

Conservation Commission  
August 16, 2021  
Minutes

1. **Chairman's Welcome and Media Notification**

Chair, Geoff Haworth called the meeting to order at 6:32PM and asked Whitney McClees to read the Media Notification, the regulations for the Open Meeting Law and meeting ground rules.

It was advised that the meeting was being conducted remotely consistent with Chapter 20 of the Acts of 2021. The legislation 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 some attendees participated by phone and video conference. [NB: The recording for this meeting failed to convert for the purposes of uploading to Cable Access and is therefore unavailable.]

2. **Quorum/Attendance**

Ms. McClees confirmed the quorum, 7 of 7 members: in attendance: Geoff Haworth, Gary Lavalette, Corey Pietraszek, Karen Isherwood, Jake Galary, Michael Kelly, Amy DeSalvatore and non-voting consultant Ronnie Medina.

No in-person attendance, conducted remotely.

Whitney McClees, Conservation Agent also in attendance

3. **Review and approve minutes**

a) August 2, 2021 minutes

Mr. Haworth made a motion to approve the minutes of August 2, 2021, seconded by Ms. Isherwood, no discussion, roll call vote 7-0 in favor, motion carries unanimously

4. **Request for Field Change to Clarify Plans: SE 023-1283, CON 19-024: 7 Union Street**

Ms. McClees reviewed, previous discussion on the shed and portable nature. The applicant submitted a request for a minor field change to clarify the plans. Submitted was special permit plans and letter to help clarify the temporary nature of the structure as "portable".

Mr. Haworth said he feels should be an amended Order of Conditions and wanted to hear from the Board on this first.

Mr. Adam Brodsky, attorney represented the project.

Ms. Isherwood asked Ms. McClees what condition could be added around the portable structure. Ms. McClees explained if the Board was satisfied with the minor field change as clarification then add the special permit plan as a minor field change. The Board could also add additional conditions to one of the current special conditions. (ADD-1: The Commission reserves the right to impose additional condition on any or all portions of this project that could impact an area of statutory interest under the Act and/or the Fairhaven Wetlands Bylaw) or could address the change through the Amended Order of Conditions process.

Mr. Galary said he was OK with the update because if they want to do more then they would need

to come before the Board again.

Mr. Haworth said he did not want to circumvent the public hearing process and would rather it be an amended Order of Conditions so that a public hearing could be held and the public could weigh in.

Mr. Lavalette said he toured it, it is elaborate and the way held down would be a process to move it. He felt as long as it is written and in writing if they want to move it they must come before us.

Mr. Haworth said he did not understand the “portable” vs. “permanent”

Mr. Brodsky said the footprint would be the same and they would come before the Board if they were looking to move it in the future, no plans at this time.

Ms. DeSalvatore said she agreed with Mr. Haworth on doing an amended Order of Conditions so they would need to advertise and have public hearing.

Mr. Kelly said he was in agreement with Mr. Lavalette and Mr. Galary, if we have it in writing he felt that would be sufficient and not like a “gentleman’s agreement” but to have it in writing so that anything other than what was in the conditions would mean they come back before the Board.

Mr. Pietraszek said he agreed that we should have it in writing

Mr. Brodsky said he would be happy to write a letter on behalf of the applicant stating what the conditions would be and that they would come before the Board if they wanted to do something different. He also said he wanted to be clear that there was no intent to circumvent the public process on this, just to clarify the nature of the structure as portable.

Discussion and question was raised as to the measurements. Mr. Haworth suggested that Mr. Brodsky get the correct measurements and bring to the next meeting on August 30, 2021. No motion or continuance needed. Mr. Brodsky said he would work to get that for the next meeting on August 30, 2021.

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

**Continued to a Future Date**

- a) SE 023-1332, CON 023-173: **18 Bass Creek Road – *continued to a date uncertain***

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.

Mr. Haworth advised if anyone was on for 18 Bass Creek Road it will not be heard tonight and it will be re-notified prior to a future meeting.

