

**Conservation Commission  
October 18, 2021  
Minutes**

1. **Chairman's Welcome and Media Notification:** Mr. Haworth opened the meeting at 6:35p.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, Gary Lavalette, 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
3. Review and approve minutes
  - a) Mr. Haworth made a motion to approve the minutes of September 20, 2021 and was seconded by Ms. Isherwood. The motion passed unanimously via roll call vote (7-0).
  - b) Mr. Haworth made a motion to approve the minutes of October 4, 2021 and was seconded by Ms. DeSalvatore. The motion passed via roll call vote (6-0) with one abstention by Mr. Lavalette.
4. Request for Certificate of Compliance
  - a) SE 023-812: **53 Goulart Memorial Drive:** Ms. McClees stated this is a request for Certificate of Compliance for an Order of Conditions from 2003. The Order of Conditions permitted a few items but the only completed item was the installation of the new septic system in April 2004. A site visit determined the pervious parking area, as depicted on the plan, had not been installed. The foundation of the building still existed, along with a number of items on the property in the process of being cleaned up, including fishing gear that is in active use. The Order of Conditions did not include any continuing conditions. This type of Certificate of Compliance will need wet ink signatures.

Ms. McClees recommended issuing a Certificate of Compliance for 53 Goulart Memorial Drive with a partial certification for the completion of the new septic system, and include as an ongoing condition that the Order of Conditions has lapsed and is therefore no longer valid. No future work subject to regulation under the Wetlands Protection Act or the Fairhaven Wetlands Bylaw may commence without filing a new notice of intent and receiving a new order of conditions.

Mr. Haworth made motion that the Board issue a Certificate of Compliance for 53 Goulart Memorial Drive, SE 023-812, with a partial certification for the completion of the new septic system, including as an ongoing condition the Order of Conditions has lapsed and is therefore no longer valid. No future work under the Wetlands Protection Act or Fairhaven Wetlands Bylaw

may commence without filing a new Notice of Intent and receiving a new Order of Conditions seconded by Mr. Galary. The motion passed unanimously via roll call vote (7-0).

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:

**Requests for Continuance or Withdrawal**

- a) SE 023-1332, CON 023-173: **18 Bass Creek Road – request to withdraw without prejudice**

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 informed the Board that the applicant specified that if the property owner wished to pursue something in the future, then they could elect to do so. At this time, the applicant does not intend to move forward with the project. The applicant communicated his intent to withdraw or have Board deny without prejudice.

Mr. Haworth made a motion to accept the request to withdraw without prejudice for 18 Bass Creek Road, SE 023-1332, and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (7-0).

- b) SE 023-1356, CON 023-229: **12-18 Rio Way – request for continuance to November 15, 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 made a motion to continue 12-18 Rio Way, SE 023-1356, CON 023-229, to November 18, 2021 and was seconded by Mr. Lavalette. The motion passed unanimously via roll call vote (7-0).

Ms. McClees added the reason for continuance is to allow the Planning Board to review during the scheduled hearing for November 9, 2021.

6. **Requests for Determination of Applicability**

- c) CON 023-249: **39 Nelson Avenue**

Request for Determination of Applicability filed by Steven Taylor for a percolation test at the property located at 39 Nelson Avenue, Assessors Map 43, Lots 224-225. Work to take place in Land Subject to Coastal Storm Flowage.

Ms. McClees presented an overview of the temporary project. The site plan submitted shows 4 locations for test pits, associated with the percolation test and soil evaluations for a septic system. These holes will then be backfilled upon completion. There are no proposed grade changes, as the work is temporary and simply for the percolation test. It does not appear that the project will have a negative impact on storm damage prevention or flood control. Since it is in a flood zone needs approval by the Commission. If this were not in the flood zone, it would be an exempt activity. Ms. McClees recommended to close the public hearing and issue a Negative 2 and Negative 6 Determination under both the Wetlands Protection Act and the Fairhaven Wetlands Bylaw.

The applicant's representative, Bob Field, of Field Engineering concurred with Ms. McClees assessment.

Mr. Haworth made a motion to close 39 Nelson Avenue, CON 023-249 and issue a Negative 2 and Negative 6 Determination under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw and was seconded by Ms. Isherwood. The motion passed via roll call vote (6-0) with one abstention by Mr. Lavalette.

7. **Notices of Intent**

d) SE 023-1345, CON 023-206: **2 Oxford Street**

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.

