

Conservation Commission
September 14, 2020
Minutes

1. Chairman's Welcome and Media Notification

Mr. Haworth opened the meeting at 6:33pm and had Ms. McClees read the media notification as well as the Zoom information regarding meetings via Governor Baker pandemic information.

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 Geoff Haworth, Gary Lavalette, Amy DeSalvatore, Nick Sylvia, and Dan Doyle. Also in attendance remotely was Conservation Agent, Whitney McClees.

2. Quorum/Attendance: Present: Geoff Haworth, Gary Lavalette, Nick Sylvia, Amy DeSalvatore, and Dan Doyle.

Jay Simmons has resigned.

Conservation Agent, Whitney McClees was also present.

3. Minutes

- a) Approve the minutes of August 24, 2020 – Ms. DeSalvatore made a motion to accept the minutes of August 24, 2020 and was seconded by Gary Lavalette. The motion passed unanimously via roll call vote, 4-0-1 (Nick Sylvia abstained).

4. Requests for Certificates of Compliance

- a) SE 023-779, CON 023-174: **23 Point Street**. Ms. McClees stated this was an order of conditions that was issued in 2002, approved for a construction of a house with three conditions. A Determination for the paved driveway was issued in 2013. Ms. McClees recommended to issue the Certification of Compliance.

Amy DeSalvatore made a motion to issue the COC for 23 Point Street and was seconded by Gary Lavalette. Motion passed unanimously via roll call vote.

- b) SE 023-1159, CON 023-175: **6 Cove Street** – Ms. McClees stated this was a Notice of Intent (NOI) that was submitted in 2013 with an order of conditions although it was never recorded. She stated the NOI was in response to an enforcement order for beach raking. Her recommendation was to issue the certificate of compliance for an invalid order of conditions. She also stated that any other work being done on the beach would need to come back before the commission.

Ms. DeSalvatore asked if there was any new work done at the property. Ms. McClees stated she hadn't visited the property since the fence permit, but it didn't appear there was any work being done there.

Ms. DeSalvatore made a motion to issue the Certificate of Compliance on SE 023-1159, CON 023-175, 6 Cove Street for an invalid order of conditions and was seconded by Gary Lavalette. The motion passed unanimously via roll call vote.

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 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.

- d) SE 023-1309, CON 023-110: **1 Bella Vista Island – *continued to September 28***

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.

New Requests for Determination

- e) CON 023-171: **172 Balsam Street**

Request for Determination of Applicability filed by Stephen Hickox for the installation of a 3-foot by 5-foot wooden platform for a generator at the property located at 172 Balsam Street, Assessors Map 43B, Lot 35. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Bordering Vegetated Wetland.

Mr. Haworth opened the public hearing for this Request for Determination.

Ms. McClees stated it was primarily a flood project area. She said there was a proposal to locate a generator off a set of stairs, in the rear of house on the water side. She stated the four sonotubes have been installed. She stated the property is in a 16' flood zone in that area, 16'25' height, but they may have to bring to 18' to comply, but it shouldn't impact sonotubes that was dug. Ms. McClees recommends closing the public hearing and issuing a Negative 2 and a Negative 6.

Mr. Haworth confirmed this was not brought forth by a cease and desist order; to which Ms. McClees stated it was not.

Mr. Doyle asked about the height, from 16 to 18'. Mr. Haworth stated they would have to follow building code.

Mr. Lavalette asked how the 3x5 wooden platform was going to be attaching to existing deck.

Ms. McClees showed the design that is adjacent to the stairs, and that it would be level with the platform of the stairs, per the plan that was submitted. She said she believed they are not extending the deck.

Ms. Desalvatore asked how the platform will be supported, and Ms. McClees stated it had sonotubes and would be part of existing deck.

Mr. Haworth asked if there was any public comment, there was none.

Gary Lavalette made a motion to approve CON 023-171: 172 Balsam Street as a Negative 2 and a Negative 6 Determination with the condition that the project be compliant with all building

regulations and was seconded by Amy DeSalvatore. The motion passed unanimously, 4-0-1 (Nick Sylvia was lost from the call.)

f) **CON 023-172: 37 Washburn Avenue**

Request for Determination of Applicability filed by Lavar Gilbert for the addition of loam and seed throughout the yard area, removal of overgrown shrubs, and planting native vegetation at the property located at 37 Washburn Avenue, Assessors Map 4, Lot 158. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zones to Salt Marsh.

