

Conservation Commission
November 9, 2020
Minutes

1. Chairman's Welcome and Media Notification - Mr. Haworth opened up the meeting at 6:38p.m. and Ms. McClees read the Open Meeting Remote access 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

2. **Quorum/Attendance:** Present remotely: Geoff Haworth, Gary Lavalette, Amy DeSalvatore, Dan Doyle, Nick Sylvia, Corey Pietraszek

Absent: John Dallen

Mr. Haworth welcomed Corey Pietraszek and John Dallen to the Commission.

Ms. McClees, Conservation Commission Agent was also at the meeting remotely.

3. **Minutes**

- a) Approve the minutes of October 26, 2020 - Not available at this time. Mr. Haworth made a motion to table minutes and was seconded by Gary Lavalette. The motion passed unanimously via roll call vote.

4. **Appointment to Non-Voting Consultant Position**

- a) Ronnie Medina

Ms. McClees stated Mr. Medina expressed interest in a non-voting consultant position. Mr. Haworth stated that the position would be until June of 2021.

Ms. DeSalvatore stated it would be nice to know why people want to come on the Commission. No further questions from other members at this time.

Mr. Haworth made a motion to appoint Ronnie Medina to a non-voting position and was seconded by Ms. DeSalvatore. The motion carried unanimously via roll call vote.

5. **Planting Plan Discussion/Approval**

- a) SE 023-1331, CON 023-177: **4 Boulder Court**

Ms. McClees stated this was submitted for the last meeting by the applicant as a requirement of the Order of Conditions for the property. She stated the proposed planting areas were on two areas of said property; along south side of house, which is approximately 50' from the edge of wetland and they proposed variety of native plants and wildflowers. Ms. McClees said they have also stated that all mature trees that aren't in way of house construction will remain. If any mature trees have to come down, they are very amendable to plant trees on other side of silt fence area in future after site has stabilized.

Ms. DeSalvatore's first impression was it looked a little thin and thought a 10" thick hedge would be in order because of the vegetation being removed. She said the clusters of bushes

should spread as well as the grassy area. Mr. Lavalette agreed with her. Ms. DeSalvatore asked if Ms. McClees was okay with the planting plan, which she stated she was.

Ms. DeSalvatore suggested a request to stipulate that in the future, the Conservation Commission should be able to revisit the planting plan.

Ms. McClees stated the said condition could be added that if vegetation fails within a three year period, that it could be replaced. She stated they could also add a condition that requires 75% or more for a successful replication.

Mr. Lavalette asked how they keep track of order of conditions with the different plantings and such.

Ms. McClees advised a certificate of compliance would not be issued until plantings are satisfied.

Applicant, Sherry Krauthamer was on the call via remote as well. She stated that on the Southern side were two very large maple and birch trees and a line of tall pine shrubs. She said the area they are going to build they will do exactly what is shown on planting plan.

Mr. Haworth made a motion to approve the planting plan for 4 Boulder Court and was seconded by Dan Doyle. The motion passed unanimously via 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

- a) SE 023-1296, CON-19-050: **46 Sconticut Neck Road – *continued to November 23***

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 023-1324, CON 023-153: **86-88 Middle Street – *continued to December 7***

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.

Mr. Lavalette asked if applicants ever give a valid reason to continue. Mr. Haworth stated they do have to give a valid reason and usually they are busy doing other permitting they have to get done first.

Requests for Determination of Applicability

- c) CON 023-190: **3 Bayside Street**

Request for Determination of Applicability filed by Lucy Figueiredo for the construction of a deck at the property located at 3 Bayside Street, Assessors Map 42, Lot 52. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Bordering Vegetated Wetland.

Ms. McClees reviewed this RDA. Application is for a deck on front of property, which is to rebuild of portion of the existing deck and new portion of a deck with eleven sonotubes for reconstruction. Ms. McClees recommended closing the public hearing and issuing a Negative 3 and a Negative 6 determination with the two conditions as outlined in the staff report.

