

CONSERVATION COMMISSION
May 18, 2020
Minutes

Mr. Simmons opened the meeting at 6:37p.m.

It was advised that the meeting was being conducted remotely consistent with Governor Baker's Executive Order of March 12, 2020, due to the current State of Emergency in the Commonwealth due to the outbreak of COVID-19. The Governor's Order suspends the requirement of Open Meeting Law to have all meetings in a publicly accessible physical location.

For this meeting, the Conservation Commission convened by telephone and video conference via Zoom as posted on the Town's website identifying how the public may join. The meeting was recorded and televised live, and some attendees participated by phone and video conference.

The meeting was attended remotely by Jay Simmons, Gary Lavalette, Nick Sylvia, Amy DeSalvatore, Geoff Haworth, Dan Doyle, and Nick Carrigg. Also in attendance remotely was Conservation Agent, Whitney McClees.

Ms. McClees read the Remote Access Information in for the record.

1. Quorum/Attendance:

Present: Chairperson, Jay Simmons, Geoff Haworth, Gary Lavalette, Nick Sylvia, Daniel Doyle, Amy DeSalvatore, and Nicholas Carrigg were all present via remote through Zoom.

Absent: None

Conservation Agent, Whitney McClees was also present and read the Remote Access information in for the record per Governor Baker as of March 12, 2020. Ms. McClees also gave "ground rules" for the conduct and effectiveness of the meeting.

2. Minutes:

Approve the minutes of May 4, 2020 – Geoff Haworth made a motion to approve the minutes and was seconded by Amy DeSalvatore. Motion approved 7-0 through a roll call vote.

4. Action

Discussion/Action

a) Request for Proposed Bylaw Change from EPA regarding Harbor Superfund Site

Ms. McClees stated this was to remain on the agenda as she spoke to David Patterson from the EPA, who clarified that they are looking for notification in the future. No decision capabilities are to be removed from Conservation. Notification only. No Commission members had questions and/or comments.

Mr. Haworth made a motion to accept the proposed bylaw change from EPA regarding Harbor Superfund Site and was seconded by Amy DeSalvatore. The motion passed unanimously, 7-0 through a roll call vote with Daniel Doyle not in favor at first then after reviewing his questions with Ms. McClees, Mr. Doyle voted in favor.

b) Policy on Non-Voting Consulting Conservation Commissioners

Ms. McClees stated that while there had been associate members in past, there was nothing that had been passed through the legislature to allow associate members on the Conservation Commission. Per Chapter 40, 8C it allows the Commission to appoint consultants – can elect to have non-voting consultant/members.

Ms. DeSalvatore stated perhaps they could possibly solicit expertise from the community if people didn't want to join the board per se.

Mr. Simmons stated they propose to add two, could propose to increase that number in the future.

Mr. Haworth stated he thought it was a great idea. A good opportunity for people to sit in and learn the ropes. He would recommend to hold off until they are able to do the meetings in person vs. Zoom.

Ms. McClees could potentially advertise that the positions exist to the public.

Mr. Lavalette had no comment at this time.

Mr. Carrigg stated that when he was an associate member, he was able to vote when no quorum was met, he assumed that was not going to happen with this policy. Ms. McClees agreed stating this would be a learning/informational capacity only. Mr. Carrigg feels it's a good opportunity and all for it.

Ms. DeSalvatore stated she would like to see the number increase to '3' for auxiliary members and a possible expertise member of the community.

Mr. Sylvia stated he has expressed his interest in the past to get off the board, he is thinking that it's his preference to stay until the end of July. He supports the idea.

Mr. Doyle thinks it was a great idea.

Mr. Simmons would like to see '3' as well.

Mr. Haworth made a motion In accordance with MGL Chapter 40, Section 8C, that the Fairhaven Conservation Commission appoint not more than three non-voting individuals to act as consultants to the Conservation Commission for terms not to exceed one year. These consulting positions shall be filled by residents of the Town of Fairhaven who have an interest in eventually serving as members of the Conservation Commission. The motion was seconded by Amy DeSalvatore and passed unanimously 7-0 by roll call vote.

