

Conservation Commission
Monday, July 6, 2020
Minutes

1. Chairman's Welcome and Media Notification: Chairperson, Jay Simmons opened the meeting at 6:34 p.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, Geoff Haworth, Gary Lavalette, and Nick Sylvia. Also in attendance remotely was Conservation Agent, Whitney McClees.

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

2. Quorum/Attendance: Chairperson Jay Simmons, Vice Chairperson Geoff Haworth, Gary Lavalette, Nick Sylvia and Amy DeSalvatore were present remotely.

Absent: Daniel Doyle

Ms. McClees read the public information pertaining to the Pandemic and meetings via Zoom only – remote. Ms. McClees advised a few people were in attendance from the public on different aspects of the agenda.

3. Minutes:

a) Approve the minutes of June 1, 2020. Geoff Haworth made a motion to approve the minutes of June 1, 2020 and was seconded by Amy DeSalvatore. The motion passed via remote roll call unanimously.

b) Approve the minutes of June 22, 2020. Geoff Haworth made a motion to approve the minutes of June 22, 2020 and was seconded by Amy DeSalvatore. The motion passed via remote roll call unanimously.

4. Discussion/Action

a) Signature Approval letter for Bills/Invoices: Ms. McClees reviewed the approval needed to allow bills to be signed by Ms. McClees or members for the accounting department. She stated the accounting department needs actual signatures not electronic signatures.

Mr. Haworth stated it worked well in the last year and felt it was needed right now as they are still meeting via Zoom. Ms. DeSalvatore was in agreement along with other members.

Mr. Haworth made a motion to continue with the policy as written as of July 29, 2019 for signatures on bills and was seconded by Ms. DeSalvatore. The motion passed unanimously via remote roll call to each member.

b) Policy for Project Review Prior to Submittal: Ms. McClees presented to the Commission members a policy that would ask applicants prior to submittal that they are strongly encouraged to schedule a meeting with the Agent for project review. Not meeting with the Agent prior to submittal will likely result in unnecessary project delays.

Mr. Haworth stated this was an important step to avoid minimum requirements in applications. He said his only concern was that applicant's may not get a feel for what the Commission members are requesting, perhaps certain plants or features on a landscaping project. He said the plans submitted for review should be a complete set of plans.

Ms. DeSalvatore stated she trusted Ms. McClees judgement and that she would be in agreeance to the new policy.

Mr. Haworth made a motion to adopt the policy for project review as stated in the staff report dated July 6, 2020 and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote.

5. 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

- a) SE 023-1296, CON-19-050: **46 Sconticut Neck Road – continued to July 27**
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.
- b) SE 023-1320, CON 023-146: **14 Wigwam Beach Road (f.k.a 307R Sconticut Neck Road) – continued to July 27**
Notice of Intent filed by Luis Pacheco for the construction of a 6-foot wide by 80-foot long fixed dock with gangway and floats at the property located at 14 Wigwam Beach Road (f.k.a. 307R Sconticut Neck Road), Assessors Map 29, Lot 16F. Work to take place in Land Subject to Coastal Storm Flowage, Salt Marsh and its 100-foot buffer zone, Land Containing Shellfish, and Land Under Ocean.

New Requests for Determination

- c) CON 023-147: **210 Sconticut Neck Road**
Request for Determination of Applicability filed by Casandra Paasche for the installation of an 8-foot by 14-foot shed at the property located at 210 Sconticut Neck Road, Assessors Map 28B, Lots 184, 198-199. Work to take place in Land Subject to Coastal Storm Flowage.

Ms. McClees reviewed this project as it was a RDA to build an 8x14 shed on six sonotubes. She stated there were no other resource areas nearby. She was able to do a site visit and recommended after they close the public hearing and issue a Negative 6 and Negative 3 with two conditions as listed in the June 30, 2020 staff report.

Applicant, Ross Paasche (Ms. Paasche's father) stated they will follow all regulations per the commission.

Mr. Haworth visited the site and had no additional issues. His only concern was there was an existing shed so he asked if they are keeping the current shed and asked them to draw the existing shed on the plan site.

Applicant was fine with Ms. McClees drawing in where the current shed is on the plan.

No additional comments from commission members were made. No other public comments were made.

Mr. Haworth made a motion to close the public hearing for 210 Sconticut Neck Road and issue a Negative 3 and Negative 6 with two conditions as listed in the staff report dated June 30, 2020 with an addition of existing shed be added to the plan and Ms. McClees to draw that in with the applicant's permission. The motion was seconded by Amy DeSalvatore and was passed unanimously via roll call vote.

