

**Conservation Commission
October 4, 2021
Minutes**

1. **Chairman's Welcome and Media Notification:** Mr. Haworth opened the meeting at 6:30p.m. Ms. McClees read the protocol for Zoom meetings and open Public Meeting Law.

Ms. McClees 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 will be televised at a later date and some attendees participated by phone and video conference and used chat on Zoom.

2. **Quorum/Attendance:** Present: Chairman, Geoff Haworth, Karen Isherwood, Michael Kelly, Corey Pietraszek, Jake Galary, and Amy DeSalvatore. Non-voting consultant, Ron Medina was also present. All members were attending via zoom. Staff: Whitney McClees, Conservation Agent
Absent: Gary Lavalette
3. **Review and approve minutes**
 - a) Mr. Haworth made a motion to approve the minutes of August 30, 2021 and was seconded by Ms. Isherwood. The motion passed unanimously via roll call vote (5-0).
4. **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.

Ms. McClees suggested that we take the notice off the agenda until we have an update. Mr. Haworth recommended we let them know they can withdraw without prejudice.

Action: Ms. McClees to reach out to applicant and advise on next steps to take.
- b) SE 023-1356, CON 023-229: **12-18 Rio Way – *continued to October 18, 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.

Requests for Continuance

- c) SE 023-1345, CON 023-206: **2 Oxford Street – *request for continuance to October 18, 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.

Rich Rheume, owner of Prime Engineering, Inc. requested continuance until the October 18, 2021 meeting.

Mr. Haworth made motion to continue SE 023-1345, CON 023-206, 2 Oxford Street, to October 18, 2021 at the applicant's request, and was seconded by Ms. Isherwood. The motion passed unanimously via roll call vote (5-0).

Requests for Determination of Applicability

d) CON 023-247: 101 Main Street

Request for Determination of Applicability filed by Jonas Limantas for the paving of an existing unpaved driveway at the property located at 101 Main Street, Assessors Map 11, Lot 166. Work to take place in Land Subject to Coastal Storm Flowage.

Ms. McClees presented site plan submitted on screen. Applicant Proposing to pave existing 1600-sqaure foot stone driveway in outer AE flood zone (Land Subject to Coastal Storm Flowage). The project does not appear to cause damage, as there are no other resource areas within 100 feet of the property. The driveway does not appear as if it will have a negative impact on storm damage prevention or flood control. Ms. McClees recommended closing with a Negative 2 and Negative 6 Determination under both the Wetlands Protection Act and the Fairhaven Wetlands Bylaw.

Property owner, Reda Veitas-Lima, of 101 Main Street is proposing to pave and create a neater and more aesthetic driveway.

Mr. Haworth opened up the meeting for public comment and there were none.

Mr. Haworth made a motion to close the public hearing for 101 Main Street, CON 023-247, and issue a Negative 2 and Negative 6 Determination under both the Wetlands Protection Act and the Fairhaven Wetlands Bylaw; motion was seconded by Ms. Isherwood. Motion passed unanimously via roll call vote (5-0).

e) CON 023-248: 6 Bay Street

Request for Determination of Applicability filed by John Whiteside and Lucy Noel for the paving of and slight enlargement of an existing unpaved driveway at the property located at 6 Bay Street, Assessors Map 28A, Lot 494. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Bordering Vegetated Wetland.

Ms. McClees stated the property is located in an AE flood zone with wetlands on the property behind driveway, which falls in the outer edge of the 100-ft buffer. They have intentions of widening their driveway to fit 3 cars. The site plan complies with the buffer zone regulations and it is recommended to close the hearing with a Negative 3 and Negative 6 Determination under the Fairhaven Wetlands Bylaw and the Wetlands Protection Act with the condition that no debris will be left in the wetland area.

Property owner, John Whiteside, of 6 Bay Street had nothing further to add to the hearing.

Mr. Haworth opened up the meeting for public comment and there were none.

Mr. Haworth made a motion to close the public hearing for 6 Bay Street, CON 023-248, and issue a Negative 3 and Negative 6 Determination under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw with the condition outlined in the staff report dated September 27, 2021. The motion was seconded by Ms. Isherwood and passed unanimously via roll call vote (5-0).

