467, CON 023-44: 1 Stetson Avenue, Map 2, Lots 256, 262 & 263**
- e. **SE 023-1423, CON 023-364: Bridge Street, Map 30A, Lots 87 & 87A**

4. **Request for Minor Activity**

- a. **James Street Right-of-Way:** Discuss possible demarcation of the border for shared access.

Karen Isherwood made a motion to approve a rope barrier on poles demarcating the shared beach access as a minor activity for the James Street Right-of-Way. The motion was seconded by Wendy Drumm and passed (5-0).

5. **Emergency Certifications**

- a. **95 Balsam Street, Map 43, Lot 129: Water main repair**

Karen Isherwood made a motion to approve the request for an Emergency Certification by the Department of Public Works for a leaking water main at 95 Balsam Street, Map 43, Lot 129. The motion was seconded by Jake Galary and passed (5-0).

- b. **30 Monondach Avenue, Map 42A, Lot 226: Water main repair**

Karen Isherwood made a motion to approve the request for an Emergency Certification by the Department of Public Works for a leaking water main at 30 Monondach Avenue, Map 42A, Lot 226. The motion was seconded by Wendy Drumm and passed (5-0).

6. Requests for Certificates of Compliance**a. SE 023-1333, CON 023-181: 18 Point Street, Map 28B, Lot 207**

SE 023-1333, CON 023-181: 18 Point Street, Map 28B, Lot 207 was continued in advance at the applicant's request to the September 16, 2024 meeting.

b. SE 023-1347, CON 023-210: 1 Boulder Court, Map 2, Lot 6C

The agent stated the MA building code allows partial break away walls. Mr. Webb confirmed with the Building Commissioner that the self-supported deck and enclosed staircase is also permissible.

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 023-1347, CON 023-210, 1 Boulder Court, Map 2, Lot 6C, with the following deviations: the size of the house and deck were altered slightly within the approved footprint on the Plan-of-Record and the retaining wall was moved and constructed approximately 15 feet away from the front face of the dwelling with a split-rail fence located at the top of the wall, as well as the following ongoing conditions: CHM-3, DER-4, FZ-4, and Condition Numbers 60, 61, and 62 as listed in the order of conditions and one added ongoing condition stating, at a minimum, two wetland resource area signs shall be posted on the upland side of the split rail fence at the rear of the property with the following language "Fairhaven Conservation Commission Wetland Resource Area." The signs shall be maintained in good condition. The motion was seconded by Wendy Drumm and passed (5-0).

c. SE 023-1334, CON 023-184: 15 James Street, Map 2, Lot 146

SE 023-1334, CON 023-184: 15 James Street, Map 2, Lot 146 was continued in advance at the applicant's request to the September 16, 2024 public hearing.

d. SE 023-1084: Raymond Street, Map 29D, Lot 117

William Madden of G.A.F. Engineering reinvestigated the beach and suggested beach nourishment and revegetation.

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 023-1084, Raymond Street, Map 29D, Lot 117, with the minor deviation of installing approximately 4 core logs. The motion was seconded by Jake Galary and passed (6-0).

e. CON 023-071: SE 023-1273: 3 North Street, Map 13, Lot 4

Karen Isherwood questioned condition 52 on the Order of Conditions, which requested deed language.

Attorney, Greg Koldys stated this condition requires the owner to notify a buyer of all conservation restrictions and all boundaries determined by the court. Attorney Koldys provided the Miguel's Transfer Certificate of Title which lists the limits and boundaries of their two parcels and includes the following language: "All of said boundaries, except the water line are determined by the Court to be located as shown on plan 27706A (Sheet 3) drawn by William F. Kirby, Surveyor, dated March 30, 1957, as modified and approved by the Court, in Land Registration Book 35, Page 127, with Certificate Title No. 6878."

Karen Isherwood made a motion to issue a Certificate of Compliance for complete certification under the WPA and the Fairhaven Wetlands Bylaw for CON 023-071: SE 023-1273: 3 North Street, Map 13, Lot 4, with the following ongoing conditions, CHM-2 and DER-4 as listed in the Order of Conditions. The motion was seconded by Wendy Drumm and passed (6-0).

f. CON 023-194, SE 023-1341: North & Cherry Street, Map 15, Lot 43

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 023-1341, CON 023-194, North & Cherry Street, Map 15, Lot 43, with the following ongoing conditions: Condition Numbers 55, 56, CHM-2 and DER-4, as listed in the order of conditions. The motion was seconded by Wendy Drumm and passed (6-0).

