

Conservation Commission
Monday, August 10, 2020
Minutes

1. Chairman's Welcome and Media Notification – Meeting was opened at 6:36pm by Chairperson, Jay Simmons.

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, Amy DeSalvatore, and Dan Doyle. Also in attendance remotely was Conservation Agent, Whitney McClees.

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

2. Quorum/Attendance: **Present:** Jay Simmons, Geoff Haworth, Gary Lavalette, Dan Doyle, Amy DeSalvatore. **Absent:** Nick Sylvia

Conservation Agent, Ms. McClees was also present.

3. **Reorganization of the Board**

Chairperson: Jay Simmons nominated Geoff Haworth for Chairperson and was seconded by Gary Lavalette. Jay Simmons, Gary Lavalette, Dan Doyle, Geoff Haworth and Amy DeSalvatore were also in favor (5-0) via roll call vote.

Mr. Haworth recognized Mr. Simmons as being the Chairperson for the last nine years.

Mr. Haworth asked if anyone wanted to be the Vice Chairperson, no one replied. He passed over for the Vice Chairperson at this time. He asked if Ms. DeSalvatore wanted to still be the clerk, and she stated no. Mr. Doyle stated he would take on the role as clerk.

Mr. Simmons made a motion to nominate Daniel Doyle as clerk and was seconded by Ms. DeSalvatore. The motion passed unanimously 5-0 via roll call vote.

4. **Minutes**

- a) Approve the minutes of July 27, 2020

Jay Simmons made a motion to accept the minutes of July 27, 2020 and was seconded by Amy DeSalvatore. The motion passed unanimous 5-0 via roll call vote.

5. **Requests for Extensions**

- a) SE 023-1246, CON 023-164: **277 Bridge Street** – Ms. McClees stated they were looking for a three-year extension for wetland replication monitoring.

Bob Carrigg was present and stated that Ms. McClees summed it up perfectly.

Board members had no further comments.

Mr. Simmons made a motion to grant the extension for three years for SE 023-1246, CON 023-164 for 277 Bridge Street and was seconded by Mr. Lavalette. The board voted in favor 5-0 via roll call vote.

b) SE 023-1198, CON 023-165: **Cedar Street/Morey Lane**

Ms. McClees stated the order of conditions were first issued in 2014 and had been extended already once. She stated there was a proposal for a single family dwelling and that the wetland line is six years old. Ms. McClees stated she did a site visit today. She stated the land has been cleared but no work of construction has begun. Her recommendation would be that given that the wetland line is six years old, she wasn't sure if the three year extension should be granted, as the line may continue to disappear.

Mr. Simmons stated it was interesting that it was the second extension and asked if it got extended again, if Ms. McClees thought the line would move drastically enough that it would move the house.

Ms. McClees stated the lot is ninety percent wetlands. She stated she wasn't sure if there were variances issued in the past, if so they would be expired. She stated that there is a significant amount of fill area proposed and clearing. She thought that the line may change slightly.

Mr. Lavalette stated he was unfamiliar with the property and had no additional comments at this time.

Mr. Doyle had no comments.

Ms. Desalvatore stated she was leaning toward not approving as it doesn't sound like their ready to move forward.

Dave Davignon, engineer was present. He stated he has been involved for permitting of project from beginning. Mr. Davignon stated he believed the wetland flagged and reviewed by Mr. John Rockwell when he was helping on the commission and approved by him. He said the lot is grandfathered. It had more adequate frontage to Cedar Street, didn't need Planning. There were no variances required by ZBA. He did suggest perhaps a two-year extension could be granted

Ms. McClees asked if this meets zoning per contiguous upland.

Mr. Davignon stated he wasn't sure.

Ms. McClees stated the approval expires on August 25, 2020, however because the current state of emergency, Governor Baker has stated that permit expirations would be tolled until the state of emergency has been lifted.

Mr. Haworth recommended that they take this up at their next meeting for a vote on August 24, 2020. He said that would give them an opportunity to see if they do anything more.

Ms. McClees stated that the site had been staked only, not flagged.

Mr. Doyle was in favor of letting it go to the next meeting.

Jay Simmons made a motion to continue to the next scheduled meeting on August 24, 2020 and was seconded by Dan Doyle. The motion passed unanimously.