Request for Amended Order of Conditions**f) SE 023-1308, CON 023-095: Huttleston Avenue, Map 31, Lots 115A & 117C**

Request for Amended Order of Conditions filed by Dana Lewis for approval of changes to the stormwater infrastructure at the property located at Huttleston Avenue, Assessors Map 31, Lots 115A & 117C. Work to take place in Bordering Vegetated Wetland and its 100-foot buffer zone.

Ms. McClees conducted a site visit to go over changes and look at the proposed work. She discussed invasive species on the property. The invasive plants are outside the buffer zone in the infiltration basin and should be removed. The engineer vows to keep as much vegetation as possible. There will be work involving a manhole repair within the wetland. They will follow the existing path into the manhole to do repair work.

Ms. McClees recommended closing the public hearing and issuing an amended Order of Conditions under the Wetlands Protection Act and Fairhaven Wetlands Bylaw for plans dated August 5, 2021. The applicant needs to provide the Stormwater Pollution Prevention Plan (SWPPP).

Mr. Rheume stated the wetlands impacted are not deep wetlands; nothing critical to save. The plywood placed on vegetation will not pose any long-term impacts. Currently, there is jewel weed and the bittersweet will be cut out.

Mr. Rheume stated the applicant will be willing to add shrubbery vegetation. This would be out of Conservation's jurisdiction, but still agrees.

Mr. Haworth made a motion to close the public hearing for Huttleston Avenue, Map 31, Lots 115A & 117C, SE 023-1308, CON 023-095 and issue an amended Order of Conditions with plans dated August 5, 2021, with the addition of SW-8 to the conditions outlined in the staff report dated September 29, 2021. The motion was seconded by Ms. Isherwood and passed unanimously via roll call vote (5-0).

Notices of Intent**g) SE 023-1363, CON 023-244: 4 Fox Run Lane**

Notice of Intent filed by Justyna Kaisig for the construction of a 22-foot-by-30-foot garage addition at the property located at 4 Fox Run Lane, Assessors Map 30, Lot 452. Work to take place in the 100-foot buffer zone to Bordering Vegetated Wetland.

Ms. McClees reviewed some discussion at the last meeting in regards to material that is pervious. She conducted a site visit with the owner and the applicant's representative, to gain clarity. The changes to the plan in the driveway will be pervious. The owner did not want to be locked into any specific surface. The Commission can add a condition to change from impervious. The paved apron will be added to accommodate snow and sand without being pervious.

Based on the revisions, the commission's concerns appeared to be addressed. If nothing else, they still want wetland plantings. If no greater impacts exist, Ms. McClees recommend granting the waiver to the regulations under Chapter 192, with conditions that the driveway remains pervious. Recommend to issue an Order of Conditions under both the Wetlands Protection Act and the Fairhaven Wetlands Bylaw with conditions outlined in the revised variance request and revised site plan dated September 20, 2021.

Ms. DeSalvatore would like to see a more detailed replanting plan written on a signed document, which allows the Commission to enforce.

Ms. McClees recommended condition that the removal of trees is overseen by an arborist. The wetland plantings are to include shrubs and ground cover. The Commission will review before planting, but there is no Order of Conditions on the enforcement order.

Ms. Isherwood has concerns the applicant may not follow through, if there is not a detailed planting plan.

Mr. Haworth suggested we change Condition 42 to say, prior to paving the driveway, submit planting plan.

Ms. McClees stated a planting plan guide will be utilized, prior to paving the driveway and any vegetation is removed. She commented that we do not know ahead of time what the extent of trees impacted and the space available for shrubbery.

Mr. Galary joined in at 7:08p.m. and was recused on a vote for this hearing.

Mr. Haworth made a motion to grant a variance to the buffer zone regulations under the Fairhaven Wetlands Bylaw as requested for 4 Fox Run Lane, SE 023-1363, CON 023-244, with the condition that the driveway remains pervious, except for the paved apron. The motion was seconded by Ms. DeSalvatore and passed unanimously via roll call vote (5-0).