- b) SE 023-1356, CON 023-229: **12-18 Rio Way – *continued to August 30, 2021***

Notice of Intent filed by George Mock, Nye Lubricants, Inc., for stormwater upgrades and reductions in impervious surface associated with building upgrades at the property located at

12-18 Rio Way, Assessors Map 19, Lot 242. Work to take place in the Riverfront Area and 100-foot buffer zones to Coastal Bank and Coastal Beach.

Mr. Haworth advised if anyone is on for 12-18 Rio Way it has been continued to August 30, 2021.

**Requests for Continuance**

- c) SE 023-1324, CON 023-153: **86-88 Middle Street – request for continuance to August 30, 2021**  
Notice of Intent filed after-the-fact by Patrick Carr, A1 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. Haworth made a motion to continue SE 023-1324, CON 023-153: **86-88 Middle Street** to August 30, 2021, seconded by Ms. Isherwood, no discussion, roll call vote 7-0 in favor, motion carries unanimously.

- d) SE 023-1345, CON 023-206: **2 Oxford Street – request for continuance to August 30, 2021**  
Notice of Intent filed by Robert Weeks, 2 Oxford Street, LLC, for the construction of a fixed pier, gangway, and floating docks at the property located at 2 Oxford Street, Assessors Map 13, Lot 1. Work to take place in Land Under the Ocean, Land Containing Shellfish, Land Subject to Coastal Storm Flowage, and the 100-foot buffer zone to Coastal Beach.

Mr. Haworth made a motion to continue SE 023-1345, CON 023-206: **2 Oxford Street** to August 30, 2021, seconded by Mr. Galary, no discussion, roll call vote 7-0 in favor, motion carries unanimously.

- e) SE 023-1344, CON 023-207: **10 Nelson Avenue – request for continuance to August 30, 2021**  
Notice of Intent filed after-the-fact by Gerald Delano for the repair and reconstruction of a concrete groin and splash pad along the shoreline, including adding a cap to the top of the concrete revetment and stabilizing the disturbed lawn area by loaming and seeding at the property located at 10 Nelson Avenue, Assessors Map 43, Lot 30. Work to take place on Coastal Bank, Rocky Intertidal Shore, Coastal Beach, and Land Subject to Coastal Storm Flowage.

Mr. Haworth made a motion to continue SE 023-1344, CON 023-207: **10 Nelson Avenue** to August 30, 2021, seconded by Ms. Isherwood, no discussion, roll call vote 7-0 in favor, motion carries unanimously.

Ms. McClees said there is a site visit scheduled for Tuesday, August 17, 2021.

Mr. Lavalette said this was fifth time we have gone there and asked if it was critical. Mr. Haworth advised it was to clarify site conditions.

**Request for Determination**

- f) CON 023-239: **29 Winsegansett Avenue**

Request for Determination of Applicability filed by Nora and Henry Bradford for the installation of a new Title 5-compliant septic system at the property located at 29 Winsegansett Avenue, Assessors Map 42A, Lots 148-149 & 174-175. Work to take place in Land Subject to Coastal Storm Flowage.

Ms. McClees shared screen and reviewed. This is a flood zone only project. The applicant is proposing to utilize the Eljen Geotextile Sand Filter system, which has been approved for remedial use in Massachusetts by MassDEP under Title 5. Two large oak trees will need to be removed to install the leaching facility and the applicant has proposed to plan two replacement oak trees elsewhere on the property. All work is proposed to occur within the existing lawn.

Mr. Haworth called out that the packet set up on this was excellent and thanked Ms. McClees.

Mr. Rick Charon, Charon Associates was on to represent Mr. and Mrs. Bradford. He had nothing to add to the review by Ms. McClees.

Mr. Haworth made a motion to close the public hearing on CON 023-239: **29 Winsegansett Avenue**, issue a Negative 3 and Negative 6 Determination with the following conditions: CAP-3, FZ-1 and all of the applicable standards to the Eljen GSF A42 system, as outlined in MassDEP's Standard Conditions for Alternative Soil Absorption Systems with General Use Certificate and/or Approved for Remedial Use, revised March 5, 2018, shall apply in full force and effect. Motion seconded by Ms. DeSalvatore, no further discussion, roll call vote 7-0 in favor, motion carries unanimously.