Ms. McClees stated she received a request on October 18, 2021 for continuance to the November 1, 2021 meeting.

Mr. Haworth made a motion to continue 2 Oxford Street, SE 023-1345, CON 023-206, to November 1, 2021 and was seconded by Mr. Lavalette. The motion passed via roll call vote (7-0).

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

a) **25 and 29 Mangham Way**

Ms. McClees gave an update on the Cease-and-Desist Notices for the two properties, which are within a Bordering Vegetated Wetland and in the Buffer Zone. At the previous meeting, the Board discussed work done potentially in a resource area. She was asked to issue Enforcement Orders, which are included in the staff report for the Commission to ratify. The area of impact involves two separate parcels from an arial overlay. The Enforcement Orders require an updated wetlands delineation, as well as an assessment of the site with a restoration plan to be submitted by January 3, 2022 (Standard 90-day allowance).

Both property owners have reached out in response to the Enforcement Orders. They have indicated they intend to move forward.

Part of the Enforcement Order was to submit the restoration plan within 90 days and then begin work within the spring planting season.

Ms. Isherwood suggested a future site visit to assess the necessity for additional conditions. Mr. Haworth agreed but will schedule a site visit while in the process of reviewing the restoration plan.

Robert Baccelli of 29 Mangham Way stated he brought in 4-wheel barrels of soil. He is willing to take out the soil, and was only trying to clean up the mess from the previous owner. Mr. Baccelli claimed the cleaned area is 30 x 10 feet. He asked for clarification on the type of restoration required by the Commission.

Mr. Haworth addressed Mr. Baccelli and confirmed the amounts of soil dumped, the size of the area, and the extent of impact due to cleared vegetation. He presented arial photos of the property pinpointing the area of violation in a vegetated zone.

Mr. Haworth suggested the applicant contact a professional in wetland restoration who will assist with the process and work with Ms. McClees.

Mr. Haworth made a motion to ratify the Enforcement Order for 25 Mangham Way and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (7-0).

Mr. Haworth made a motion to ratify the Enforcement Order for 29 Mangham Way and was seconded by Ms. Isherwood. The motion passed unanimously via roll call vote (7-0).

Mr. Lavalette wanted to discuss potential fines imposed and asked the Board if a \$300 dollar fine is appropriate for this Enforcement Order.

Ms. Isherwood stated she did not think the owner's violation was intentional and that maybe they did not understand the vulnerability of the area and how it should not be disturbed.

The Board agreed to not impose a fine on this property.

b) **20 Yankee Lane**

Ms. McClees gave an update stating the property owner just obtained a wetland scientist. The wetland scientist has submitted a restoration plan, which was included in the staff report. Ms. McClees believes the plan needs more detail and has discussed these ideas with the wetland scientist. Additionally, the Board should consider taking a vote to require any revised restoration to be resubmitted by November 1, 2021. The Board is to provide clear deadlines, since this has been lingering since May 2021.

Scott Goddard, from Goddard Consulting was present and did not feel it would be appropriate to present the restoration plan at this time, considering the updates. Goddard Consulting intends to present a plan that is consistent with the ideas of Ms. McClees and the Board on November 1, 2021.

Ms. Isherwood believes the restoration plan should begin as soon as possible. Mr. Haworth believes a phased plan should be a consideration.

Mr. Lavalette suggested another a peer review, considering the magnitude of the project and moving streams. He pointed out that since streams are now flowing at full capacity, now would be an opportune time for a peer review to analyze how the streams could be diverted.

Mr. Haworth would like to see the finalized plan presented to the Board before making these types of decisions.

Ms. McClees agreed that this should be a phased project and her advice is to start plantings this fall and move on to stream restoration next summer. This would allow the Board more time to determine if they would like a peer review on the more complicated aspects of the project, such as stream restoration, hydraulic calculation, etc. This wouldn't occur until summer anyway because it would need to occur in low flow time period. This is another option that the Board has to consider. Maybe not having peer review for entire project, but looking at peer reviewer oversight for certain aspects of the project that the Board doesn't typically deal with on a regular basis.