Mr. Haworth made motion to close the public hearing for 4 Fox Run Lane, SE 023-1363, CON 023-244, and issue an Order of Conditions under the Fairhaven Wetlands Bylaw and Wetlands Protection Act with plans dated September 20, 2021, with the conditions outlined in the September 20, 2021 staff report with the modification to condition 42 as follows: "The area on the plan of record to be planted with wetland plantings shall be planted with a combination of native trees, shrubs, and groundcover. A planting plan utilizing the Commission's Buffer Zone Restoration Guidelines shall be submitted to the Commission for review and approval prior to the installation of the driveway and of any vegetation." The motion was seconded by Ms. Isherwood and passed unanimously via roll call vote (5-0).

h) SE 023-1364, CON 023-246: **Eaton Road Right-of-Way**

Notice of Intent filed by Vincent Furtado, Fairhaven BPW, for drainage work and paving an existing gravel road at Eaton Road, Assessors Map 29B. Work to take place in Land Subject to Coastal Storm Flowage and the 100-foot buffer zone to Bordering Vegetated Wetland.

Ms. McClees stated the applicant is proposing to pave Eaton Road with an 18-foot width and 182 feet in length. Presently, there is an existing gravel road. This project would eliminate the need to spread gravel every few years. There is a higher elevation near Briarcliff Road and the drainage swale uses existing topography. The paving work falls in an existing disturbed area that is populated with phragmites and knotweed, and will not be adversely impacted.

Mike Carter, presented the file on behalf of Vinnie Furtado. There is a flooding issue near the pumping station, which has never been kept up or maintained; a survey was conducted in 2019 where it was determined to not dig a swale.

Ms. DeSalvatore asked if it is in a velocity flood zone and why is there a need to pave this road.

Mr. Carter explained that the erosion on the gravel road means continuous maintenance and the need to grade. There is also some elevation leading up to the drainage ditch. This project will ensure greater protection to resources.

Ms. DeSalvatore asked if major storms will present significant impact. The Commission is trying to improve the area and believes the ditch should be cleaned for proper stormwater flow.

Mr. Haworth made motion to close the public hearing for Eaton Road Right-of-Way, SE 023-1364, CON 023-246, and issue an Order of Conditions with the conditions outlined in the staff report dated September 27, 2021. There are 45 conditions cited on the staff report dated September 30, 2021 with the approved plan dated March 17, 2021. Motion was seconded by Mr. Galary and motion passed unanimously via roll call vote (6-0).

5. Violations/Enforcement Orders/Cease and Desist Notices

a) 25 and 29 Mangham Way

A cease and desist was issued to the property owner of 29 Mangham Way for a pile of fill placed in the buffer zone, to be spread in a wetland resource area. A subsequent site visit revealed a large cleared area with a Bordering Vegetated Wetland. The cleared area appears to span both 25 and 29 Mangham Way. The owner of 29 Mangham Way indicated he has been utilizing the area for a camper. They also indicated a lot of debris in a cleared area from the developer of the house. No additional fill can be placed in the resource area. The existing fill will need to be removed and the wetland restored. No permits were ever filed for the clearing and fill in the wetland on either property. The wetland line from the Order of Conditions permitting the construction of the house appears to be fairly accurate, with the approximate edge of the wetland being on the edge of the yard.

The Commission should consider issuing two enforcement orders for restoration, one to the property owner of 25 Mangham Way, regarding the fill in the resource area on that property, and one to the property owner of 29 Mangham Way, regarding fill in the resource area on both properties.

Mr. Haworth initially observed the site and took photos. A large amount of fill was dropped off and they were wheel barreling the fill into the back yard. The owner was present and explained the situation. 29 Mangham crept into the property of 25 Mangham. Clearing has taken place into the buffer zone and significant debris has been cleared.

Mr. Haworth stated it is a complex issue, since it includes multiple property owners. It will be difficult to get the neighboring property to fix the violations. The cease and desist must be issued to both owners. The Commission assumes it all started during construction. They are now deep into the wetlands. They also need to deal with all the invasives; there is a vine network throughout the whole area. A professional may need to get involved to determine a resolution.