5. Requests for Extensions

a. SE 023-1251: **279 Mill Road**

Request for extension of Order of Conditions issued July 17, 2017.

Ms. McClees reviewed her staff report dated May 13, 2020 – she saw no reason to not extend the three year request to July 17, 2023.

Ms. DeSalvatore asked why three years.

Ms. McClees said you can ask up to three years.

Commission members had no comments.

Nicholas Galletout was present on behalf of the project. Mr. Galletout said he was requesting the three years but is on track to start construction this summer.

Mr. Haworth asked if there were any changes to the plans.

No changes have been submitted for this project, per Ms. McClees.

Mr. Galletout stated there were no changes.

Mr. Haworth made a motion to issue an extension to the order of conditions for SE 023-1251: 279 Mill Road to July 17, 2023 and was seconded by Ms. DeSalvatore. The motion passed unanimously, 7-0 by roll call vote.

- b. SE 023-1253: **Bernese St, Smith St, Sedgewick Rd, & Briercliffe Rd**
Request for extension of Order of Conditions issued June 27, 2017.

Ms. McClees reviewed her Staff Report dated May 13, 2020. This was stormwater work by DPW on the four streets listed; partially grant funded, awaiting further grant monies.

Conservation members had no questions.

Mr. Haworth made a motion to issue an extension to the order of conditions for SE 023-1253 to June 27, 2023 and was seconded by Amy DeSalvatore. The motion passed unanimously, 7-0 per roll call vote.

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

Continued to a Future Meeting

- c) SE 023-1297, CON-19-051: **Hiller Avenue & Timothy Street, Assessors Map 28C, Lots 71 and 71A – continued to July 6**

Notice of Intent filed by Robert Roderiques for the construction of paved roadways and stormwater management systems and the installation of utilities including the placement of fill for the aforementioned work for a proposed 16-lot subdivision at the property located at Assessors Map 28C, Lots 71 and 71A. Work to take place within the Buffer Zone to Bordering Vegetated Wetland.

- d) SE 023-1296, CON-19-050: **46 Sconticut Neck Road – continued to June 1**

Notice of Intent filed by Joshua Alves, Alexander Grey Development LLC, for the construction of an 8-house subdivision, roadway, stormwater facility, and utilities and for wetland mitigation of historical impacts at the property located at 46 Sconticut Neck Road, Assessors Map 28, Lot 24. Work to take place within Bordering Vegetated Wetland and Buffer Zone to Bordering Vegetated Wetland.

Continued Notices of Intent

- e) SE 023-1299, CON 023-081: **Bridge Street, Assessors Map 36, Lot 15**

Notice of Intent filed by Craig Lutz, Carapace LLC for the construction of an auto dealership with ancillary paved parking on vacant lot at the property located at Bridge Street, Assessors Map 36, Lot 15. Work to take place in Bordering Vegetated Wetland.

Ms. McClees reviewed her staff report dated May 13, 2020. She stated the peer reviewer notes were received and the applicant was asking for several waivers requested under local stormwater regulations (issued by the Planning Board). She said there were additional questions from the peer reviewer and that the applicant sent letter back and plans however, the revised submitted plans were not high resolution and she had a hard time reading them. She stated the primary concern per the peer reviewer was that the project does not meet stormwater standard #2, but the applicant says most of the site is undeveloped and they disagree with the peer reviewer on what should be used as existing conditions for stormwater calculations.

Mr. Craig Lutz was present. He said he would submit revised O&M plan to Ms. McClees. Scheduled to Planning Board for first week of June.

Richard Rheaume, Engineer said he believed there was a misunderstanding on stormwater standard #2 and explained their understanding. He says there project meets and exceeds in every way and stated they are asking Planning Board for a waiver of control of stormwater runoff.

Mr. Rheaume said calculations have always been done based on existing conditions, not pre-existing, historic conditions.

Mr. Haworth said it sounds like we are getting close and they are going to PB for some waivers. He doesn't see anything else we need to address at this time.