On the question, Ms DeSalvatore stated she would like to amend the motion to review the wetland line before the next meeting.

Ms. McClees stated it looked like a few flags are still there but the ground is dry and new flags would have to be hung.

Dave Davignon stated he was confused by the comments. He said on one side they would like to see hay bales and fill as they are allowed, and in the next two weeks they would like to see more activity. But then they are asking for more flags to be put up, but they would disappear with the fill, so it doesn't make proper sense.

Ms. DeSalvatore stated she thought the extension should be denied. Ms. DeSalvatore made a motion to deny the extension and no one seconded the motion.

Mr. Simmons stated that the extension would not lift until the governor lifted the pandemic regulations.

Jay Simmons, Dan Doyle, Gary Lavalette and Geoff Haworth were in favor of Mr. Simmons' motion to continue to the next meeting and Ms. DeSalvatore abstained. The motion passed via roll call vote 4-0 with Ms. DeSalvatore abstaining.

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

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

- b) SE 023-1296, CON-19-050: **46 Sconticut Neck Road – continued to August 24**

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.

New Requests for Determination

- c) CON 023-163: **6 Cove Street**

Request for Determination of Applicability filed by David Fall for the construction of a privacy fence consisting of 80 feet of wood panel fencing and 20 feet of wooden posts with vinyl chain at the property located at 6 Cove Street, Assessors Map 28B, Lot 48. Work to take place in Land Subject to Coastal Storm Flowage, Coastal Beach, and the 100-foot buffer zone to Coastal Beach.

Ms. McClees stated after the site visit, the applicant requested a continuance to August 24, 2020.

Mr. Simmons made a motion to continue CON023-163: 6 Cove Street at the applicant's request and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote, 5-0.

d) CON 023-154: **22 Point Street**

Request for Determination of Applicability filed by Gia Zolotas for the construction of a cement patio around the house, total square footage of 272.5, at the property located at 22 Point Street, Assessors Map 28B, Lots 204, 205, & 218. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Coastal Beach.

Ms. McClees stated the applicants were proposing a concrete patio walkway where their trash barrels and gas grill sit, and replace deteriorating brick work. She said it would be a 7x7 area of concrete proposing on side of house and no more than 4' wide path around house on Point Street. She said nothing is proposed on the beach side of the property. Ms. McClees and Mr. Lavalette had done a site visit. Any flooding would hit the house first vs impervious surface. Ms. McClees stated it was a 273' sq feet of cement as proposed landscaping area – no work on beach. Her recommendation was to close the public hearing and issue a negative three and a negative six with the two conditions as read in her staff report dated August 7, 2020.

Ms. Gia & John Zolotas, applicants were present. They stated it was pretty cut and dry. Bricks were coming up and they wanted it to be more flat.

Jay Simmons stated it was a reasonable request. He was in favor of the project.

Gary Lavalette had no issues.

Dan Doyle – no issues

Amy Desalvatore stated it was all okay with me as long as not touching beach side.

Mr. Haworth was also in favor as long as they stay away from the resource area.

Jay Simmons made a motion to grant the request as requested with a negative three and a negative six and the two conditions as listed in the staff report dated August 7, 2020 and seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote, 5-0.

Request for Amended Order of Conditionse) SE 023-1258, CON 023-162: **Sconticut Neck Road, Assessors Map 29, Lot 1C**

Request for Amended Order of Conditions filed by Overlook Realty Trust for an amendment to an existing Order of Conditions to change the location of a driveway crossing at the property located at Sconticut Neck Road, Assessors Map 29, Lot 1. Work to take place in Bordering Vegetated Wetland and its 100-foot buffer zone.

The applicant is requesting to amend an existing Order of Conditions to move a wetland crossing 280 feet to the west to cross a different part of the wetland. Ms. McClees proposed plan amendment the wetland impact is being reduced by three square feet. She stated the primary reason for the request would be to allow for a single shared driveway instead of two separate.

Ms. McClees asked if the pipes were sufficiently sized to maintain the hydrologic connection between the two sides of the wetland so as not to turn the eastern portion into an isolated wetland.

She also asked if the driveway crossing appears to be proposed asphalt/pavement. The property owner indicated she did not want it paved. Were the driveway to be pervious, would that change the design significantly?