Ms. McClees reviewed the project. She stated the applicant removed Japanese knotweed that was overtaking the house and property. She said the applicant was looking to add loam and seed throughout the area and native vegetation in south corner of home. She said he wanted to add approximately forty yards of loam and looking to stabilize the area. Ms. McClees did a drive-by today and notice they were building a deck/porch in the front of the house, that needs a permit sign-off from Conservation. For the planting portion, she is recommending a Negative 3 and a Negative 6, with conditions as outlined in her staff report, but the deck needs to be included in the RDA.

Mr. Haworth suggested they not move forward until they get information on the deck.

Ms. McClees agreed.

Mr. Lavalette agreed to wait until the deck is permitted as well as Mr. Doyle and Ms. DeSalvatore stated the same.

Mr. Haworth made a motion to continue to the next meeting to hear more about the front porch/deck and was seconded by Amy Desalvatore. The motion was unanimous via roll call vote.

Ms. McClees stated there was a few people from the public, who wanted to comment on this project.

Mr. Wesley Wood stated he lived next door, and Mr. Gilbert's gutters were facing his property. He has concerns that the water is going to go in his yard. He said the house had been abandoned for years and is a non-conforming lot, so he was not sure how they got a permit to build the porch/deck. He was also concerned on the possibility of the basement flooding and what would happen to that water.

Mr. Haworth stated the non-conforming issue has to be taken up with the Zoning Enforcement Officer. Ms. McClees stated she would check in with the building department.

Abutter, Thomas Bourque stated he thought more was taken out in the rear of the property than the Commission thought. Ms. McClees stated she would go out for a review.

Abbreviated Notices of Resource Area Delineation

g) **CON 023-173: 18 Bass Creek Road**

Abbreviated Notice of Resource Area Delineation filed by John Kalife requesting confirmation of a boundary delineation of a Bordering Vegetated Wetland at the property located at 18 Bass Creek Road, Assessors Map 43C, Lots 296, 298, 300, 302, 304, 306, 309, 310, and 311.

Ms. McClees stated there was no DEP file # yet, therefore they could not close the Public Hearing. She stated the green cards have been submitted. She stated she did a site-visit with the applicant, and there was not a thorough view of the wetland line as of yet. Ms. McClees stated her recommendation would be to have the line reviewed and she said what was submitted deviates significantly from the DEP layer on MassGIS and soil maps. She stated this warrants further specific review.

The applicant, John Kalife was present remotely. He said he would like to build a home at the property for his family and he does have an engineer, Frederick Geisel, who couldn't be on the call tonight.

Mr. Lavalette stated he did some googling around and found that his engineer was a previous owner of GCG Associates.

Mr. Haworth asked Ms. McClees if she could review the wetland line.

Ms. McClees stated she would touch base with a circuit rider and review the wetland line.

Mr. Lavalette stated he would be okay with Ms. McClees working with the applicant. Mr. Doyle agreed.

Ms. DeSalvatore believes it should go to peer review; it's hard for Ms. McClees to get a day off never mind doing any more work.

Mr. Haworth opened it up for public comment.

Mr. Ristuccia was on the call and gave input for the engineer, Mr. Geisel. Mr. Ristuccia asked if the engineer could be there with her when she reviews the wetland line.

Ms. McClees stated it depends on the availability. She said she generally prefers to review the line herself and then follow up with the wetland scientist.

Mr. Ristuccia said he was asking because he knew the man has the education and knowledge and experience to review.

Ms. McClees stated it sounds like he has more experience on north shore vs. down here.

Mr. Haworth reiterated they couldn't continue without a DEP # anyway. He recommended that Ms. McClees verify the wetland line.

Ms. McClees stated she will do her best to review the line within the next two weeks, however any revisions would need to be submitted before next meeting and that could be a little tricky.

Mr. Haworth made a motion to continue Bass Creek Road to the next meeting of September 28, 2020 with Ms. McClees working with the applicant to review the wetland line and was seconded by Dan Doyle. The motion passed via roll call, 4-0 unanimously.

