

**Fairhaven Conservation Commission
Monday, July 29, 2019
Banquet Room**

1. Chairman's Welcome and Media Notification

2. Quorum/Attendance

Present: Jay Simmons, Chairperson; Vice Chairperson, Geoff Haworth, Nick Sylvia, Daniel Doyle, and Amy DeSalvatore

Absent: Edward Dorschied and Nicholas Carrigg

3. Approval of Minutes: None.

4. Requests for Extensions: None.

5. Requests for Certificate of Compliance

a) **CON 023-077, SE 023-071: Smuggler's Beach Subdivision, Assessors Map 29, Lot 1**
Construction of a subdivision, roadway, and associated utilities.

Ms. McClees advised the Board that the order of conditions has lapsed and no longer valid.

Geoff Haworth made a motion to issue an invalid of order of conditions and was seconded by Nick Sylvia. The motion passed unanimously.

b) **CON 023-080, SE 023-1113: 2 Alcobia Drive**

Remove and reconstruct eastern and southern garage walls (approx. 30 feet) and repair footings that are not deep enough.

Ms. McClees reviewed her staff report. The Order of Conditions has expired at this point. The construction has been completed and a final sign off was given by the Building Department. Her recommendation would be to issue a Certificate of Compliance for a Complete Certification.

Mr. Haworth made a motion to issue a certificate of compliance for complete certification and was seconded by Nick Sylvia. Motion passed unanimously.

6. PUBLIC HEARINGS:

a) **SE 023-1286, CON-19-029: 200 Mill Road – *continued to August 12***

Notice of Intent filed by Paul Downey, Mill Bridge Holdings LLC, for the construction of a 72-space parking expansion within the 100-foot buffer zone to a Bordering Vegetated Wetland at the property located at 200 Mill Road, Assessors Map 36, Lot 11A.

Previously continued to August 12, 2019.

b) **SE 023-1296, CON-19-050: 46 Sconticut Neck Road – *request for continuance to August 12***

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.

c) **SE 023-1297, CON-19-051: Hiller Avenue & Timothy Street, Assessors Map 28C, Lots 71 and 71A – request for continuance to August 12**

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.

Mr. Haworth made a motion to continue this applicant until August 12, 2019 per the applicant's request and was seconded by Mr. Sylvia. Motion passed unanimously.

d) **SE 023-1302, CON-19-066: 6 Emerson Avenue – request for continuance to August 12**

Notice of Intent filed by Natalie Reis for the installation of a garage, stamped patio, and concrete driveway at the property located at 6 Emerson Avenue, Assessors Map 29A, Lot 119. Work to take place within Land Subject to Coastal Storm Flowage/Zone VE and Buffer Zone to Coastal Beach.

Mr. Haworth made a motion at the applicant's request to continue until August 12, 2019 and was seconded by Nick Sylvia. The motion passed unanimously.

e) **CON-19-055: 25 Abbey Street**

Notice of Intent filed by Agostinho Pinto for the razing of the existing dwelling and garage and construction of a new flood zone-compliant single-family dwelling at the property located at 25 Abbey Street, Assessors Map 6, Lot 102. Work to take place in Land Subject to Coastal Storm Flowage/Zone VE and Buffer Zone to Bordering Vegetated Wetland.

Mr. Agostinho Pinto as the applicant.

Ms. McClees reviewed her Staff Report and asked the applicant about the impervious surface was increasing by approximately 500 sq feet.

Mr. Pinto said engineer was putting a down spout in. He didn't know where the impervious surface numbers was coming from.

Ms. DeSalvatore asked what the status of wetland line.

Ms. McClees stated it is not on the property. They did a 100' buffer zone per request from Ms. McClees. The wetland is on another property, therefore didn't have to have a delineation line. Ms. McClees showed where the buffer zone is on the map viewer.

Mr. Simmons called for abutters, none responded.

Mr. Haworth asked about the driveway and asked if he has reviewed with them, which he stated he had not. He stated that he would vote 'no' if it comes up tonight for a vote because the plans are not correct. Mr. Haworth stated this is the third time the plans have come before them and the calculations are incorrect.

Mr. Simmons stated that Conservation only worries about the conservation, not other by-laws in Town.