Mr. Lavalette said he was in agreement with Mr. Rheaume stating that it's what is existing now and he has to deal with it that way.

Mr. McClees noted that the letter submitted from peer reviewer indicated that the purpose of stormwater standard 2 was related to the impact of those downstream in terms of an increase in post-development runoff because the entire area is fully developed.

Ms. DeSalvatore stated she would like to hear more at next meeting.

Mr. Lutz said he breathing this project daily and that GCG is very behind on their work. He is looking to move this forward.

Ms. McClees advised applicant to request a continuance.

Mr. Simmons asked if commission members were happy to move forward after the Planning Board meeting to move forward. Mr. Simmons stated that this is Mr. Carrigg's last meeting.

Ms. McClees stated she will get things in order for the June 1, 2020 meeting.

Mr. Lavalette will not be able to vote as this started prior to him coming on the commission.

Mr. Haworth made a motion to continue to June 1, 2020 meeting on applicants request and was seconded by Gary Lavalette. Motion passed unanimously, 7-0 per roll call vote.

- f) SE 023-1308, CON 023-095: **Huttleston Avenue, Assessors Map 31, Lots 115A & 117C**
Notice of Intent filed by Dana Lewis for the construction of four 3-unit residential buildings with ancillary earthwork and utilities, along with two storage buildings and a shed at the property located on Huttleston Avenue near Gellette Road, Assessors Map 31, Lots 115A and 117C. Work to take place in Buffer Zone to Bordering Vegetated Wetlands.

Ms. McClees reviewed her staff report dated May 13, 2020, and peer reviewer noted a few things in staff report: Proposed infiltration area vegetation should be cleared and replaced with loam and seed for maintenance. A cleared access path should be provided. Relocate planting along edge of pocket wetland to provide maintenance access. Side slopes for sediment forebay do not meet MSH standards, but forebay is accessible on one side. Waiver should be considered. However, granting the waiver will not relieve the applicant from any actions imposed by MassDEP. Pocket wetland bottom elevation is above estimated seasonal high groundwater and should be excavated to the groundwater table to maintain adequate water levels. Items need to be added to the construction phase erosion control plan and O&M plan. GCG recommends properly sizing the infiltration area based on MSH requirements without the required estimated seasonal high groundwater separation.

Ms. McClees noted that the applicant is seeking input from the Commission on several items identified by the peer reviewer.

Mr. Rheume stated they are addressing all the issues – after removing 90% of total suspended solids through the pocket wetland system, they wanted the infiltration area to remain a natural upland wooded by itself rather than loamed and seeded, as recommended by GCG.

Ms. DeSalvatore asked about drainage issues. Mr. Rheume said he has to discuss with peer reviewer.

Ms. McClees asked how much buffer zone is being proposed to be cleared at this project, what the percentage was.

Mr. Rheume will get her that number both in percentage and square feet.

Mr. Haworth made a motion for SE023-1308 to June 1, 2020 per applicant's request and was seconded by Amy DeSalvatore. Motion passed unanimously 7-0 per roll call vote.

g) SE 023-1309, CON 023-110: **1 Bella Vista Island**

Notice of Intent filed by Heiam Alsawalhi for the reconstruction of an existing eastern groin, modification of the existing seawall, dredging the bridge channel, providing beach nourishment, a line of wooden posts and planting a lawn in the non-jurisdictional depressions, the construction of a ten-foot-wide crushed stone path to the beach, and an after-the-fact electric gate at the causeway bridge at the property located at 1 Bella Vista Island, Assessors Map 43B, Lots 326, 359, and 360. Work to take place in Land Under Ocean, Coastal Beach, Coastal Bank, Land Subject to Coastal Storm Flowage and buffer zone to Salt Marsh.

Ms. McClees stated they went on a site visit on May 11, 2020 for a brief overview – commission will need to see existing condition plan with a current survey. She reviewed her staff report dated May 13, 2020.