New Notices of Intent

h) SE 023-1330, CON 023-170: 200 Mill Road

Notice of Intent filed after-the-fact by Paul Downey, Mill Bridge Holdings LLC, for curb and pavement rehabilitation and drainage pump and outlet replacement at the property located at 200 Mill Road, Assessors Map 36, Lot 11A. Work to take place in the 100-foot buffer zone to Bordering Vegetated Wetland.

Ms. McClees stated a Notice of Intent was filed after the work started. They were filling and replacing pipes and pump systems. She did have a question on what type of filtration was proposed.

Ms. McClees stated the engineer had stated they started backfilling for safety reasons, so as not to keep open a trench area. They have installed silt fencing; a rip rap basin area would be installed to help with potential erosion and slow down the water. Ms. McClees' recommendation would be to close the public hearing and issue an order of conditions with conditions as outline in the staff report.

Mr. Haworth stated he was disappointed that a large corporation did this work without filing.

Bob Field, Engineer was at the meeting via remote. He said it was his understanding that the pump replacement was started outside of the buffer zone, which they new they had old cracks and by the time they chased it was within the buffer zone. He said he had no better explanation.

Mr. Haworth stated he would like a \$300 fine for doing the work prior to the filing.

Mr. Field stated he will get the specifications on the infiltration system that goes into a French drain and will forward to Ms. McClees in a day or so. He said that she explained everything well and had no additional comment.

Ms. DeSalvatore stated she had concerns about the rate of discharge and would like to see it go to peer review.

Mr. Field stated it was a pre-existing condition since site was built with the same discharge it's always been.

Ms. McClees stated there was no specific wetland line.

Ms. DeSalvatore suggested a peer reviewer, whereas it will be helpful.

Gary Lavalette said he's been at the site many times and thinks that there has always been erosion. He too, was disappointed that this is after the fact filing. He was concerned on the clean out of the pipes that were present on the lot.

Mr. Doyle had no further comments.

Mr. Haworth stated he felt it was two separate violations, the paving and the pipes, and recommended a \$300 fine for each violation. He said he is not in favor of moving forward and would like to see an actual wetland line delineated so they can see where the actual basin is. Ms. DeSalvatore agreed.

Mr. Haworth stated he wanted rip rap at the discharge of pipes, widen the basin, a wetland line delineated and the \$600 fine, for after the fact filing of two violations.

Mr. Lavalette totaled agreed and would like to see what will be put in those drains. He stated there should be some type of improvement in the parking lot.

Mr. Doyle said he was acceptable to what was recommended. Amy DeSalvatore agreed as well and asked for mitigation to the wetland area.

Bob Field requested a continuance to September 28, 2020.

Ms. McClees stated all plans and documents due by September 21, 2020 to make the September 28th meeting.

Mr. Field stated if not flagged by this week he'll ask for a continuance further out.

Mr. Haworth made a motion to issue the \$600 fine for paving work and piping without prior permitting through Commission, per Chapter 192-11 in the Fairhaven Conservation By-Laws and was seconded by Amy DeSalvatore. The motion passed unanimously via roll call vote.

Mr. Haworth made a motion to have the applicant use rip rap at the end of pipe to avoid erosion and to get the office a wetland line to us as soon as possible. The motion was seconded by Amy DeSalvatore and was passed unanimously by a roll call vote.

Continued Notices of Intent

- i) SE 023-1324, CON 023-153: **86-88 Middle Street – request for continuance to September 28**

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 the motion to continue to September 28, 2020 per the applicant's request and was seconded by Gary Lavalette. The motion passed unanimously by roll call vote.

j) SE 023-1296, CON-19-050: **46 Sconticut Neck Road – continued to September 14**

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.

Ms. McClees stated she received an updated email to request a continuance to November 23, 2020 meeting to allow time for the Planning Board's review. Mr. Haworth asked for renotification where it was to be continued so far out. No comments from board members.

Mr. Haworth made a motion to continue to November 23, 2020 at the applicant's request and was seconded by Amy DeSalvatore. The motion passed unanimously by roll call vote.

k) SE 023-1308, CON 023-095: **Huttleston Avenue, Assessors Map 31, Lots 115A & 117C – continued to September 14**

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 stated the applicant requested to continue to September 28, 2020.