Continued Notices of Intent

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

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.

Ms. McClees gave a brief summary of this project at the request of Mr. Simmons. She stated originally the request three months ago asked for a six month continuance as they needed the time to appeal a Planning Board Decision through Superior Court. She said the court system closed due to the Pandemic and they haven't proceeded further. Ms. McClees stated the court is just starting to open up as of July 1, 2020 and the client's representative reached out to extend the request to September 28, 2020 to allow the procedure to get through the court system.

Mr. Haworth asked if there could be documents from the court for proof that there was a delay in the court system.

Applicant's attorney, John Mathieu stated that he absolutely has the tracking order with Superior Court and that the Towns' attorney is fully aware and they are proceeding to the next step.

Mr. Haworth stated that this has been continued for nearly a year and that he is concerned. He said he understands the appeal through the court system on the Planning Board decision but that has nothing to do with Conservation. He doesn't feel it should be continued without an end in sight.

Attorney Mathieu stated he didn't think it was unreasonable to ask for another continuance given that the courts have been closed. He said that they may have to withdraw or that plans may change and that unfortunately projects like these can go on for a longer period of time. He said they are asking for a reasonable amount of time continuance.

Mr. Haworth stated it was ridiculous that there hasn't been any movement with Conservation. That there have been no new plans, no documents submitted – nothing done with conservation and they are in limbo waiting for documentation from another board. Mr. Haworth stated he felt it was unreasonable to ask for continued continuances as it was a disservice to the town as a whole.

Mr. Simmons stated that he agreed with some of Mr. Haworth's sentiments, however he was happy that the applicant did send someone to the Commission to be on this call.

Ms. DeSalvatore asked if they had a court date as of yet and why the continuance to September 28, 2020; she asked what would change by that date.

Attorney Mathieu stated this was a full lawsuit with depositions, motions, etc. and that with the court just reconvening as of July 1, 2020, it was safe to assume there was going to be a three month backlog of cases. Unfortunately, he said that civil cases are put in the back of the line. He said they have already received an answer from the Towns' Attorney and was hoping they could come to a valid plan, either to withdraw or move forward with plans by the end of September.

Ms. DeSalvatore asked so what is the reasoning that things will change by September 28, 2020.

Attorney Mathieu stated there was no reason. He said they have the answer from the Town and now they can start discussing it. He said it is a long complaint and a long answer.

Ms. DeSalvatore said she felt it would be more productive to withdraw and come back to us when the lawsuit is resolved. She said it was a burden on the community and a waste of time for the Commission. Sounds like should be withdrawn now.

Mr. Lavalette stated he was in favor of continuing it to September 28, 2020.

Mr. Sylvia stated as an attorney, they are facing a unique set of circumstances and continuances as put forth by the court system. He said he agreed it was a reasonable request to continue at this time.

Mr. Simmons agreed that it is a burden to the community, however he was in support to continue.

Mr. Mathieu had no further comments.

Mr. Haworth made a motion to continue to September 28, 2020 per the applicant's request and was seconded by Amy DeSalvatore. The motion passed unanimously in favor via roll call vote.

Mr. Haworth made a motion that on or before the September 28, 2020 date that the applicant should be ready to fully present the project or option to withdraw at that time and was seconded by Amy DeSalvatore. The motion passed unanimously in a roll call vote.

Nick Sylvia questioned whether or not they could "force" someone to withdraw an application. Mr. Simmons said they could not, but that would be the other option, the applicant to withdraw.

Mr. Haworth stated he made the motion like that to put the applicants on notice that they would have to be fully prepared to present the project with whatever they have already submitted. He just didn't feel that it made sense to wait for the Planning Board information to hold up the Commission.

- e) SE 023-1309, CON 023-110: **1 Bella Vista Island – *continued to July 6, request for continuance to July 27***
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 the applicants stated they needed more time to put together information requested by Commission members and the peer reviewer.

Ms. DeSalvatore stated she didn't feel like the work was getting completed at this project.

Engineer, Richard Rheume stated they are working on expanding the current plan to a four page plan and addressing the concerns.

Ms. McClees stated that a second Notice of Intent also should be forthcoming.

Mr. Rheume stated that it was.

Mr. Lavalette said he just hopes that it doesn't continue to be continued past the July 27, 2020 date.