Ms. McClees stated that the Wetland Protection Act states that all other permits should be done prior to coming to the Conversation Commission.

Mr. Simmons believes that is debatable.

House is also being elevated to meet flood requirements.

Commission was discussing the plan to meet all required requirements and have the plans corrected. Mr. Haworth believed he did not want to approve the plans as submitted, because the calculations are incorrect. Mr. Simmons didn't feel that a new plan was necessary.

Mr. Simmons said it was not a contentious project from abutters.

Mr. Pinto, the applicant, stated he would request a continuance for four weeks to give him time to go to the DPW to discuss the driveway.

Mr. Haworth made a motion to continue 25 Abbey Street at the applicant's request to August 26, 2019 and was seconded by Daniel Doyle. Motion passed unanimously.

e) CON-19-065: 1 Alcobia Drive

Request for Determination of Applicability filed by Richard J. McCarthy for the removal of hurricane/storm-downed trees, dying/dead trees, broken/dying limbs and branches extending over the roofline, stumps to remain, the placement of a stockade fence adjacent to the south border, and a gate at the property located at 1 Alcobia Drive, Assessors Map 42, Lots 66, 67, and 68. Work to take place in Buffer Zone to Salt Marsh and Land Subject to Coastal Storm Flowage/Zone VE.

Richard McCarthy was present. Mr. McCarthy explained the project to take down trees on the property. He said he wants to put up a one post gate swing. Also wants to put up a 3-4 sections of stockade fence.

Ms. McClees showed an old plan that Mr. McCarthy had, she stated she went out and reviewed the plan. Stated that the wetland line was pretty accurate. She said all the trees proposed to come down are all around the house, not in the salt marsh.

Mr. McCarthy stated that the stumps would remain.

Mr. Simmons stated that the stumps staying would hold the ground together.

Ms. DeSalvatore asked if we know for sure that the trees are actually dying. Ms. McClees stated she isn't an arborist and can't confirm that.

Mr. Simmons called for abutters, there were none.

Mr. Haworth made a motion for a Negative 3 with the following conditions (as spelled out in the staff report dated June 17, 2019) and with a fourth condition that the stumps remain.

Ms. DeSalvatore stated that she wasn't comfortable voting for the project not knowing the conditions of the trees actually be dead or dying.

Daniel Doyle seconded the motion. Motion passed 4-1, with Ms. DeSalvatore abstaining.

NEW PUBLIC HEARINGS:

f) CON-023-073: 38 Camel Street

Request for Determination of Applicability filed by Russell Enos for the installation of a new porch, a new crush stone driveway, and a cobblestone border on the existing driveway, and the removal of a diseased tree at the property located at 38 Camel Street, Assessors Map 29, Lots 55-57. Work to take place within Land Subject to Coastal Storm Flowage/Zone VE and Buffer Zone to Bordering Vegetated Wetland.

Russell Enos was present. Mr. Enos stated that the porch/stairway was collapsing. There is also a tree on the property that is hollow and he wants to take it down. He also is going to replace the existing porch in the back of the house.

Ms. McClees asked about the footings/foundation. Mr. Enos stated he would speak to the Building Inspector after this meeting regarding the footings/foundation of the porch.

Stump of the tree would be flushed with the ground, stayed per the Commission.

Mr. Simmons called for abutters. None.

Mr. Haworth made a motion for a Negative 3 of 38 Camel Street with the two conditions as listed in the Staff Report dated July 25, 2019 and the third being stump to the ground and was seconded by Daniel Doyle. Motion passed unanimously.

Mr. Haworth made a motion to take 38 Camel Street out of order, from under violations/enforcement orders and was seconded by Ms. DeSalvatore. The motion passed unanimously.

Mr. Simmons stated there was a violation on the property.

Ms. McClees stated there was gravel and water near the shed. She explained where the current gravel and rock piles are located on the property near the shed, and significant evidence of hydric soil and wetland plants. She showed where the rocks and gravel are filling in the wetlands, evident of a violation.

Per her staff report dated July 26, 2019, Ms. McClees asked that the debris and gravel be removed from the wetland and outside of the buffer zone, if possible. She also recommended the gravel be removed from the end of the pump station to the northern property line.

Mr. Simmons stated that Mr. Enos should remove as much of the stone as he can, bringing it down to the dirt.