Mr. Haworth made a motion to continue to September 28, 2020 per the applicant's request with renotification at the next meeting and was seconded by Ms. DeSalvatore. The motion passed unanimously by roll call vote.

l) SE 023-1325, CON 023-158: **1 Crow Island – continued to September 14**

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 Waterbodies and Waterways, Coastal Beach, Coastal Dune, and the 100-foot buffer zones to Coastal Beach and Coastal Dune.

Ms. McClees reviewed the project. She did recommend mitigation. She stated that the Division of Fisheries and Marines concurred with the drilling versus the sink/float method. She recommended closing the public hearing and issue the order of conditions as listed in her staff report.

Mr. Christian Farland, engineer was also on the call remotely.

Ms. DeSalvatore asked if the entire island is in a velocity zone.

Mr. Farland stated there is a portion in the velocity zone and a portion in the 100' year flood zone.

Mr. Farland reviewed the project with flood waters for Ms. DeSalvatore in detail with adding fill to the site. Ms DeSalavatore stated she is concerned about the impact on the island removing the trees and the resource area.

Mr. Lavalette had no additional comments. Mr. Doyle had no additional comments.

Mr. Haworth opened it up for public comment but there was none.

Mr. Haworth made a motion to close the public hearing and issue order of conditions, as listed in the staff report for plans dated August 17, 2020 and conditions as outlined in the staff report dated September 11, 2020, 52 condition. The motion was seconded by Amy DeSalvatore and passed unanimously via roll call vote.

m) SE 023-1329, CON 023-167: **108 Sycamore Street – *continued to September 14***

Notice of Intent filed by Chris Simmons for the demolition of an existing building and the construction of a 2-family residential building, concrete driveway and walkway, patio, utilities, grading, and landscaping at the property located at 108 Sycamore Street, Assessors Map 20, Lot 33. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zones to Coastal/Barrier Beach, Tidal Flat, and Salt Marsh.

Ms. McClees reviewed the project stating the applicant is proposing to demolish the existing building and construct a new 2-family residential building, concrete driveway and walkways, paver patio, utilities, grading, and landscaping. All proposed improvements fall within Riverfront Area, flood zone and the 100-foot buffer zone to coastal bank and salt marsh and a portion of the work falls within the 100-foot buffer zone to tidal flat (coastal beach).

Engineer, Paul Matos was on the zoom call and explained the project in further detail. He said they have checked all boxes in the Riverview Act. It is an existing lot with 4,112 impervious surface and 3,178 sq feet of overgrown areas. No natural species and all overgrown- invading species. He said it was an Improvement over existing conditions, and they are increasing green space. Permanent landscape buffer.

Mr. Haworth said he disagrees with the assessment and feels that moving 6' paved area doesn't constitute as a landscape buffer and should be at least 25'. He said it is a sensitive area and does not think this is a permissible project.

Gary Lavalette stated a proposed two family is overkill for this property – a single family with buffers on both sides might be more doable. Mr. Lavalette believes it has to be scaled down to get the buffer zone.

Ms. DeSalvatore concurred and would also like to see more dense plantings to native plants.

Mr. Doyle asked about the footprint staying the same regardless if it was one or two family.

Mr. Doyle stated that he thought 11' was close to the buffer zone, but he isn't a big fan of the 25' setback.

Mr. Haworth stated the footprint change is very important as the impact would be higher on the resource area with a two family versus a single.

Mr. Matos stated he doesn't believe that Conservation Commission has a right to propose a single-family dwelling as that is a Zoning issue. He said they have a right to develop as it is today.

Discussion ensued from members of the board to scale back the project.

Mr. Matos stated the position of the building has been established by zoning. He suggested they continue to the next meeting and will speak with my client to see if we can reduce the building size.

Mr. Haworth opened it up for public comment. John Downey and Mr. Kendall wanted to speak.

Abutter, Richard Kendall, who lives at 99 Sycamore Street said he agrees with commission members and explained a little bit about the past with the building. He believes the whole area may be condemned on what was there previously and had concerns with a building there.

Abutter, John Downey agreed that the proposed two family was too big for the size of the lot. He said he was hoping to see a smaller footprint

Mr. Kendall stated that he would like to see notifications sent via certified as should be.