Ms. Figueiredo attended the meeting remotely and stated the front deck was non-repairable. It was not structurally sound and rotting away.

No further comments from any commission members. Mr. Haworth opened up to the Public, no comment made at this time.

Mr. Haworth made a motion to close the Public Hearing and issue a negative 3 and negative 6 with the two conditions as listed in the staff report. Ms. DeSalvatore second the motion and it passed unanimously via roll call vote.

Abbreviated Notices of Resource Area Delineation

- d) SE 023-1332, CON 023-173: **18 Bass Creek Road – request for continuance to November 23**
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 advised they are in the process of reflagging the wetland line and has asked for a continuance. No comments from conservation members.

Mr. Haworth made a motion to continue 18 Bass Creek Road to November 23, 2020 at the applicants request and seconded by Gary Lavalette. The motion passed via roll call vote.

Requests for Amended Order of Conditions

- e) SE 023-1302, CON 19-066: **6 Emerson Avenue**
Request for Amended Order of Conditions filed by Natalie Reis for the relocation of the proposed garage at the property located at 6 Emerson Avenue, Assessors Map 29A, Lots 119-122. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zones to Coastal Beach, Barrier Beach, and Bordering Vegetated Wetland.

Ms. McClees stated this project has previously been before the commission and they have returned for an amended order of conditions to move the garage further north on the property. She said the mature tree to be removed as proposed with no grade change per plans and any grade change will be minor to level out site if necessary. The primary change is relocation of garage. Ms. McClees recommends a condition to retain the mature tree should it be damaged or die and that a native tree be replaced with a species to be submitted for approval.

Ms. McClees stated she received a letter from a number of the abutters today with concerns that it falls within wetland restrictions. They don't think it complies with zoning or wetland area and it was a total of six different abutters.

Applicant's representative, Michael Ristuccia was on the call and stated nothing has changed except the garage is being relocated farther away from wetlands and to a higher elevation. He said it was the same plan and same as presented and approved. He said they are doing every effort to save the mature tree, however if it's too close they may have to be taken down.

Mr. Lavalette asked about 1000-gallon drywell and had concerns that no drainage be inside the garage.

Ms. McClees stated the drywell details with holes on side to allow infiltration back into the ground from runoff from the garage and existing dwelling. She stated there was a condition that an annual inspection is required by the homeowner.

Ms. DeSalvatore stated she would like to see a temporary fence around the drip line of the tree, and not just tape so the roots would be protected during construction.

Mr. Ristuccia stated he would be fine with putting up that fence.

Mr. Haworth stated the proposed project is 30' away from the wetland area and explained what conservation concerns are, which is protecting the earth not something else like view.

Mr. Haworth opened it up for public comment.

Abutter, Susan Spooner stated the larger question was that Ms. Reis is stating she wants to house her car while she is away and she is building a two bay, two story extravaganza. She stated the abutters have never expressed they will not have their ocean view, as Mr. Haworth stated previously. She said there are concerns from a conservation standpoint regarding dredging, chemical particulates in the wetland, restriction buffers, cutting of vegetation. She said she would like to know if the building commissioner is aware of the project and she thinks it most definitely takes well over the 25% lot coverage of her property.

Abutter, Eloine Viera stated this project has been presented to the Zoning Board of appeals and was denied initially. She stated the problem is a proposed two-story for a craft room with no plumbing. She believes there is a hidden agenda.

Mr. Haworth stated the number of stories the garage has is not a factor for Conservation. He said it does have the same footprint as previously approved. He said where the garage is being moved to is further away from the wetland line and that's their concern.

Ms. McClees gave a refresher of the project to the board.

Ms. Viera stated 6 out of 7 of the abutters are against this project.

Mr. Haworth made a motion to close the public hearing and approve the amended order of conditions from plans dated September 25, 2020 with the fifty-one conditions plus the two additional conditions discussed this evening (drywell shall be for roof run off only and the protective fence to be installed around the mature tree), for a total of fifty three conditions as stated in the November 6, 2020 staff report and was seconded by Mr. Lavalette. The motion passed unanimously via roll call vote.