7. Request for Extension

a. SE 023-1344, CON 023-207: 10 Nelson Avenue, Map 43, lot 30

Karen Isherwood made a motion to extend the Order of Conditions for SE 023-1344, CON 023-207, 10 Nelson Avenue, Map 43, Lot 30, to November 8, 2024 under the Wetlands Protect Act and Fairhaven Wetlands Bylaw with removal of the first sentence in Condition #22 which states as follows "The use of heavy equipment on the beach or rocky intertidal shore is prohibited" and contingent upon a written plan by a professional licensed engineer for removal of the north groin to a point upgrading it to Mean High Water mark and the addition of the stones at a 1:1 slope to soften the vertical face groin, approved by the Agent prior to the start of any work. The motion was seconded by Wendy Drumm and passed (6-0).

8. Public Hearings pursuant to the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, s. 40) and/or the Code of the Town of Fairhaven Chapter 192, Wetlands:

Requests for Determination of Applicability

a. CON 023-450: 60 Maitland Street, Map 22B, Lot 75B

Request for Determination of Applicability filed by Albert Santos to replace an existing patio and driveway with new asphalt and pavers. Property located 100 feet of an offsite BVW at Assessor's Map 22B, Lot 75B.

Karen Isherwood made a motion to close the public hearing for CON 023-450, 60 Maitland Street, Map 22B, Lot 75B, and issue a Positive 2b for Bordering Vegetated Wetland, and Negative Determination 3 & 6, with the added conditions CAP-3, and a sign shall be posted on the upland side of the fence with the following language "Fairhaven Conservation Commission Wetland Resource Area." The sign shall be maintained in good condition, under the Wetlands Protection Act and Fairhaven Wetlands Bylaw. The motion was seconded by Wendy Drumm and passed (6-0).

b. CON 023-451: 12 Goulart Memorial Drive, Map 42, Lot 15C

Request for Determination of Applicability filed by Sandra Pietruska for additional cobblestone pavers on driveway (10'x2') and a shed (6'x8'). Property located within Buffer Zone to BVW, Land Subject to Coastal Storm Flowage and FEMA Flood Zone VE (El.17') at Assessor's Map 42, Lot 15C.

Karen Isherwood made a motion to close the public hearing CON 023-451, 12 Goulart Memorial Drive, Map 42, Lot 15C, and issue 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 Jake Galary and passed (6-0).

Notices of Intent

c. SE 023-1474, CON 023-412: 21 Goulart Memorial Drive, Map 42, Lot 22

Notice of Intent filed by David & Jayne Lynch to redeposit sand that migrated during a storm and place crushed shell on the driveway. Proposing to install 165 ft. of dune fencing on the southeast side of the driveway. Work to take place within Barrier Beach, Coastal Dune, riverfront, and FEMA Flood Zone VE (El. 20') at Assessor's Map 42, Lot 22.

SE 023-1474, CON 023-412: 21 Goulart Memorial Drive, Map 42, Lot 22 was continued in advance to the September 16, 2024 public hearing at the applicant's request.

d. SE 023-1464, CON 023-424: 23 Eaton Road, Map 29B, Lot 110

Notice of Intent filed by Michael & Hayden Linley to raze existing house and construct a new residence on FEMA Flood Zone compliant foundation, sewer & water connections and associated site work. Work to take place within Coastal Dune, Barrier Beach, Coastal Beach, BVW, Land Subject to Coastal Storm Flowage and FEMA Flood Zone VE (El. 20') at Assessor's Map 29B, Lot 110.

SE 023-1464, CON 023-424: 23 Eaton Road, Map 29B, Lot 110 was continued in advance to the September 16, 2024 public hearing at the applicant's request.

e. SE 023-1461, CON 023-425: 60 Highland Avenue, Map 28A, Lots 164 & 165

Notice of Intent filed by Stan Feck to construct a single-family dwelling on a pile foundation within the Buffer Zone to a Bordering Vegetated Wetland and within Land Subject to Coastal Storm Flowage. The house will be serviced with municipal water and sewer at Assessor's Map 28A, Lots 164 & 165.