Engineer, Dave Davignon was present, representing Lauren Francis. He answered the questions as it would not change design on surface it was for maintenance purposes and they were proposing two grass strips that could go with gravel; hard surface is recommended. As far as pipe sizes the pipe there used to receive a lot more flow because of a Town broken pipe that would feed this wetland system, so this was a better option.

Ms. McClees reviewed her staff report dated August 6, 2020 and addressed erosion condition and other conditions in said staff report.

Mr. Smmons had no questions at this time.

Amy DeSalvatore stated she would like to see driveway be pervious.

Mr. Lavalette stated he took a tour of the property and thinks this is a better plan, he has no issues. Mr. Doyle stated he had no issues/comments at this time.

Mr. Haworth also stated he has no issues.

Rick Lieberman, abutter to the property stated it seems a better solution. He said multiple abutters have issues with the pathways and driveways and would like to see them asphalted.

Mr. Davignon point of clarification stated the amendment is only for wetland crossing on lot six, and they are not requesting permission or layout for future driveway for the wetland crossing as part of the road. He said they would be back in September with Notice of Intent for the common driveway.

Ms. McClees reiterated this amendment to consider is only in the wetland itself, which Mr. Davignon agreed.

Discussion on impervious or pervious. Mr. Simmons stated he would vote impervious based on concerns of abutters; Ms. DeSalvatore stated because it was in resource area should be pervious; Mr. Lavalette and Mr. Doyle had no comment. Mr. Haworth had two trains of thoughts and stated that the pipes wetland flows in the area, creating a pathway – impervious will help in long term maintenance.

Mr. Haworth stated it would be condition number fourteen that would need to be clarified when the motion is made to what time of change, asphalt, cement or other.

Jay Simmons made a motion to close the Public Hearing and grant this request with the forty-seven conditions listed in the staff report, amending condition number fourteen to an impervious surface. Staff report is dated August 6, 2020. The motion was seconded by Gary Lavalette.

On the question, Ms. DeSalvatore stated she would like it to say cement.

Mr. Simmons amended the motion to add impervious as cement and was again seconded by Mr. Lavalette. The motion passed unanimously via roll call vote 5-0.

New Notices of Intent

k) **SE 023-1327, CON 023-161: 1 Old Fort Road, Fort Phoenix State Reservation**

Notice of Intent filed by the MA Department of Conservation and Recreation for the removal of an old skating/hockey rink and the installation of new pickle ball courts, new access pathways, minor parking lot improvements, a native meadow mitigation area, and rain gardens at the

property located at 1 Old Fort Road, Assessors Map 1, Lot 2. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Bordering Vegetated Wetland.

Ms. McClees reviewed her staff report for a proposal of four new pickle ball courts where the old skating rink was at Fort Phoenix, with a repaving of the new parking lot. They were proposing a 5' wide path between parking lot and tennis courts. Also proposing 10' wide access path (for maintenance or emergency). Proposing a rain garden, upgrading the stormwater treatment systems on site. Ms. Mclees would like to see signage for the pollinating meadow. She did receive a letter from an abutter who was inquiring about an osprey pole at the project.

Matt Creighton, from BSC Group explained the project. He stated it would improve the stormwater system utilizing existing drain system.

Jay Simmons stated it was an excellent project and stated it was better than what was currently used there.

Mr. Doyle stated he had heard concerns that it was going to become pickle ball versus the skating rink that was currently there.

Mr. Creighton stated that the skating rink is sloped and they weren't sure how much use it gets now. He said that people came to them to ask for pickle ball courts instead.

Danielle Mellett of DSL stated the skating rink not useable and is cracked. She said they had request for pickle ball courts and have had no comments from people to keep the skating rink.

Mr. Lavalette thought it was a great project and he emphasized that area gets a lot of water from an adjacent property through the woods for them to be aware of that flooding; but in whole he thinks it's a great project.

Mr. Haworth asked if there was an opportunity for an osprey pole in the area.

Ms. Mellett stated they can look at that for another project.

Ruth Rhelfeld reiterated they would be doing future projects and they will look into.

Joyce and Ken Pottel were on the call. Mr. Pottel stated he was the Chairman of the Pickle ball Committee. He said there is a lot of interest in this sport allot of people in community interested in this sport as it reaches all ages and ability levels. He said it would also be the first pickle ball court in Massachusetts.