Mr. Rheume was present on behalf of this project. He said a full existing conditions plan was forthcoming and with what DEP is requiring on 2nd plan; narrative that goes through what peer reviewer asked for – non DEP 3rd plan (separate filing) asking for continuation to June 22, 2020 meeting.

Mr. Haworth stated he went on the site review and was disappointed of the new mulch beds; quite the history here and commission needs to make sure they are dotting i's & crossing 't's'; reasonable that by June 22, 2020 to have cable & buoys and other debris taken out. New work electrical piping done on the west side.

Mr. Simmons agreed that it looks like new work seems to be happening there.

Mr. Lavalette said he had some reservations about the dredging.

Mr. Haworth made a motion that prior to the June 22 meeting all debris in resource area should be removed and then notify the Conservation Agent for a site review and an accurate existing conditions plan shall be submitted no later than a week prior to the June 22 meeting. Amy DeSalvatore second the motion and it passed in favor 7-0 per roll call vote.

Ms. DeSalvatore requested a cease and desist order. Ms. McClees stated there should be occurring on the property without a permit.

Amy DeSalvatore made a motion that no further work is to occur without a permit and to issue a Cease and Desist order for all activity – no further work to occur on the property without a permit from the Conservation Commission and was seconded by Mr. Haworth. The motion passed unanimously 7-0 via roll call vote.

Mr. Haworth made a motion to continue the hearing to the June 22, 2020 meeting per request of the applicant and was seconded by Amy DeSalvatore. The motion passed unanimously 7-0 per roll call vote.

2. Violations/Enforcement Orders/Cease and Desist Notices

a) 3 Hidden Drive

Ms. McClees stated that property owner indicated he wasn't aware of the Conservation area. She said a wetland delineation plan is needed as there was some potential disturbance to wetlands, restoration plan needs to be submitted per impact of resource area.

Mr. Lavalatte said this would be an after the fact and there should be a plan of action.

Mr. Haworth stated he had been one of the first to go to the property and reviewed the concerns and spoke with homeowner – extremely cooperative with homeowner – move forward with restoration plan. Engineer on board per the homeowner.

Property owner, Richard Perreira stated they had just bought the property on March 6, 2020. Looking at the properties around him he said their backyards were cleared and had grass. He said not really knowing about Conservation they were looking to replant grass, install fence for dogs on property. He does have engineer, Steve Gioiosa from SITEC and that they are working to flag soils and come up with a restoration plan so they could move forward.

Mr. Simmons explained how the process works, from a cease and desist order, and then asks for a restoration plan. Mr. Simmons wants to see consistency in how they handle fines within their board.

Mr. Perreira stated there is an easement on the property.

Mr. Simmons asked if Ms. McClees showed any plans have been found on this site from previous filings. She said not been in the office to take a look – no hardcopy as of yet.

Mr. Simmons asked for a \$300 fine to stay consistent because it went into resource area.

Ms. DeSalvatore would like to see delineation of buffer and resource delineation – doesn't think ignorance can be claimed here, as it should be on their deed that it's in a resource area. She would like to see stumps and trees identified.

Mr. Haworth stated he looked through the deed search and he had a hard time finding wetland information on the deed.

Ms. McClees also stated she had looked and there was an order of conditions listed on the subdivision when it was built – no evidence of recording at the registry of deeds. She said it could have been a Nasketucket River Basin only project.

Mr. Lavalette thinks a fine is appropriate to stay consistent.

Nicholas Sylvia dropped from the meeting.

Mr. Perreira stated he was okay with the \$300 fine as it was an honest mistake.

Mr. Haworth stated he was in the minority and that Mr. Perreira has been nothing but cooperative. He said he'd rather see him put that \$300 into plantings than a fine. He said there is a difference of knowing that you are violating and continuing it, than really understanding Conservation and that the Board should take that under advisement. He said the homeowner has been very cooperative.

Mr. Haworth made a motion to issue an enforcement order for a restoration plan with 90 days to include delineation line and listing of vegetation/trees listed that were removed and that the cease &

desist order will remain until plan received and approved. He was seconded by Amy Desalvatore and the motion passed unanimously 6-0, with Nick Sylvia in absentia.