Ms. McClees stated even though private property, owners still have to abide by the wetland protection act.

Mr. Simmons proposed that we continue this situation and have Ms. McClees review the project in stages. Ms. McClees said she would like to see the two hills of rocks/stone removed immediately.

Ms. DeSalvatore said it had to be removed with small equipment, nothing heavier.

Mr. Haworth made a motion to begin addressing the violation in stages. The first stage suggested would be to move the rocks and crushed stone and move to a non resource area; once removed will contact the conservation agent when completed and the Commission would follow up; and was seconded by Mr. Sylvia. The motion passed unanimously

h) CON-023-074: 56 Goulart Memorial Drive

Request for Determination of Applicability filed by James Moraux for the replacement of the existing tent with a permanent building using 8' high steel frame in 10" diameter concrete form 4' below grade at the property located at 56 Goulart Memorial Drive, Assessors Map 42, Lot 23B. Work to take place within Land Subject to Coastal Storm Flowage/Zone VE and Buffer Zone to Coastal Beach.

Jim & Mary Mouraux were present. No abutters present.

Ms. McClees reviewed her Staff Report dated July 25, 2019. Sonatubes are going in the existing concrete. No work being proposed in the salt marsh or on the beach. It doesn't expand the foot print.

Mr. Haworth asked why if in flood zone it was not being elevated.

Ms. McClees stated it was an open pavilion without walls. Twelve sonatubes, 8' high steel frame.

Mr. Haworth made a motion to recommend issuing a Negative 3 determination with condition: no cement or debris in a resource area and was seconded by Nick Sylvia. The motion passed unanimously.

i) CON 023-076: 30 Weeden Road

Request for Determination of Applicability filed by Dana Pickup for the construction of a 7' x 22' farmers porch at the property located at 30 Weeden Road, Assessors Map 31B, Lot 302B. Work to take place within Land Subject to Coastal Storm Flowage/Zone AE and Buffer Zone to Bordering Vegetated Wetland.

Dana Pickup, from Carefree Homes was present on behalf of the applicant.

Ms. McClees reviewed her staff report dated July 26, 2019.

Mr. Haworth made a motion to issue a negative 2 determination with no conditions, and was seconded by Nick Sylvia. The motion passed unanimously.

j) CON-023-075: 240 Alden Road

Abbreviated Notice of Resource Area Delineation filed by Jeff White requesting confirmation of all the jurisdictional resource areas under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw at the property located at 240 Alden Road, Assessors Map 23, Lots 175A, 175D, and 175E.

Employed by Mr. White – in May had line delineated by a scientist, Steven Schmeil. He wants to get the lines verified. Approximately 16 acres

Mr. Haworth stated he has never heard of the scientist and would request a peer review as it could be dangerous to take at face value, referring to the delineation line.

Ms. McClees stated that delineation line was done on October 28, 2017, and the wetlands on this lot is connected to a larger system of wetland on Long Road. Ms. McClees recommended that the line should be reviewed either with herself and the circuit rider or a peer reviewer.

Mr. Haworth asked if there was a fee to the applicant for the peer reviewer by staff. Ms. McClees nothing right now, but could review in future.

Mr. Haworth stated that dedicating a whole day of Ms. McClees day to this wouldn't be fair to her and that we need to treat everyone fair. Just think we should do it for everyone.

Ms. DeSalvatore thinks there should be a fee imposed on the applicant.

Mr. Simmons stated he agreed with this avenue as it is an education opportunity for Ms. McClees.

Mr. Simmons asked if we could charge per flag, as a "donation". Ms. McClees said not if it's not in the by-laws.

Applicant asked to continue the application to August 26, 2019 for a delineation review.

Mr. Haworth made a motion to review the line either with Ms. McClees and the circuit rider or a per reviewer per the applicant's discretion, and to continue this application to August 26, 2019. Daniel Doyle seconded. Motion passed unanimously.

k) CON 023-078: 12 Howland Road

Notice of Intent filed by Nye Lubricants, Inc. for the removal and replacement approximately 25,326 square feet of aggregated material (asphalt) at the property located at 12 Howland Road, Assessors Map

19, Lot 100. Work to take place within Riverfront Area, Buffer Zone to Coastal Beach, and Land Subject to Coastal Storm Flowage/Zone AE.