Mr. Haworth made a motion to require a revised restoration plan to be submitted and ready for the Commission for the November 1, 2021 meeting and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (7-0).

c) **North Street Marsh**

Ms. McClees presented a summary on the cease and desist issued on the morning of October 6, 2021 by the Commission Chair, for significant spreading of crushed rock and regrading directly

next to the saltmarsh. A significant amount of gravel had been spread. Upon receiving the cease and desist, half the site had been spread with gravel with stock pile in center of the area. When Ms. McClees and Mr. Haworth returned, the same afternoon, they found the remainder of the rock had been spread. We asked that a site plan be submitted depicting grade elevation, and the depth of the rock spread. Ms. McClees and the Chair were concerned over the impact to the saltmarsh, when all the quarry dust washes into the saltmarsh with no erosion controls placed at the edge of the saltmarsh.

A draft of an Enforcement Order is included in the staff report for the Board's consideration. The saltmarsh performance standards apply, not only to the saltmarsh, but to the saltmarsh buffer. Additionally, the property owner's representative submitted the survey plan. The approved plan presented displayed work approved to be done, which stated clean, crushed stone would be used with no regrading permitted. The applicant's representative submitted a second plan showing significant grade changes, and the extent of crushed rock increased. The plan also indicated that the rock in place is mostly 4 inches deep with certain spots closer to 2 inches.

Mr. Haworth concurred with Ms. McClees that there were changes to the grading, most significantly where the rock line meets the marsh. The whole berm in that area is removed and allows for flow down into the marsh. Mr. Haworth elaborated that he went to issue the cease-and-desist at 9 a.m. and when he came back at 1 p.m. the remaining third of the stockpile had been spread. They stated they had permission from Steven Gioiosa. It was later discovered that Mr. Miguel never told Mr. Gioiosa there was a cease and desist order.

Mr. Gioiosa, of Sitec Environmental Consultants, represented Mr. Miguel. He addressed the Board and stated he inspected the site about a week before stone was placed. The stockpile area in the approved plan was designated by the EPA as a stockpile area. The contour line depicts a 6-foot elevation line, which existed before any work was initiated. Rocks in the shading were also there prior to work. He believes Mr. Miguel thought he was doing the right thing by getting the crushed stone in. He was not making the distinction between washed crushed stone and just crushed stone.

The approved plan did contemplate stone in this area for final stabilization and reducing erosion going into the marsh long-term. The second plan is based on last week's field survey. The crushed stone and elevation of the crushed stone in middle of the site generally follows the topography that was there. You can see the 6-foot contour faintly underneath, follows closely to where the 6-foot contour was before. One grade change is the edge point on the North edge. He feels as though he was trying to do the right thing in stabilizing an unstable area, although he should have consulted with the Board first. He also was not informed there had been a cease-and-desist order placed on the work. Mr. Gioiosa did consult with Ms. McClees, and the placed stone was an allowed activity under the permit. He concluded with the fact that he does not believe Mr. Miguel went beyond the limits of work authorized by the Commission.

Mr. Haworth commented on the photos of the area before they initiated work. Mr. Miguel ripped out grass and all greenery along the edge. The stockpile area was the limit of work for him and he far exceeded these limits. The berm was ripped out and modified, along the edge. This berm provided some protection for the marsh and the greenery provided some filter. There was nowhere in the plan that stated crushed stone was supposed to go near the marsh. The

stone around the stockpile area should be removed, and the area should be restored to the original grade and replanted.

Mr. Gioiosa suggested that although vague, the outermost stockpile area is where they have removed grass and added the stone.

Mr. Haworth believes the stockpile area is denoted by hash marks and not the arrows which extend beyond, as Mr. Gioiosa explained.

Ms. McClees added that there is condition in the order that says no regrading anywhere as part of this project. There clearly has been regrading which is violation of the order.

Ms. DeSalvatore believes there should be daily supervision where the Board gets immediate notice of violations. She also believes all washed stone is not permitted and needs to be removed immediately. She also suggested a wetland scientist (from an independent party) reviewing the original grades to be restored properly.

Mr. Lavalette stated two weeks prior to the start of the project members of the Board did a site visit. Mr. Lavalette suggested to Mr. Miguel to not do anything until he spoke with Ms. McClees or Mr. Haworth. He was prewarned and he went about and did it anyways.

Ms. Isherwood would like to see fines imposed and unwashed stones removed. The area should be completely restored by a wetland scientist that the Commission approves. She would like no further work to be done on the fence, until the present violation has been completely restored and all Orders of Conditions are in compliance.

Ms. DeSalvatore added that there needs to be daily supervision where we get immediate notice of violations and added that the Board has a \$25K bond to supervise this site.

Ms. McClees concurred that a restoration plan should be conducted by an ecological scientist and an engineer.