Action: The Commission to determine the original elevation and request the applicant remove soil to restore to the original elevation.

Mr. Haworth stated the applicant has 90 days to initiate in resolving the violations.

Action: Ms. McClees is to issue enforcement orders. The issue is to be ratified at the October 18, 2021 meeting.

b) 20 Yankee Lane

Applicant is in process and would like to continue to the October 18, 2021 meeting.

6. **Correspondence**

a) Chambers Street/Silver Shell Beach Drive Beach Access Query

Ms. McClees received an email from the resident questioning beach access. There was a prior query about cutting a path for beach access. The previous Chair maintained there was already access to the beach. The property owner met with a representative from public works about the possibility of mowing a path through dune grasses. This was a potential violation in 2019. The owners are looking for further beach access, and have reached out to the highway superintendent.

Mr. Haworth stated the proper procedure would be to ask the DPW Board if they agree and then proceed to file with us. The letter from the DPW states it would be approved once approved with the Conservation Commission.

Mr. Haworth expressed his concern with the possibility of this circumventing the proper public hearing process. He does not feel right to say yes or no without a formal plan and request. There may be public discontent and they have a right to voice their opinion. The Commission needs public filing with a plan of action to take proper process. Everyone deserves a say in this matter with total transparency.

The Board agreed on having the neighbors' input.

Neighbor, Christopher Augenti, was present and discussed how it is the only access to the beach. The town mowed it once and now it is completely overgrown and prevents land owners from walking down to the beach.

Ms. Isherwood added that a public meeting would also expose what cannot be done to the dunes when developing a path to the beach.

7. **Ongoing Projects**

Ms. McClees stated there were no specific updates besides erosion control, and a few calls with concern for the ongoing filing on North Street. Commission has received reports from abutters about concerns to be addressed.

Ms. DeSalvatore added she was at North Street the other day and noticed added fill for parking and it looks expanded with new stones.

Action: Ms. McClees to put North Street on the agenda for next meeting and ask the engineer to appear for status update.

Ms. McClees added the cease-and-desist has been lifted to clear the work plan. Extensive clearing for erosion control is not permitted, and this will be monitored weekly. They still have to flag vegetation and submit a planting plan.

Mr. Haworth stated the Board witnessed a 10-foot clearing during site visit.

Action: Mr. Haworth and Ms. McClees to conduct second site visit.

Ms. McClees will remind the applicant that in addition to assessing fines, the Order of Conditions is able to be revoked due to non-compliance.

Mr. Kelly stated there should be recourse for the applicant blatantly disregarding orders. The applicant was directed to have a professional overseeing these orders.

8. Upcoming Projects

One submission for a certificate of compliance. There are no new notices of intent for next meeting on October 18, 2021.

9. General Business

a) Bills:

- Neighborhood News: \$136.00
- Registry of Deeds: \$115.00 for recording fee
- MACC: \$125.00 for Fall conference registration

b) MACC Virtual Fall Conference: October 19, 20, 21, and 23. Ms. McClees sent registration information. Notify Ms. McClees if you would like to be registered.

c) Next Meeting: October 18, 2021. Virtual meetings will continue until April 1, 2022.

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

Mr. Haworth spoke of another cease and desist for a demolition on 25 Abbey Street. Contractor reached out explaining they did not know there was an Order of Conditions on the property. Expecting to do site visit to bring the project back into compliance. An old metal fence has been peeled back and pushed into wetland soils and he noticed 60 yards of material on the property.

Ms. DeSalvatore brought up 6 Emerson Avenue. She feels the property owner has placed a tremendous amount of fill on the property, which will impact flood waters.

Action: Ms. McClees will submit an amendment letter intended for 6 Emerson Avenue.

Mr. Haworth made motion to adjourn at and was seconded by Ms. Isherwood. Motion carried unanimously at 8:03p.m. (6-0).

Respectfully submitted,

Kelly Camara
Recording Secretary