Mr. Simmons stated that Nicholas Sylvia walked away from his computer but was trying to get through via phone.

Ms. McClees stated that they have a quorum and need to move forward.

Ms. DeSalvatore made a motion to issue a \$300 fine under Chapter 192, Section 11 Town Bylaw for destruction of the resource area and was seconded by Gary Lavalette. In a roll call vote, the motion passed 5-1, with Mr. Haworth in the opposition. Mr. Sylvia did not return to the meeting.

Mr. Perreria asked if he can clear what was removed by hand cleaning only. Machine has been removed from property – since the cease & desist had been issued.

Commission said it was okay as long as it was inventoried first.

Mr. Simmons asked Mr. Perreira to work closely with his engineer and Ms. McClees.

Other business not anticipated within 48 hours:

Mr. Haworth stated there was a violation that was issued on Friday the 15th. He received a phone call regarding 251 Sconticut Neck Road and followed up at 5:00pm. There was mini excavator in the yard and clearing and digging was taking place. He spoke to one of the homeowners, identified as Alisha and issued a cease & desist order. The individual stated they were building a concrete basketball court. Mr. Haworth stated they had to file for Commission.

Ms. McClees had a follow up conversation with property owners – the property is entirely within velocity zone – potentially within buffer zone to salt marsh area; the homeowner had previously filed with the Commission.

Mr. Simmons stated the Commission should levy a \$300 fine and should be ratifying the cease & desist and request a filing within 90 days for the work.

Homeowner, Mr. Robert Faria said he didn't realize he needed a permit and had only removed 5 inches of soil (depth). He said he needs help to figure this out.

Ms. McClees stated any work, digging/altering/filling was protected by the Wetland Protection Act and needs a permit from the Conservation. She said a Notice of Intent would have been filed, possibly building permit as well, and recommended the Commission should issue an enforcement order and this would be an after the fact filing for a notice of intent.

Mr. Simmons advised where to find the Notice of Intent on the town website.

Mr. Haworth stated that procedurally because it was not on the agenda, the Commission should ratify the cease & desist and put it on their next agenda for discussion of any fines or other requirements.

Mr. Haworth made a motion to ratify the cease & desist order on 251 Sconticut Neck Road and was seconded by Ms. DeSalvatore. The motion passed unanimously 6-0 through a roll call vote.

Mr. Simmons stated no work can be done on project until after the NOI has been submitted and that it will be placed on the June 1st meeting agenda.

3. General Business

- a) Bills – none at this time;

b) Next Meeting: June 1, 2020

Any other business that may properly come before the Commission not reasonably anticipated prior to 48 hours.

Gary Lavalette asked about a 'to whom it may concern' letter in packet as it seems like a DPW issue, not Conservation.

Ms. McClees stated it was on a project that Conservation had issued permit already. She said it was advertised properly and at this point no further action needed.

Gary Lavalette stated he believes there should be a consistent with fines, should be some 4-5 items for a criteria – when should someone be fined as they need to be consistent.

Ms. McClees stated she has asked Mr. Lavalette to put something in writing to her in an email as to what kind of policy he would like to see so they could add it to a future agenda and deliberate on it. She advised him this was his third request and he brings it up at every meeting, but doesn't send her an email to put on the agenda so therefore they cannot discuss it.

Mr. Lavalatte stated he would send an email.

Mr. Haworth asked that the word "Correspondence" be added to the end of the agenda so if there was any they could discuss. On a personal note, he advised the public if they had any information they wanted to send to him directly, his mailing address is PO Box 403 in Fairhaven. He said his dad has been receiving his mail and would just like it redirected.

Mr. Simmons took a moment to thank Nicholas Carrigg for his last three years of service on the Commission as this is his last meeting. Mr. Carrigg – 'it was a good experience. Thank you.'

Mr. Haworth made a motion to adjourn and seconded by Ms. DeSalvatore. The motion passed unanimously at 9:25p.m. via roll call vote.

Respectfully submitted,

Patricia A. Pacella

Recording Secretary