Mr. Haworth pointed out that some sort of fabric was placed under the stones as well, with evidence in the photos. This forces water to sheet feed, once the fabric becomes clogged. The right fabric is required to properly drain. He would like the boulders to be removed and the edge restored with greenery, to act as a filter before it gets to the marsh. Currently, there is nothing to filter out pollutants.

Ms. McClees added further recommendations to the Enforcement Order, included in the staff report. Her advice is to restore the marsh to preconstruction conditions, as depicted on the plan approved by the current Order of Conditions. The restoration plan is to be put together by both a qualified professional wetland scientist, who has expertise with saltmarsh ecology and an engineer who can address the changes in grade and elevation. This should be sent to the Conservation Commission for review on or before November 8, 2021. The Board typically provides 90 days for the submission of a restoration plan, but the potential for unwashed rock to cause significant damage to the saltmarsh warrants a shorter timeline. It is urgent for the rock to be removed.

Mr. Gioiosa agreed there were grade changes on the North edge, but disagreed on the limit of stockpile area. He understands stones were not authorized and neither was the removal of extensive vegetation.

Ms. McClees does not want the stones removed hastily for fear it would cause more damage. Currently, there is no erosion control, so it is crucial to be careful when using large equipment.

Mr. Haworth made a motion to issue Enforcement Order for North Street, Map 15, Lot 43, SE 023-1341 and CON 023-194 and was seconded by Ms. Isherwood. The motion passed unanimously via roll call vote (7-0).

Ms. McClees recommended a modified the condition to say put together by a qualified scientist as approved by the Commission, which was included in the motion.

Mr. Haworth made a motion that we fine North Street, Map 15, Lot 43, SE 023-1341 and CON 023-194 \$1,200 for the four violations discussed and was seconded by Ms. DeSalvatore. The motion passed unanimously via roll call vote (7-0).

Mr. Haworth made a motion for a cease-and-desist on the entire project for North Street, Map 15, Lot 43, SE 023-1341 and CON 023-195 until such time the Commission votes otherwise and was seconded by Ms. Isherwood. The motion passed unanimously via roll call vote (7-0).

## 9. Ongoing Projects

### a) SE 023-1340, CON 023-195: **1 Bella Vista Island**

Ms. McClees discussed two open orders for Bella Vista Island and to address violations of work done without permitting. The order for plantings stipulated that the project had to be initiated by August 31, 2021. If the project was not initiated, the Commission may issue a new Enforcement Order with fines up to \$300.00 a day. The qualified wetland scientist overseeing this project reached out to the applicant's representative to get clarification as to why the project has not started. She received an email from the applicant's representative stating they cannot attend tonight's Fairhaven Conservation Commission meeting, but would like to request that due to the lack of growing season available the Commission not require exposing the area as bare earth for winter and spring. The Commission could mandate the removal of the fruit trees, ornamental shrubs, electric and water supply facilities before December 1, 2021, since that will not create any significant erosion. The applicant's representative also stated work could not be done earlier because they could not find a site contractor. The Board could ask the applicant's representative to provide a schedule for completing the work, given what he has outlined for the ornamental fruit trees.

Mr. Lavalette suggested they remove all utilities and plants planted illegally by December 1, 2021 or face a fine of \$300.00 a day.

Mr. Haworth made a motion to continue dredging until November 1, 2021 and was seconded by Mr. DeSalvatore. The applicant or applicant's representative is required to provide a schedule for what can be done between now and December 1, 2021, as well as a schedule of completing the remainder of the project by the end of the spring planting season 2022 to either the Agent or the Commission's consultant by October 25, 2021. If no work has begun by December 1,

2021, it will be a \$300.00 a day fine until such time as the project moves forward. The motion passed unanimously via roll call vote (7-0).

**10. Upcoming Projects**

For the November 1, 2021 meeting the Board will have an abbreviated notice of resource area delineation (ANRAD) for a portion of the AT&T property.

Notice of intent to begin to rectify the concreting at 86-88 Middle Street.

A Request for an amended Order of Conditions for 25 Abbey Street.

**11. General Business**

a) Bills: \$125 to MACC for Fall Conference registration.

b) Next Meeting: November 1, 2021

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

Mr. Haworth made motion to adjourn at and was seconded by Ms. Isherwood. Motion passed unanimously via roll call at 8:20p.m. (7-0).

Respectfully submitted,

Kelly Camara

Recording Secretary