Notices of Intent

f) SE 023-1309, CON 023-110: **1 Bella Vista Island – request for continuance to November 23**

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 applicant has asked for a continuance to November 23, 2020 and she will be working on letter this week to send them so she would appreciate continuance from the board.

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

g) SE 023-1333, CON 023-181: **18 Point Street**

Notice of Intent filed by Antonio and Doreen Albuquerque to raze the existing house and construct a new flood zone-compliant single family home with associated utilities and site work

at the property located at 18 Point Street, Assessors Map 28B, Lots 207 & 220. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zones to Coastal Beach and Coastal Dune.

Ms. McClees stated she didn't see the engineer on the call as of yet.

Mr. Haworth made a motion to table 18 Point Street until the engineer could be present and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote.

Later in the meeting, Rick Charon was on the call. Mr. Haworth made a motion to untangle 18 Point Street and seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote.

Ms. McClees reviewed the project as a proposed new Single Family Dwelling with a concrete paved driveway, frost foundation below grade and proposed inground recharge system. She had a question for the engineer, on how the impact of the erosion would be controlled to the surrounding soils and to the coastal dune.

Engineer, Rick Charon reviewed the project and stated they normally used this type of foundation. He said they are pretty familiar with the soils in this area as they had built a home a few years ago. He said they are proposing breakaway walls.

Discussion with conservation members ensued.

Mr. Haworth said he would like to do a little more research to better understand this project.

Mr. Lavalette stated he was not in favor of these types of foundation and wouldn't be in favor of this project as presented.

Other members had no problem with continuance.

Mr. Haworth opened up to the public, where there were no comments at this time.

Mr. Charon asked for a continuance.

Mr. Haworth made a motion to continue per the applicants request to November 23, 2020 and was seconded by Mr. Lavalette. The motion passed unanimously via roll call vote.

h) SE 023-1334, CON 023-184: **15 James Street**

Notice of Intent filed by Kyle Costa to raze the existing house and construct a flood zone-compliant single-family dwelling with associated utilities and site work at the property located at 15 James Street, Assessors Map 2, Lots 146 & 147. Work to take place in Land Subject to Coastal Storm Flowage.

Mr. Haworth opened the meeting for 15 James Street.

Ms. McClees reviewed the project as an existing house and shed exists on the property and the applicant was going to raze the home and construct a new with same type of frost wall foundation. Project is in a flood zone only with no other resource area within 100' of property. She said there were a small amount of fragmities they are proposing to remove with no catch basin and no erosion control proposed.

Rick Charon stated it was a very similar project in the AE zone, elevation 15' per plans.

Mr. Lavalette stated again he was not in favor of breakaway walls.

Mr. Haworth stated that the breakaway walls does meet the FEMA regulations so it is an approval way to build the foundation regardless if a member is not in favor - they have to go by the FEMA regulations.

Abutter, David Caruso was on the call remotely and stated he was not in favor and had concerns for runoff of project both during and after the construction. His other concern is the size of the project that is double the size, which adds more to the runoff.

Mr. Charon stated they wouldn't be oppose to adding a recharge system on the roof. -Ms. McClees advised with the approval is that the recharge system would have a condition that it must be maintained yearly.

Mr. Haworth made a motion to close the Public Hearing and issue an order of conditions for plans dated October 20, 2020 with the new plans showing recharge system for roof and an added condition to installed and maintain recharge system. The motion was seconded by Dan Doyle and passed unanimously via roll call vote with Ms. DeSalvatore abstaining. Motion passed 5-1.

i) SE 023-1337, CON 023-189: **1 Smugglers Road**

Notice of Intent filed by Keith and Kimberly Decker for the construction of a 26-foot by 26-foot two-story garage, associated site work, and driveway expansion at the property located at 1 Smugglers Road, Assessors Map 29, Lot 1. Work to take place in the 100-foot buffer zone to Bordering Vegetated Wetland.