Resident, Gayla Reilly stated she was impressed with the project with DSL. She was impressed that it was handicap accessible to give them access is great. She said it was truly a community sport and remarked on the remarkable design.

Ms. DeSalvatore stated she was interested in hearing about flooding issues in that area.

Ms. McClees said that part of the issue is the drain in the middle of the court that doesn't function as it is supposed to. She said that would be an addressed as it gets functionable and would be pitched appropriately as well.

Mr. Creighton stated that is correct.

Mr. Bob Espindola stated he was just learning more about pickle ball. He said he was happy to see that it was a community sport, and fun. He said he thinks it is great for the Town. He said it was good for all ages and very popular in Florida. It was a good cardio workout.

Mr. Doyle stated he had some discussions with people that wanted to keep the skating ring but unfortunately they weren't on the call for discussion.

Jay Simmons made a motion to close public hearing and issue an order of conditions based on plans dated December 4, 2019 and July 20, 2020 with the following forty-two conditions as outlined in the staff report dated August 7, 2020. The motion was seconded by Amy DeSalvatore. The motion passed unanimously 5-0 via roll call vote.

Continued Notices of Intent

- f) SE 023-1308, CON 023-095: **Huttleston Avenue, Assessors Map 31, Lots 115A & 117C – request for continuance to August 24**

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.

Amy DeSalvatore made a motion to continue per the applicant's request to August 24, 2020 and was seconded by Jay Simmons. The motion passed unanimously with a roll call vote 5-0.

- g) SE 023-1309, CON 023-110: **1 Bella Vista Island – request for continuance to August 24**

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.

Amy DeSalvatore made a motion to continue to August 24, 2020 and was seconded by Mr. Simmons. The motion passed unanimously with a roll call vote 5-0.

- h) SE 023-1320, CON 023-146: **14 Wigwam Beach Road (f.k.a 307R Sconticut Neck Road)**

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.

Ms. McClees reviewed her staff report.

Brad Holmes was present on behalf of applicant. He went over the discussion they went over at last meeting. He stated the pier width had been reduced to 4' wide and they moved forward with the 1.5' :1 recommendation, ratio height to width over the salt marsh.

No further comments from board members. Mr. Haworth was happy with the amendments put forth from the previous meeting.

Jay Simmons made a motion to close the Public Hearing and issue an order of conditions as listed in staff report dated August 7, 2020 with the thirty-nine conditions and was seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote, 4-0-1; with Mr. Doyle abstaining as he was not able to vote.

- i) SE 023-1324, CON 023-153: **86-88 Middle Street**

Notice of Intent filed after-the-fact by Patrick Carr, A#1 Crane Company, Inc., for the paving of an existing pervious parking area with concrete at the property located at 86-88 Middle Street, Assessors Map 11, Lots 6D, 6E, & 7. Work to take place in Land Subject to Coastal Storm Flowage.

Ms. DeSalvatore made a motion to continue 86-88 Middle Street per the applicant's request to August 24, 2020 as requested and was seconded by Mr. Simmons. The motion passed unanimously.

Mr. Lavalette asked if they would get the peer reviewer paperwork by the next meeting. Ms. McClees advised it was already included in their packet this evening.

j) SE 023-1325, CON 023-158: **1 Crow Island**

Notice of Intent filed by Albert Santos, New Bedford Inc., for the installation of a new E-One sewer grinder pump and force main and site grading for the construction of 2 seasonal tents used for venue functions at the property located at 1 Crow Island, Assessors Map 44, Lot 1. Work to take place in Land Subject to Coastal Storm Flowage, Land Under the Ocean, Land Containing Shellfish, Land Under Water bodies and Waterways, Coastal Beach, Coastal Dune, and the 100-foot buffer zones to Coastal Beach and Coastal Dune.

Ms. McClees reviewed her staff report. She stated that DMF (Division of Marine Fisheries) provided comments and asked for alternative analysis and recommend sewer main force to be covered.

Mr. Haworth asked if the applicant minded to ask for a continuance until their next meeting, as they were one member absent this evening.