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 023-1461, CON 023-425, 60 Highland Avenue, Map 28A, Lots 164 & 165. The motion was seconded by Jake Galary and passed (6-0).

Karen Isherwood made a motion to close the public hearing for SE 023-1461, CON 023-425, 60 Highland Avenue, Map 28A, Lots 164 & 165, approving the plan titled "Plan to Accompany Notice of Intent" Sheet 1 revised and stamped August 15, 2024 and the plan titled "Proposed Vegetation Management Plan" Sheet 2 revised and stamped August 15, 2024 and issue an Order of Conditions outlined in Attachment A dated August 19, 2024, under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw. The motion was seconded by Jake Galary and passed (6-0).

f. SE 023-1462, CON 023-430: 25 Shore Drive, Map 29C, Lots 615 & 616

Notice of Intent filed by Young Family Trust to construct a single-family dwelling with a 10' wide crushed shell driveway on the westerly side of the house and install a shadow box privacy fence along a portion of the northerly property line. Work to take place within Coastal Beach, Coastal Dune, FEMA Flood Zone VE (El. 17') at Assessor's Map 29C, Lots 615 & 616.

SE 023-1462, CON 023-430: 25 Shore Drive, Map 29C, Lots 615 & 616 was continued in advance at the applicant's request to the September 16, 2024 public hearing.

g. SE 023-____, CON 023-387: 251 Sconticut Neck Road, Map 29, Lot 032

Notice of Intent filed by Robert Faria for an after-the-fact shed within FEMA Flood Zone AE (EL.16') located at Assessor's Map 29, Lot 032.

SE 023-____, CON 023-387: 251 Sconticut Neck Road, Map 29, Lot 032 was continued in advance at the applicant's request to the September 16, 2024 public hearing.

h. SE 023-1466, CON 023-438: 0 North Street, Map 15, Lot 43

Notice of Intent filed by Lee Miguel to install fence along the property line along the discontinued Cooke Street to match the existing fence along property line; stockade fence with 6-inch gap beneath on north and south property line, with a maximum height of 48" adjacent to the road (approximately 16' from the curb). Work to take place within the Buffer Zone to Bordering Vegetated Wetlands at Assessor's Map 15, Lot 43.

Karen Isherwood made a motion to lift the Cease and Desist issued on May 20, 2024 for installation of an unpermitted fence in the Buzzer Zone to a salt marsh for North & Cherry Street, Map 15, Lot 43. The motion was seconded by Wendy Drumm and passed (6-0).

Karen Isherwood made a motion to close the public hearing for SE 023-1466, CON 023-438, 0 North Street, Map 15, Lot 43, approving the plan titled "Cooke St. Site Plan by: Lee Miguel" dated August 5, 2024 and issue an Order of Conditions outlined in Attachment A dated August 19, 2024, under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw. The motion was seconded by Jake Galary and passed (6-0).

i. SE 023-1468, CON 023-445: 62 Maitland Street, Map 22B, Lot 75A

Notice of Intent filed by Gail Rebello to construct garage addition with in-law apartment and pool with patio and fence within 100 feet to an offsite Bordering Vegetated Wetland (BVW) at Assessor's Map 22B, Lot 75A.

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 023-1468, CON 023-445, 62 Maitland Street, Map 22B, Lot 75A. The motion was seconded by Wendy Drumm and passed (6-0).

Karen Isherwood made a motion to close the public hearing for SE 023-1468, CON 023-445, 62 Maitland Street, Map 22B, Lot 75A, approving the plan titled "62 Maitland Street Assessors Map 22B Lot 75A Fairhaven, Massachusetts" dated August 13, 2024 and issue an Order of Conditions outlined in Attachment A dated August 19, 2024, under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw. The motion was seconded by Jake Galary and passed (6-0).

j. SE 023-1472, CON 023-449: 0 Frederick Avenue, Map 29A, Lots 151-152

Notice of Intent filed by Michael Livingstone to construct a 38'x38' single-family dwelling with a 272 square foot cantilever deck and an additional 70 square foot cantilever deck. The property is located within the 100-foot Buffer Zone to a Bordering Vegetated Wetland (BVW) and FEMA Flood Zone VE (EL.16') at Assessor's MAP 29A, Lots 151-152.