Nick Sylvia had no comment

Mr. Haworth made a motion to continue 1 Bella Vista Island per the applicant's request to July 27, 2020 per the applicant's request and was seconded by Ms. DeSalvatore. The motion passed unanimously.

f) SE 023-1308, CON 023-095: **Huttleston Avenue, Assessors Map 31, Lots 115A & 117C – continued to July 6**

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 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 July 2, 2020. She stated there were revised documents and plans were submitted. She stated the wetland line had not been reviewed since 2017. She stated the applicant submitted a letter regarding buffer zone impacts. There were some concerns on the manhole maintenance Ms. McClees wanted a part of the O&M plan.

Mr. Haworth stated he remembered there were concerns from neighboring properties that stated the water drainage was happening on their property and asked if the manhole was going to help with that.

Engineer, Richard Rheume stated that the manhole pipe was being addressed.

Mr. Haworth suggested a potential condition be added to the order of conditions that the manhole be maintained in its full structure.

Ms. DeSalvatore had no further comments.

Mr. Lavalette just had a concern about the manhole cover blowing off and suggested it be reinforced.

Mr. Rheume stated it was being bolted down with the plans reflecting that.

Mr. Sylvia had no comments at this time.

Mr. Simmons asked if anyone wanted to speak on this project from public – seeing none he asked if Mr. Rheume wanted to ask for a continuance.

Mr. Rheume asked for a continuance to next meeting – as they have to wait for planning board meeting to move forward.

Mr. Haworth made a motion to continue to August 10, 2020 per the applicant's request and was seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote.

g) SE 023-1319, CON 023-144: **251 Sconticut Neck Road – continued to July 6**

Notice of Intent filed after-the-fact by Robert Faria for the installation of a 30-foot by 50-foot basketball court at the property located at 251 Sconticut Neck Road, Assessors Map 29, Lot 32. Work to take place in Land Subject to Coastal Storm Flowage and buffer zone to Salt Marsh.

Ms. McClees reviewed the project stating the applicant was applicable to move away from the salt marsh to the rear along the chain link fence. Ms. McClees said she went for a site visit discussion with the applicant and approved the installation of plantings.

Ms. McClees recommended not to approve wetland line as there is none on the plans. She recommends closing the Public Hearing and issuing an order of conditions with 42 recommended conditions as stated in the staff reported date July 1, 2020.

Mr. Faria was on the zoom call and stated he wanted to get an additional nine trees to plant.

Mr. Haworth stated he was pleased at how the applicant was workable and appreciated that.

Ms. DeSalvatore stated grateful for more plantings and that would be great. She asked a few questions on the buffer zone regarding the northern buffer.

Mr. Lavalette and Mr. Sylvia had no comment at this time.

Ms. McClees added that erosion control should go up as soon as possible, either a silt fence or straw wattle or silt sock. She also stated the trench on current plan is incorrect and is on correct first plan. She agreed, with applicant's permission, to amend the plan to show the trench and plantings per the applicants request up the border.

Mr. Haworth made a motion to close the public hearing and issue an order of conditions dated June 30, 2020 with modifications made today and the forty-two conditions listed in the staff report dated July 1, 2020 and was seconded by Ms. DeSalvatore. The motion passed unanimously via a roll call vote.

New Notices of Intent

h) **SE 023-1321, CON 023-148: Frederick Avenue, Map 29A, Lots 168-169**

Notice of Intent filed by Steven and Sandra Hermenau for the construction of Frederick Avenue 250 feet west from Sconticut Neck Road and the construction of a single family dwelling with driveway, and sewer and water service at the property located on Frederick Avenue, Assessors Map 29A, Lots 168-169. Work to take place in Land Subject to Coastal Storm Flowage and buffer zone to Bordering Vegetated Wetland.

Ms. McClees stated the applicant's representative was asking for a continuance to July 27, 2020 to allow time for concerns raised during on-site visit.

Mr. Haworth stated it was a reasonable request for an extension. He made the motion to continue per the applicants' request to July 27, 2020 and was seconded by Gary Lavalette. The motion passed unanimously via roll call vote.