#### **Notices of Intent**

g) SE 023-1361, CON 023-240: **11 Balsam Street**

Notice of Intent filed after-the-fact by Nora and Henry Bradford for the demolition of the existing house, construction of a new flood-zone compliant single-family dwelling, and the replanting of vegetation removed without a permit at the property located at 11 Balsam Street, Assessors Map 43C, Lots 128-130. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Bordering Vegetated Wetland.

Ms. McClees shared screen and reviewed. The applicant is proposing to demolish the existing house and construct a new flood zone compliant single-family house. The work on this property began last fall/winter without permits and the Commission issued a \$300 fine and required an after-the-fact filing within 90 days (March 7, 2021). The fine was paid in December 2020. This filing addresses the second part of the violation, to file an after-the-fact permit.

The site plan shows the existing tree line in comparison to the tree line before any clearing was done. The plan shows that there was 10,300 square feet of clearing done, all within the velocity flood zone. Of that, 6,500 square feet was within the 100-foot buffer zone to BVW. The proposed work includes the demolition of the existing structure and the construction of a new flood zone-compliant house. Currently, the applicant proposes to let the 1,500 square foot area in the 0-25 foot buffer zone regrow and plant additional trees.

Work proposed within 0-25 foot buffer zone: Planting of 15 white oak, maple, and sassafras

trees between existing stumps, existing tree stumps to remain and be allowed to regrow. In the 25-50 foot buffer zone: stumps to be cleared, area to be loamed and seeded and the shed to remain. Work in the 50-100 foot buffer zone in velocity flood zone only: demolition of existing cottage, grading associated with the new house, rear deck attached to the house, clearing of existing stumps and the area to be loamed and seeded. Work proposed outside the 100-foot buffer zone in velocity flood zone only: construction of new single-family flood zone-compliant house, grading, new driveway, utility connections, clearing of existing stumps, area to be loamed and seeded.

Ms. McClees said the Commission should consider whether the 1,500 square feet proposed to be replanted and left to regrow is sufficient replacement for the 6,500 square feet of buffer zone cleared. They could consider requiring the area in the 0-50 foot buffer zone be replanted with a mix of native trees, shrubs, and groundcover. During a site visit on August 10, members of the Commission expressed concern or had questions about the low square footage of proposed planting in relation to what was cleared without a permit. A larger area of replanting in the 0-50 foot buffer zone with a variety of trees, shrubs, and groundcover was also discussed. The status of the driveway, whether it is intended to be paved or unpaved as the property is in the velocity flood zone. Also, whether the property owners intend to move or replace the shed.

Mr. Rick Charon, Charon Associates was on for the property. He said after purchase they met with the Conservation Commissioner who was the Building Commissioner at the time and there were some blue marks on trees that would stay. Six to seven years passed and the owners were unaware they had to refile. Items in the 0-25 foot buffer zone from BVW was flagged (on right side). Clearing was done in the 25-foot area.

Mr. Haworth opened to the Board.

Discussion across the board was had regarding what was cleared and having an inventory of what was cleared and the need for restoration of the area. The Board wanted to have a better understanding of what was cleared and removed and a revised plan as recommended by Ms. McClees. Mr. Haworth suggested the applicant ask for a continuance to have time to have time to revise the plan and bring the additional information to the next meeting. Mr. Charon agreed and said he would review and speak with his clients.

Mr. Haworth made a motion to continue SE 023-1361, CON 023-240: **11 Balsam Street** to August 30, 2021, seconded by Mr. Lavalette, no further discussion, roll call vote, 7-0 motion carries unanimously.

h) SE 023-1362, CON 023-237: **1 & 2 Marsh Island**

Notice of Intent filed by Buzzards Bay Coalition for an Ecological Restoration Limited project for invasive plant vegetation management at the property located at 1 and 2 Marsh Island, Assessors Map 15, Lot 1, and Assessors Map 17, Lot 129. Work to take place in Riverfront Area, Land Subject to Coastal Storm Flowage, Bordering Vegetated Wetland, Salt Marsh, and Buffer Zone.