Present representing Nye Lubricants were Patrick Norton and Martin Weinstein.

Mr. Haworth stated the reason for this filing was that he was driving by and saw the ripping of asphalt. He stopped and spoke to the contractor who had no clue a permit was needed. There were no permits in place. Mr. Haworth placed the cease and desist order at that time.

Ms. McClees reviewed her staff report dated July 29, 2019. Falls under the wetland protection act and coastal storm water management. Removal & replacement of roughly 25,362 sq. ft of aggregated material (asphalt) on the western side of the property near the Acushnet River.

Ms. McClees reviewed the three most relevant criteria as listed in her staff report.

Mr. Weinstein stated they were replacing what was there. Preventive maintenance.

Any redevelopment project is to improve the existing conditions. Ms. McClees asked what the current stormwater management is currently.

Mr. Norton stated there is preventive controls in place, the edge of the burn and two shut off controls. They check for contamination and filter through the grass, at a catch basin.

A discussion was had to improve the grading. A temporary silt fence was installed.

Ms. DeSalvatore thinks this should be requested under peer review for stormwater management.

Mr. Simmons stated that he felt it should be continued with Ms. McClees overview.

Mr. Weinstein stated that they are trying to prevent risk.

Mr. Haworth stated that prior to them ripping out the asphalt, they should've filed. He said there is a lot going on in this area and stormwater regulations are important. Mr. Haworth would like to see maintenance and an upgrade, especially where this is an after the fact filing.

Mr. Simmons thought that perhaps an 'emergency' order could be in place for the on-going off loading of the trucks at the location.

Mr. Simmons requested a continuance for two weeks and a discussion at that time.

Mr. Haworth, at the applicant's request made a motion to continue the hearing until August 12, 2019 and suggested in the meantime they continue to work with Ms. McClees. The motion was seconded by Daniel Doyle and passed unanimously.

7. Violations/Enforcement Orders/Cease and Desist Notices:

a) 38 Camel Street – previously discussed above.

b) 3 North Street – follow up on Commission request from June 3, 2019

Mr. Simmons recused himself as Chairperson, sat in the audience as an abutter.

Mr. Haworth stated that the Commission had requested a list of violations, and was presented by Ms. McClees.

Ms. McClees stated the Commission had requested this list so the whole project summary was in front of them and with the history

Mr. Sylvia stated he felt was a miscommunication, he requested an idea of history for both lots. The purpose he stated was to have something to reference when the property owner comes before the Commission. He wanted an easily referenced document to put the owner on notice.

This is the list only on this project.

Mr. Haworth stated he spends too much time on this one project and it takes up more time than necessary.

Mr. Sylvia stated he felt the Commission wasn't addressing the violations one-by-one, so perhaps should address it more carefully and aggressively.

Mr. Haworth advised he is not the only one on the commission that can go out to the property address.

Discussion on if there are continued violations at the property how the commission should be handling the violations.

Ms. McClees stated that she doesn't want to have conflict between the current order of conditions on one particular lot vs. the adjacent lot under same owner. Not looking at specific order of conditions but to these two parcels, this is what the history is of both properties.

Mr. Haworth made a motion to take 8b out of order, seconded by Daniel Doyle. Motion passed unanimously.

8b) 3 North Street – potential field change.

Ms. McClees stated when the applicant came in with the proof of recording, he stated there were some changes to the approved plan. The changes included are, the granite bench will no longer be replaced; the proposed pin oak located on the southwestern corner of the property as depicted on the approved plans is proposed to be located within the western portion of the property and may not end up being placed in the location as shown on plans dated June 3, 2019.

Ms. DeSalvatore made a motion to approve the changes per the Staff Report dated July 26, 2019 and was seconded by Nick Sylvia. The motion passed unanimously.

c) 28 Cherry Street – Mr. Simmons came back as Chairperson. The violation on Cherry Street is that sections of fence were observed to have been installed along the western edge of the property in Land Subject to Coastal Storm Flowage/Zone AE and in buffer zone to salt marsh.

Mr. Haworth stated he believed there was new brush cut.