Ms. McClees reviewed the project for a proposed two-story garage, 25' away from vegetated wetland whereas some grading and filling is being proposed. Some grading will occur closer to the 25' wetland area and applicant will modify driveway to access garage appropriately. She stated it was outside of flood zone within 100' buffer sone from BVW. She said the rest of the driveway is out of conservation entirely. She said the applicants wanted to clean out the adjacent parking area which had invaded species. A project narrative update has been submitted. Ms. McClees recommended closing the public hearing and recommends an order of conditions from plans dated October 15, 2020 with the number of conditions as listed in the staff report. She stated the wetland line has not been verified and was done in May 28, 2020. It is not approved as a condition.

Engineer, Dave Davignon was on the call representing the Deckers. He stated he only wanted to add that the garage did receive zoning board of appeal approval for the height. They are proposing underground electric line and no plumbing as shown per plans.

There were no questions from some board members.

Mr. Lavalette stated he had no problems with this project but he did have concerns about previous violations on this property and would like to see those corrected and closed before they move on with something else.

Ms. McClees stated they approved the restoration plan in September and site visits have been done to stake out projects that need to be addressed. They will begin scraping out the knotweed and fresh loam with needed seed mix. She said there has been movement to make the corrections on the property. The fine was issued but has not been received to date. Ms. McClees stated the commission could add a condition that would prevent moving forward until the fine is paid.

Mr. Haworth made a motion to close the public hearing and issue an order of conditions for 1 Smugglers Road from dated plans of October 15, 2020 with the listed conditions as listed in the November 6, 2020 staff report, including the forty-four conditions listed as well as adding one more addressing the fine. The motion was seconded by Mr. Lavalette. The motion passed unanimously via roll call vote.

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

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 stated the applicant has asked for a continuance to November 23, 2020 to pull together calculations as requested by the Commission previously.

Mr. Haworth made a motion to continue to November 23, 2020 per the applicants request and was seconded by Dan Doyle. The motion passed unanimously via roll call vote.

Violations/Enforcement Orders/Cease and Desist Notices

- k) **2 Melpen Way** - Ms. McClees stated this was an Enforcement Order violation. It required a restoration plan that has since been submitted for review. The narrative has noted nineteen trees that were cut on site; they are proposing a replacement 1:1 of black cherry and red cedar. In addition to trees, thirty shrubs including sweet pepper bush and bayberry are proposed. They are proposing reconstructing the boardwalk (which is not new); removing planks and replacing $\frac{3}{4}$ " spacing to prevent shading impacts on marsh below. Ms. McClees stated \$900 fine was issued and received.

Mr. Charon stated it was a pre-existing walkway that was already there and they just want to remove the planks to set up better spacing.

No questions from board members.

Mr. Haworth stated once they modify the boardwalk, they need to use today's current standards.

Mr. Haworth made a motion to approve plans dated October 26, 2020 with set conditions as listed in the staff report. The motion was seconded by Ms. DeSalvatore and passed unanimously. Mr. Haworth made a motion to approve plans dated October 26, 2020 with conditions as listed in the staff report from November 6, 2020 and was seconded by Ms. DeSalvatore. The motion passed unanimously.

7. **Correspondence** – Ms. McClees advised none at this time
8. **Ongoing Projects** – Ms. McClees stated there were no updates at this time. She advised there is a Certificate of Compliance coming before them on November 23, 2020.

Mr. Lavalette asked about the status of 200 Mill Road. Ms. McClees stated that was approved at a meeting he did not attend.

9. **Upcoming Projects** – Ms. McClees stated a few certificate of compliances were coming up and a couple of Notice of Intents.

10. General Business

- a) Bills – none to present
- b) Next Meeting: November 23, 2020

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

Ms. McClees stated she received a report from the Harbormaster that someone was doing work on Goulart Memorial Drive with a backhoe. She went down there and nothing looked paved but there did appear to be some disturbance, so she will follow up.

Mr. Haworth made a motion to adjourn and was seconded by Mr. Lavalette. The motion passed unanimously at 9:15pm via roll call vote.

Respectfully,

Patricia A Pacella
Recording Secretary