Ms. McClees stated on the zoom platform a few neighbors were on regarding this NOI with concerns and she advised them to return for the next meeting where they could voice their concerns.

i) **CON 023-149: Knollmere Beach, 161 Weeden Road**

Notice of Intent filed by Raymond Surprenant, Knollmere Beach Association, Inc. for beach nourishment with maximum 250 cubic yards of clean sand annually at the property located at 161 Weeden Road, Knollmere Beach, Assessors Map 32A, Lots 213 & 214. Work to take place in Land Subject to Coastal Storm Flowage, Coastal Beach, and the 100-foot buffer zones to Coastal Dune, Coastal Bank, Rocky Intertidal Shore, and Salt Marsh.

Ms. McClees stated a revised plan was submitted after the on-site visit, she discussed her staff report.

Mr. Rick Charon, Engineer was on call for applicant. He stated they have nourished the beach in the last five or six years and there has been no change since 2014. Mean high water line showed no unconsolidated sediment; no build up or surcharge. The beach is eroding too quickly – suggested

maintaining 250 cubic yards annually – if need adjustment in future will do so per a filing. He didn't see a significant change in project.

Ray Surprenant, one of the members of the beach association said the boats on the salt marsh vegetation – grass is thriving, boats have been there for more than 50 years – not a new change.

Ms. McClees didn't see a current impact of salt water vegetation and suggested if it wasn't a concern of the Commission, they could strike those recommended conditions. She said in regards to the storage of boats on a resource area, she is leaving it up to the commission members.

Mr. Simmons stated if the boats are used frequently and there is no noticeable damage then he doesn't have concern. If there is damage in the future then stated that could change.

Mr. Suprenant agreed the boats should not be stored there.

Mr. Haworth stated he had a problem with beach nourishment as a whole. He said 250 cubic feet of sand every single year is his concern and there are other issues in/around Town, and wonders where the sand is going downstream to cause issues in other areas. He said he doesn't see a great benefit other than humans get to use a sandy beach.

Mr. Lavalette stated he felt it was "overkill" of 250 cubic yards of new sand yearly and he was not in agreement to keep the boats moored where they are.

Nick Sylvia had no comments.

Mr. Simmons stated he had concerns about replenishing the sand yearly as well.

Ms. DeSalvatore stated she didn't see the need for additional sand right now. She stated she did do a site visit and the sand did not look natural to that area, she said it looked like a manufactured beach.

Rick Charon stated they don't know how many times they've replenished but the 250 cubic feet was a maximum number, not something they would do yearly as it does get costly. He figured that perhaps they have replenished every other year.

Mr. Haworth asked if DEP has weighed in as of yet, which he was told they had issued a file number with no comments. He recommended they come back in the future if they want to replenish, not have a blanket order to replenish the sand yearly or every other year.

Discussion continued.

Mr. Haworth made a motion to continue to July 27, 2020 per the applicant's request and was seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote.

j) **CON 023-150: 6 Saltmarsh Road**

Notice of Intent filed by Peter Lopes, Trustee of the Luiz Family Nominee Trust for the construction of a new Title 5 septic system for an existing house at the property located at 6 Saltmarsh Road, Assessors Map 43, Lot 3. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zones to Coastal Bank and Rocky Intertidal Shore.

Ms. McClees stated it would be an improvement and referred to her staff report.

Rick Charon, Engineer was present for the applicant. He stated it was an improvement and a good system.

Peter Lopes, property owner, was present.

Mr. Lavalette will recuse himself from the vote as he is working for an abutter.

Mr. Haworth made a motion to close public hearing and issue an order of conditions plans dated July 1, 2020 with the forty-two conditions as listed in the staff report dated July 1, 2020 with added erosion control condition and WET-1 to not include wetland line approval and was seconded by Amy DeSalvatore. The motion passed unanimously per roll call vote (with Mr. Lavalette recusing).

6. Violations/Enforcement Orders/Cease and Desist Notices

a. 2 Melpen Way

Ms. McClees received a report of a potential violation. She noted significant vegetation cleared and trees in a flood zone and buffer zone. A cease and desist was posted.

Engineer, Rick Charon stated he has been engaged by the homeowner.

Mr. Haworth stated a \$300 fine needs to be issued for the amount of clearing that has been done. Mr. Simmons agreed. They both stated they were happy the homeowner reached out to an engineering firm and asked that restoration plans be submitted.

Mr. Haworth made a motion to ratify the enforcement order and was seconded by Amy DeSalvatore via roll call vote, motion passed unanimously.

Mr. Haworth made a motion to charge \$300 for clearing, \$300 fine for the bridge over the resource area and a \$300 fine for the stumping; with a total of \$900 for the violations.