(1:31:51) Andrew Stackpole of Field Engineering represented Michael Livingstone and presented the proposed project.

Sandra Hermenau of 3 Frederick Avenue recently received an Order of Conditions for her property and questioned who in the subdivision is responsible for stormwater management?

Action: Agent to review Ms. Hermenau's conditions to determine why stormwater management was triggered for her project and its effect on the resources.

Action: Agent to present 3 Frederick Avenue documentation to the commission at the September 16th public hearing and to reach out to DEP with stormwater questions.

The following residents spoke in favor of the project at 0 Frederick Avenue.

Joanne Rego – 29 Brook Drive

Daniel DeJesus – 110 Green Street

Robert Rizzo – 29 Bluepoint Road

Scieszka – 89 Center Street

Jayne Morrison – 12 Charity Stevens Lane

Jay Lanagan – 116 Chestnut Street

Karen Isherwood made a motion to continue SE 023-1472, CON 023-449: 0 Frederick Avenue, Map 29A, Lots 151-152 to the September 16, 2024 public hearing at the applicant's request. The motion was seconded by Jake Galary and passed (6-0).

9. Violations/Enforcement Orders/Cease and Desist Notices

- a. **EO 023-019 & 023-020: 6 & 8 Jeannette Street, Map 34A, Lots 62K & 62P:** Agent to provide update on 7-29-2024 site visit with Attorney Marsh and Steven Chmiel; Zenith Land Surveyors provided revised plan on July 24, 2024 to accompany RDA.

Attorney James Marsh and client/owner Scott Couto presented a planting plan prepared by Zenith Consulting; the area shown to be filled is approximately 2,600 square feet with a 1:1 replication.

Mr. Couto stated the previous owners dumped bricks/masonry; additionally, there are currently five dead pine trees to be removed.

The commission requested confirmation on demarcation from Jamie Bissonnette of Zenith Consulting in order to avoid further encroachment.

Erik Baumann signed off at 8:22pm.

- b. **EO 023-022: 344-346 New Boston Road, Map 40, Lots 23B & 23C:** Agent to provide an update.

Bruce spoke with Town Counsel and was told the town can either pursue injunction to force work or enforce fines.

Patrick Mullen stated he had no knowledge of the work that took place on August 22, 2022 and only gained knowledge of the percolation tests in September 2022. He reminded the commission that the Enforcement Order for Mary Mullen was vacated. Mr. Mullen further stated that Farland Corp. agreed and approved to restore and had received a proposed restoration memo from Environmental Consulting & Restoration, LLC dated December 7, 2022. A Settlement Agreement & Mutual Release document was prepared for Farland Corporation and Not the Violator, LLC in May 2023. Farland Corp. did not agree to these conditions and as of today, no work has commenced.

Action: Agent to speak with Dave Flaherty regarding percolation tests.

Action: Conservation office to send letter to all Enforcement Order recipients and request that they attend the September 16th meeting.

- c. **17 Diamond Street, Map 29, Lot 45:** Unpermitted clearing in the Buffer Zone to Land Subject to Coastal Storm Flowage (LSCSF) – Notice of Violation sent May 2024.

Agent has recently been in contact with the owner.

- d. **0 Beachwood Street, Map 28B, Lot 122:** Agent to provide update on unpermitted work in the form of vegetative clearing and depositing of fill in the Isolated Vegetative (IVW) and Land Subject to Coastal Storm Flowage (LSCSF); discuss possible EO – Notice of Violation sent July 2023.
- e. **EO 023-014: 20 Yankee Lane, Map 39, Lot 16:** Agent to provide updates on phases 1 & 2 and correspondence with the peer reviewer.

Chris Frattaroli of Goddard Consulting recently became the representative for the project and was available to answer any questions. He confirmed that Phase 1 & 2 had been approved and executed this spring, which included phragmite management and stream modifications and fill.

The commission requested a restoration plan for Phases 3, 4 and 5 be submitted for discussion at the September 16, 2024 meeting.

- f. **SE 023-309, 023-1101, 023-1127, 023-1161: 1 Bella Vista, Map 43B, Lots 326, 359 & 360:** Agent to provide updates on monitoring efforts.
- g. **32 Point Street, Map 28B, Lot 132:** Agent to discuss issuing an EO.