Engineer, Christian Farland was present and stated he would be open to the continuance. Did receive letter from DMF – doesn't want work to be done in January to May. Again, Mr. Haworth asked for Mr. Farland to ask for a continuance, because he didn't want too much discussion to occur if it was going to be continued.

Board members agreed.

Jay Simmons made a motion to continue to the August 24, 2020 meeting per the applicants request and was seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote 5-0.

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

a) 50 Balsam Street

Ms. McClees reviewed the cease and desist order that had been issued with work being done without permits. She stated a second cease & desist was issued and work continued. Therefore an enforcement order has been issued. She stated she has not been contacted by the property owners.

Mr. Lavalette stated he tried talking to the assumed property owner who wanted no part of him. He stated the Building Department has also been there with cease & desist order and that has been torn down as well. Mr. Lavalette stated that with the volatile nature of the individual he called the police and the assumed property owner left before the police arrived. He stated he never got to speak to him and hasn't done work there or returned in about a week.

Mr. Simmons stated he was aware of what occurred and there are significant violations.

Ms. DeSalvatore asked if we should fine the home owner.

Mr. Haworth stated the first thing they need to do is ratify the enforcement order and then think we should fine in the near future.

Amy DeSalvatore made a motion to ratify the enforcement order for 50 Balsam Street and was seconded by Dan Doyle. The motion passed unanimously 5-0. Via roll call vote.

b) 1 Calumet Road

Ms. McClees stated she received a report of potential work happening at the beach. The homeowners were in the process of building a fire pit and placement of sand occurred. She stated the house when constructed, was superseded with order of conditions from the State. She said the owners didn't know they had to call Conservation to do additional work.

Owners, Sandy and Ron Stapleton were present. Ms. Stapleton stated they had no idea they needed a permit, she said that because they had to go through the State for the construction ten years ago and talked about the fire pit at that time, she didn't know they still had to go to their local Conservation. The Stapleton's stated they would be amicable to move forward with what the Conservation required.

Ms. DeSalvatore stated they should have the opportunity to review with their engineer and come back to next meeting.

Mr. Doyle said he was appreciative they are on call and want to correct anything.

Ms. McClees agreed with Ms. DeSalvatore that they should come back to the Board. She agreed to discuss with them further on what needs to be done prior to that meeting.

Mr. Haworth asked the Stapleton's to discuss with Ms. McClees and then they would be asked to come back to the next August 24, 2020 meeting.

8. **Correspondence**

No correspondence.

9. **Ongoing Projects:** Ms. McClees received a phone call from 44 Torrington Road that the restoration project has begun.

10. **Upcoming Projects:** Ms. McClees stated that the legal notice has been filed for three upcoming filings: 148 Shaw Road a Notice of Intent for a removal of a barn; 108 Sycamore Street for a demolition of the building there, and to rebuild a two family home. And a Request for Determination for an accessibility pathway at 6 Fort Street.

11. **General Business**

a) Bills

Ms. McClees stated there were three bills: Fairhaven Neighborhood News - \$285 legal ads for the June 22, 2020 and July 7, 2020 meetings; MACC - \$368 – FY21 dues & handbook subscriptions. Also the MSCP - \$20.00 for FY21 dues.

Ms. DeSalvatore asked whether or not there would be monies to cover the MACC Conference. Ms. McClees stated it was most likely going to be held via zoom and the dates were October 17-October 24, 2020 for the National Conference. She will keep everyone posted, but was sure there were monies in the budget for that expense.

b) Next Meeting: August 24, 2020

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

In other business, Mr. Haworth and Mr. Lavalette stated there were issues at 200 Mill Road. Mr. Lavalette stated that ninety percent of the work was completed. He stated that a cease and desist order was issued and there has been no activity since.

Ms. McClees stated she will follow up with the engineer and has a site visit for August 11, 2020.

Also, Mr. Lavalette stated he found a driveway being done on Bonney Street. He did put a call into DPW, a permit was issued; but it is in a velocity zone, and not filed with the commission. He said there was pavement there previously, there was a slight expansion being done with 2' wider and 2' into the property. He had discovered this today just before noon.

Ms. McClees will send them a letter.

Amy DeSalvatore made a motion to adjourn and was seconded by Jay Simmons. The motion passed unanimously via roll call vote 5-0 at 8:44p.m.