Mr. Simmons recommended that Ms. McClees do a site visit.

d) 33 Point Street – A shed was constructed in Land Subject to Coastal Storm Flowage/Zone VE without a permit. The homeowner came into the office this morning and Ms. McClees gave him the paperwork for an after the fact filing of a new shed. She wasn't sure if he was still going to keep the shed there or remove it. Mr. Simmons stated the Commission would give the homeowner 90 days to make a decision.

Mr. Haworth made a motion to give 33 Point 90 days to make a decision, and was seconded by Mr. Doyle. The motion passed unanimously.

e) Town Beach on West Island – waiting for \$300 fine

Ms. McClees discussing with the person who is still waiting for the check and who it went to. She sent the documentation and continues to follow up with the fine.

8. General Business/Discussion:

a) Payment of Bills

Ms. McClees received a memo from the Town Accountant regarding who will be designated to sign payment of bills/invoices. She put together a response and had the Commission members sign it.

Mr. Haworth made a motion that Ms. McClees and any board members will be able to sign payment of bills, and was seconded by Mr. Doyle. The motion passed unanimously.

GCG – 46 Sconticut Neck Road - \$2,842.50

Mr. Haworth made a motion to pay GCG Peer Review for Stormwater Management on 46 Sconticut Neck Road for \$2,842.50, and was seconded by Mr. Doyle. The motion passed unanimously.

Mass Conservation Society - \$20.00 dues

Mr. Haworth made a motion to pay MSMCP for \$20.00 dues, and was seconded by Mr. Doyle. The motion passed unanimously.

MACC – FY20 dues - \$362.00

Mr. Haworth made a motion to pay MACC for FY20 dues of \$362.00 and was seconded by Mr. Doyle. The motion passed unanimously.

c) Winsegansett Marsh Concerns

Ms. McClees received phone calls regarding marsh concerns, water more stagnant – purple film and odor. She visited and there was a purple film, which she believes may be a naturally occurring bacteria. The stagnant water may be typical fluctuation, or change by mosquito trenching not happening as frequently – she isn't sure why the stagnant water.

Mr. Simmons has reviewed it as well.

Abutters, Joan and Michael Mello has been there 20 years – marsh not moving, not flowing. Other abutter, Mr. Kline marsh that he faces is just still water. A big portion of the marsh has died.

Mosquito trenching – Bristol County Mosquito could be called & inquired on.

Ms. McClees stated that she has read about mosquito trenching in another study.

Discussion on perhaps obstruction in the marsh.

Ms. DeSalvatore asked if Buzzards Bay Coalition or DEP could walk the marsh and see if they could look at it.

Mrs. Mello stated she is here to really advocate for someone to look at it. She said it holds a lot of wildlife.

Ms. McClees stated she would reach out to her resources and get out there to investigate the marsh area with them.

d) Isolated Vegetated Wetlands

Ms. McClees stated this was a follow up from previous meeting falls under Commission by-laws. She has been out to property, wetland line staked out and in the stages of plans being done. Three lots, under common ownership. This is on West Island. She looked into other communities, it would be a by-law notice of intent. A by-law fee only.

Ms. McClees will put something in writing to adopt a by-law only filing, and collect a by-law only fee.

Mr. Haworth make a motion to adopt a policy on by-law only filing and specify it's a by-law only filing and collect the fee. Ms. DeSalvatore seconded. The motion passed unanimously.

e) 9 Goulart memorial Drive Site Visit

Ms. McClees indicated the property owner would like to remove more healthy trees and vegetation in resource area. Homeowner had previously requested a site visit. Ms. McClees went out and did a site visit. She showed pictures to the Commission. She said the homeowner would like to take trees and shrubs out and put others in its place. Ms. McClees said she didn't see a reason to remove healthy vegetation in a wetland.

Ms. McClees will make an attempt to schedule a site visit with the Commission and bring it back to the next meeting.

9. Any other business

Ms. DeSalvatore stated that she believed under Wetland Law, they can regulate what's unloading in the riverbank.

Ms. McClees stated that she will double check and email the reference to the Commission members. She stated that an impact has to happen directly to the riverbank before the Commission can act on it.

Mr. Haworth made a motion to adjourn and was seconded by Nick Sylvia. Motion passed unanimously.

Meeting adjourned at 9:55 p.m.

Respectively submitted,

Patricia A. Pacella

Recording Secretary