The agent stated this matter has been resolved.

- h. **20 Bass Creek Road, Map 43C, Lot 403:** Unpermitted vegetative clearing in the Buffer Zone to the Bordering Vegetated Wetlands.
- i. **SE 023-1296, CON 023-307: Alves Way, Map 28, Lot 24:** The developer has been notified of the Operation and Maintenance Plan and monitoring requirements in accordance with the issued Army Corps of Engineers General Stormwater Permit; notice of violation sent out July 2024.

- j. **EO 023-017: 29 Mangham Way, Map 31A, Lots 300 & 300A:** Contacted the owner to let them know a Spring 2024 inspection of the restoration area is required before the EO is lifted; Commission site visit was conducted August 12, 2024.

The commission requested this property be added to the site visit list for October 2024.

- k. **350 New Boston Road, Map 40, Lot 21:** Unpermitted clearing in the Buffer Zone to BVW; notice of violation and to appear at the September 16, 2024 meeting was sent out August 14, 2024.

Karen Isherwood made a motion to send a letter to appear at the September 16, 2024 meeting to the property owner of 350 New Boston Road, Map 40, Lot 21. The motion was seconded by Wendy Drumm and passed (5-0).

- l. **19 Hacker Street, Map 28A, Lot 132:** Notice of Violation and to appear at the September 16, 2024 meeting was sent out August 14, 2024.

Karen Isherwood made a motion to send letter to appear at the September 16, 2024 meeting to the property owner of 19 Hacker Street, Map 28A, Lot 132. The motion was seconded by Jake Galary and passed (5-0).

- m. **0 Hacker Street, Map 28A, Lot 130:** Notice of Violation and to appear at the September 16, 2024 meeting was sent out on August 14, 2024.

Karen Isherwood made a motion to send letter to appear at the September 16, 2024 meeting to the property owner of 0 Hacker Street, Map 28A, Lot 130. The motion was seconded by Wendy Drumm and passed (5-0).

- n. **0 Point Street, Map 28B, Lot 131:** Unpermitted fence and structure in the Buffer Zone to BVW and LSCSF; Notice of violation and to appear at the September 16, 2024 meeting was sent out August 14, 2024.

Karen Isherwood made a motion to send letter to appear at the September 16, 2024 meeting to the property owner of 0 Point Street, Map 28B, Lot 131. The motion was seconded by Wendy Drumm and passed (5-0).

- o. **734-736 Sconticut Neck Road, Map 42, Lot 6:** Unpermitted installation of a fence. A partial RDA application was submitted on August 5, 2024. The conservation agent issued a Cease and Desist on August 12, 2024.

- p. **25 Abbey Street, Map 6, Lot 102:** Owner notified of expired Order of Conditions (SE 023-1300); Received NOI application on August 7, 2024; application incomplete until the office receives updated site plan.

- q. **28 Whisper Lane, Map 42A, Lot 178:** Unpermitted clearing in Buffer Zone to Salt Marsh/LSCSF; Notice of violation sent out August 2024.

Karen Isherwood made a motion to send a letter to appear at the September 16, 2024 meeting to the property owner of 28 Whisper Lane, Map 42A, Lot 178. The motion was seconded by Jake Galary and passed (5-0).

- r. **364 Huttleston Avenue, Map 30B, Lot 144:** Cease & Desist issued July 20, 2024 for unpermitted work in the Buffer Zone to Bordering Vegetated Wetland.

Karen Isherwood made a motion to send a letter to appear at the September 16, 2024 meeting to the property owner of 364 Huttleston Ave. The motion was seconded by Wendy Drumm and passed (5-0).

- s. **59 Reservation Road, Map 29B, Lot 59:** Verbal Cease & Desist on July 22, 2024 for unpermitted work in the Buffer Zone to Bordering Vegetated Wetland, Coastal Dune, and FEMA Flood Zone VE (El.20').

10. General Business

- a. Next scheduled site visits: **September 12, 2024**
- b. Next Scheduled Public Hearing Date: **September 16, 2024**

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

12. Motion to adjourn

Jake Galary made a motion to adjourn at 9:31pm. The motion was seconded by Tony Couto and passed (6-0).

Karen Isherwood, Chair

Fairhaven Conservation Commission

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