Ms. McClees shared screen and reviewed the applicant is proposing approximately 8.2 acres of invasive plant control and management as part of a larger 12-acre salt marsh restoration

project. They are proposing to control approximately 7.9 acres of common reed (*Phragmites australis*) and approximately 0.3 acres of other invasive plants. They are proposing control for at least two growing seasons ahead of the future salt marsh restoration project and annual monitoring and spot treatment of invasive plants is proposed to continue thereafter. They are proposing to control the invasive species onsite through a combination of manual cutstem treatments as well as foliar herbicide application to limit their presence and prevent their continued spread on the property. Management techniques are species-specific and include cut stem for woody species, selective foliar treatments for herbaceous species and hand wiping or cut and drip applications when near sensitive plant communities.

Ms. McClees said the solution of herbicide, surfactant, and marking dye will be used for all treatments and conducted by licensed applicators. Beginning to control these plants this summer ahead of the larger restoration project, which is proposed for fall 2022, will result in a much greater chance of success to establish native vegetation in areas of newly created salt marsh. In subsequent years, monitoring of treated areas will be conducted annual and spot treatments applied as needed with foliar spray, hand wiping, or cut-stem treatment of herbicide by pesticide-licensed staff. Hand pulling will be utilized where possible for species such as spotted knapweed. Based on Mass DEP's recommendations, the applicant has revised their submission to an ecological restoration limited project. Ecological restoration limited projects permitted by an order of conditions may result in the temporary or permanent loss of resource areas and/or the conversion of one resource area to Page 4 of 4 another when such loss and/or conversion is necessary to the achievement of the project's ecological restoration goals. Based on the revised submitted documentation, the project meets all of the eligibility criteria for a restoration order of conditions, as outlined in 310 CMR 10.13.

Ms. McClees recommends closing the public hearing and issuing an Order of Conditions under the WPA and Fairhaven Wetlands Bylaw with the 13 special conditions as outlined in the August 6, 2021 staff report.

Sara Quintal, Restoration Ecologist from Buzzards Bay Coalition (BBC) was on for this item.

Mr. Haworth opened to the Board.

Ms. DeSalvatore said she thought it was amusing that the only way to get it involves a whole lot of round-up.

Ms. Quintal said that invasives are different than natives so to get them involves some level of herbicide judiciously applied for example, for woody use a cut-stem at the base, different treatment for phragmites.

Mr. Lavalette said he has experimented with the use of salt and has been able to knock out about 30-40% of poison ivy and wondered if experimenting with high doses of rock salt could work here. Ms. McClees said poison ivy is native and it can get more complicated with more invasive species.

Mr. Haworth opened to the public, seeing and hearing none confirmed by Ms. McClees.

Mr. Haworth made a motion on SE 023-1362, CON 023-237: **1 & 2 Marsh Island** to close the

public hearing and issue an Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw with the 13 special recommended conditions outlined in the August 6, 2021 staff report and plans dated July 30, 2021. Motion seconded by Ms. Isherwood, no further discussion, roll call vote 7-0 in favor, motion carries unanimously. Ms. McClees will be in contact about finishing the process.

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

**a) 217 Alden Road**

Ms. McClees reviewed from the August 11, 2021 staff report this was a member of the Commission responding to a report of a possible violation and found that vegetation had been cleared and fill spread within a buffer zone and within a BVW. The Commissioner then instructed the property owner to stop work and contact the Agent. The property owner did immediately come to the office to address the issue and that he was unaware he needed a permit to spread fill and remove vegetation from the property. A certificate of compliance was issued in 2018 around the time he purchased the house, but he explained that he was unaware that meant the property fell within the jurisdiction of the Commission. He does want to work with the Commission to rectify the situation.

Ms. McClees did a site visit to see if the wetland line from 1999 had shifted but with about 4-5 feet of fill on the site it was difficult to determine where the edge of the wetlands was without further investigation. While on site, Ms. McClees said she recommended that as much of the fill be removed as possible and regrade so that the lawn more gradually slopes back toward the drainage ditch and doesn't displace water onto the neighboring property. Also, incorporate native trees, shrubs and groundcover into the planting proposal.