Mr. Lavalette asked for a fine on each stump removed as there were four and it was apparent they were trying to burn the stumps away.

Mr. Haworth made a motion to fine 2 Melpen Way the \$900 fine as previously explained and was seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote.

Mr. Haworth made a motion that the fine must be paid within thirty days and was seconded by Amy DeSalvatore. The motion carried unanimously.

Mr. Haworth made a motion that silt fencing control and any other necessary stabilization needs to be in place within 7 days and was seconded by Amy DeSalvatore. The motion passed via roll call vote.

b. 1 Smugglers Road

Ms. McClees stated this came up during a site visit on adjacent property. She stated there was cutting of vegetation and referred to her staff report. She stated she gave the homeowners a verbal cease and desist. She stated they have submitted a letter and were unaware of any permits of work that occurred. Ms. McClees explained to them that no machinery was aloud in the resource area or digging and cutting of vegetation was required for a filing with the Conservation.

Mr. Haworth read the letter received by the homeowners. He said it seemed like a justification not an acceptance to what occurred. He recommended a formal site visit. He stated it looks like they brought in sand for the beach, and they have been cutting and removing vegetation.

Gary Lavalette had no questions/comments at this time.

Ms. DeSalvatore stated she did a site visit on her own there today, and there were ATV tracks all over the beach. She has forward the pictures to Ms. McClees. While there she was told by people that she was trespassing.

Mr. Haworth made a motion that the agent write up an enforcement order to 1 Smuggler's Road and to try to get a site visit with the homeowners. Mr. Simmons asked that the enforcement order include today's issues that Ms. DeSalvatore viewed.

Mr. Haworth asked Ms. McClees to review the jurisdiction of a UTV with the Harbormaster. Mr. Haworth also asked that the enforcement order include the cease and desist order and that no vehicles be allowed on the beach area; Mr. Lavalette seconded the motion and it was passed unanimously via a roll call vote.

7. Correspondence: None.

8. Ongoing Projects:

Mr. Haworth stated he did a site visit on 8 Chambers Street. He said there was a RDA filing that approved a 6" slab for a 16x28 garage; however the Building/FEMA regulations would not approve because the garage was in a flood zone. He said they have dug out 4' frost wall as well as a 4' foundation for 16x28 building. The contractor was on-site and Mr. Haworth the issues. He stated the contractor agreed no further work would be done. He stated most likely a NOI would have to be filed as they can't do a modification on a RDA.

Ms. McClees stated since the site visit the property owner has called and provided her with pictures of the installation of silt fence. She reiterated the RDA approval for plan was a 6" slab in a velocity flood zone, not a full foundation.

Mr. Lavalette had no comments at this time.

Ms. DeSalvatore remembered unpermitted clearing had been done – record of unpermitted clearing – not the first time.

Mr. Sylvia had nothing to add at this time.

Ms. McClees stated this would be an after the fact of a Notice of Intent.

Mr. Haworth didn't think it was intentional and wouldn't recommend a fine. He thinks the Commission should just allow the after the fact NOI filing.

Ms. McClees reviewed the four conditions that were issued.

Mr. Haworth made a motion to add siltation control and to stay in place and require the homeowner to file a NOI within 14 days. The motion was seconded by Amy DeSalvatore. The motion passed via roll call unanimously.

Amy DeSalvatore stated she went by 52 Balsam Street and there was definitely cutting of vegetation on the water.

Ms. McClees recommended a letter of violation and then if need be have it rise to an enforcement order.

Gary Lavalette was at 44 Torrington Road and stated there were shoots a foot tall on tree stumps.

9. Upcoming Project

Ms. McClees stated there were two requests for certificate of compliances, three RDA filings and two upcoming Notice of Intents coming forth.

General Business

- a) Bills
 - \$525.00 – legal ads/Fairhaven Neighborhood News
 - \$58.49 - field supplies/Forestry Suppliers
 - \$153.19 - office supplies/Staples
 - \$384 – SurveyMonkey subscription to sustainability outreachAll bills were paid out of the FY20 budget.
 - b) Next Meeting: July 27, 2020
- 10. Any other business** that may properly come before the Commission not reasonably anticipated 48 hours in advance of the meeting.

Mr. Haworth made a motion to adjourn and was seconded by Amy DeSalvatore. The motion passed unanimously and was adjourned at 10:34pm via roll call vote.

Respectfully submitted,

Patricia Pacella