Ms. McClees stated he did receive meeting notification via regularly mail certificate of mail, which was okay per state regulations, but she was going to confirm with their bylaws.

Mr. Matos said they had notified the abutters per the according methods; will ask my client if he wants to remail per the certificate.

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

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

- a) 41 Bayview Avenue – Ms. McClees received a report of a paved driveway without a permit in a velocity zone. She has since met with the property owner and explained the filing process which is forthcoming before the Commission on September 28, 2020. They will be asking for a small fence at that time as well.

Homeowner, William Ryan was present and stated they installed the driveway with no knowledge of Conservation regulations.

Mr. Lavalette asked if this had gone before Department of Public Works and was told it had not.

Ms. McClees explained that past practice, the Commission has requested that a portion of the driveway be reverted back to impervious surface, and/or issued a fine. She said it is in their hands for a recommendation.

Mr. Ryan stated it was approximately 20' wide driveway; 100' lot and the length is probably 10-15'. Previously it was crushed gravel.

Mr. Haworth stated to be consistent he would recommend a \$300 fine.

Board members agreed to the fine. Ms. DeSalvatore questioned whether he was over lot coverage.

Ms. McClees stated a \$200 filing fee has been submitted at this time. She stated he is at 27% lot coverage currently and adding plantings would be an asset to this area.

Mr. Lavalette wasn't sure whether the DPW would allow him to keep the driveway there.

Ms. McClees stated she believed the DPW has submitted a letter and that the applicant has contacted them. She said they would hear this case on September 28, 2020 anyway.

Mr. Haworth made a motion for 41 Bayview Avenue to issue a \$200 fine and a planting plan to be filed with the Conservation with his RDA for the September 28, 2020 meeting. The motion was seconded by Ms. DeSalvatore.

On the question, Ms. DeSalvatore would like to see the Commission as a whole move away from pervious driveways in the velocity zone. Mr. Haworth agreed.

Via roll call vote, the motion passed unanimously.

- b) 1 Smugglers Beach Road – Ms. McClees stated this was brought about through an enforcement order that was issued. She has since received planting plans to help resolve. She stated that a summary of items was sent with the enforcement order to address the cutting of vegetation, tracks by ATV across the marsh, removal of vegetation, 12,000 sq feet of knotweed that was removed. She stated the engineer, Rick Charon was proposing to replant with wildflowers, grasses and was proposing 10' control strip of clearing area, 25' off edge of wetland as a buffer.

Rick Charon, engineer for the Deckers, reviewed the project as Ms. McClees stated advising that there was a lot of knotweed in the area and they were hoping to get in the 10' control strip, which would allow them to mow for up to three years.

Mr. Haworth stated he is leaning toward a \$300 fine to be consistent with how they have been fining. He said at this time, where this is the response to an enforcement order that he didn't want to put anything to a vote, but it would be discussed at their next meeting.

- c) 50 Balsam Street – Ms. McClees had no additional update. Mr. Lavalette, who frequents the area, stated there has been no additional work since the beginning of the enforcement order.

6. **Correspondence** – None at this time.

7. **Ongoing Projects** – None.

8. **Upcoming Projects** – Ms. McClees advised a number of filings for the September 28, 2020 meeting and reviewed them with the Commission.

9. **General Business**

- a) Bills – Ms. McClees reported three. \$1150-GCG for peer review of 86-88 Middle Street; \$480 Fairhaven Neighborhood News for the July 27, August 10, and August 24 Meetings. And \$3.13 for shipping and handling related to MACC brochures.

- b) Next Meeting: September 28, 2020

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

In other business, Ms. DeSalvatore asked about the upcoming conference and workshop classes that were available. Ms. McClees stated she would forward an email out to the Commission members.

Geoff Haworth stated there were openings on the board and asked the Public, who may be interested to send a letter of interest to either Ms. McClees and/or the Board of Selectmen.

Ms. McClees advised there would be only one meeting in October, and that is October 19th. Mr. Lavalette reported he hoped to be there for that meeting, as he is going through a personal issue on October 11th but should be home by the 19th.

Amy Desalvatore made a motion to adjourn and was seconded by Gary Lavalette. The motion passed unanimously at 10:01p.m. via roll call vote.

Respectfully submitted,

Patricia A. Pacella
Recording Secretary

Approved 10/26/2020