Ms. McClees said the Commission will need to determine whether or not they feel an accurate wetland line is needed based on the 1999 site plan. If that line is still accurate, a portion of the work was done in a BVW rather than solely buffer zone and any restoration will have to take that into account. If the Commission feels an accurate line is necessary, I recommend requiring the property owner have a wetland delineation done and provide a restoration plan for review and approval. If the Commission feels the line from 1999 is sufficient, I recommend requiring the property owner to submit a restoration plan that complies with the BVW performance standards for the portion of the impacted area that is BVW and includes buffer zone restoration.

Mr. Sean DeGrace, property owner, was on tonight. He apologized for not being aware and said he does want to work with the Commission to be in compliance.

Mr. Haworth made a motion to issue an enforcement order to the property owner to get a wetland delineation and file a restoration plan within 90 days, seconded by Ms. DeSalvatore, no further discussion, roll call vote 7-0 in favor, motion carries unanimously. Mr. Haworth asked Mr. DeGrace to work with Ms. McClees on this and have filing within 90 days.

**b) 20 Yankee Lane**

Ms. McClees reviewed per the Enforcement Order the Commission had asked for documents by August 4, 2021 showing a restoration plan for the property and work that was being done to clear land in a section of the property. The Enforcement Order was issued in May and nothing was received in terms of a restoration plan from the property owner. Ms. McClees included in the packets the email from the attorney for Mr. Lopes.

John Zajac, Cornerstone Law Group, 1 Taunton Green, Suite 2, Taunton, MA representing Mr. Brian Lopes, who was also attending this meeting via zoom.

Mr. Haworth said that his client was to have a restoration plan to the Commission by August 4, 2021 and nothing has been received.

Mr. Zajac referred to his discussion with Ms. McClees and email and said his client has had challenges with transitioning from his previous engineers and attorney as well as their workloads which he felt was the case with most engineers and other land use professionals lately. Currently Mr. Stevie Carvalho of Farland Corp. is putting together a scope of work agreement and Mr. Lopes intends to retain him to prepare the plans. Looking to understand if and how the previous plans/surveys can still be used to address the concerns of the Commission.

Discussion was had around the violation and the need for a plan to address the violation and how Mr. Lopes will work on resolving. The Board has been asking for a plan and is concerned that multiple times Mr. Lopes has not adhered to the Board's timeline, the Board wants to work with Mr. Lopes to get this resolved.

Mr. Haworth made a motion to allow the enforcement order to be extended to September 20, 2021, with the understanding that someone will provide an update at that meeting, seconded by Ms. DeSalvatore, no further discussion, roll call vote 7-0 in favor, motion carries unanimously.

**7. Correspondence**

No updates

**8. Ongoing Projects**

Ms. McClees said Mazda dealership at 250 Bridge St is just about finished, she did a walk through today with some Town officials. Substantial construction has been done and they are getting ready for the Certificate of Occupancy.

**9. Upcoming Projects**

Ms. McClees said there is one request coming up for an amended Order of Conditions

**10. General Business**

**a) Bills**

Nothing to review

**b) Next Meeting: August 30, 2021**



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

Mr. Lavalette said he was at a property today, the Cease and Desist sign was removed and he sent pictures to Ms. McClees. There is a fence going up in a velocity flood zone, looks like two fences back to back to create the design. Mr. Lavalette said the C&D was posted and he got a call from a neighbor that it was ripped off. He had also left Ms. McClees' card with it as well. He was wondering if we can have a process and fines to pay when the C&D is ripped down. Ms. McClees said she spoke with the property owner, they are coming to Town Hall tomorrow to address the issues. Ms. McClees said there could be some areas on the water where the wind could be the cause of the signs coming down. On this property that Mr. Lavalette was speaking of the individual did contact Ms. McClees almost immediately on the issue.

Ms. Isherwood made a motion to adjourn the meeting at 9:08PM, seconded by Ms. DeSalvatore, no discussion; roll call vote 7-0 in favor, motion carries unanimously.

Respectfully submitted,  
Amy Almeida  
Recording Secretary