

**Fairhaven Conservation Commission
Monday, August 12, 2019
Banquet Room**

1. Chairman's Welcome and Media Notification

2. Quorum/Attendance

Present: Jay Simmons, Chairperson; Vice Chairperson, Geoff Haworth, Daniel Doyle and Edward Dorschied

Absent: Amy DeSalvatore , Nicholas Carrigg and Nicholas Sylvia

Fairhaven Town Conservation Commission Agent, Whitney McClees was also in attendance.

3. Approval of Minutes: July 8th & July 29, 2019

July 8, 2019 – Geoff Haworth made a motion to accept the July 8, 2019 minutes as presented and was seconded by Ed Dorschied. The motion passed unanimously.

July 29, 2019 – Mr. Haworth made a motion to accept the July 29, 2019 minutes as presented and was seconded by Ed Dorschied. The motion passed unanimously.

4. Requests for Extensions: None.

5. Requests for Certificate of Compliance

a) **CON 023-086 SE023-0583: 21 Cove Street**

Amended Order of Conditions issued March 26, 1998 for the elevation of the foundation and an addition in a flood zone. Original Order of Conditions issued August 25, 1997

Ms. McClees reviewed her staff report and stated the work appeared to be completed specified to the plans.

Mr. Haworth made a motion to issue the certificate of compliance and was seconded by Ed Dorschied, the motion passed unanimously.

6. 46 Charity Stevens Lane, Notice of Removal from Chapter 61A

Ms. McClees stated that the Selectboard was waiting to hear a recommendation from Conservation Commission regarding 46 Charity Stevens Lane right of first refusal on chapter 61a land. She stated it was the intention to convert two areas (total of approximately 11 acres) on the property from 61A to solar photovoltaic arrays. She stated the property falls within the Nasketucket River Basin area.

Jay Simmons asked if there could be a portion taken out of 61A but not all of it; Ms. McClees stated it could.

Mr. Haworth stated that from a Conservation standpoint that the Selectboard should consider taking a piece of the property out and review for first refusal.

Ms. McClees said it abuts the Town Forest. Her recommendation was to perhaps encourage the Selectmen to explore right of first refusal for the western solar lease and stormwater area, given the proximity to the Town Forest and existing wetlands and the goals outlined in the 2040 Master Plan and the 2017-2024 Open Space and Recreation Plan.

Mr. Haworth made a motion to recommend to the Selectmen that they explore the Western side area, near the Town Forest as their right for first refusal and was seconded by Ed Dorschied. The motion passed unanimously.

7. PUBLIC HEARINGS:

- a) **SE 023-1297, CON-19-051: Hiller Avenue & Timothy Street, Assessors Map 28C, Lots 71 and 71A – continued to August 12, request for continuance to September 16, 2019**

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 per the applicant's request to September 16, 2019 and was seconded by Ed Dorschied. The motion passed unanimously.

- b) **SE 023-1302, CON-19-066: 6 Emerson Avenue – request for continuance to August 12, continuance to September 16, 2019.**

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 to continue per the applicant's request to September 16, 2019 and was seconded by Ed Dorschied. The motion passed unanimously

- c) **SE 023-1303, CON 023-075: 240 Alden Road – continued to August 26**

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.

- d) **CON-19-055: 25 Abbey Street – continued to August 26**

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.

- e) **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.

Mr. Haworth made a motion to continue to September 16, 2019 at the applicant's request and was seconded by Ed Dorschied. The motion passed unanimously.

f) **SE 023-1296, CON-19-050: 46 Sconticut Neck Road**

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.

GH made a motion to table 46 Sconticut Neck Road and was seconded by Ed Dorschied. The Motion passed unanimously.

g) **CON 023-078: 12 Howland Road – *continued to August 12***

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.

Chris Stillman, from Apex was present as he is consulting with Nye Lubricants to respond.

Nye Lubricant's attorney was also present.

Ms. McClees stated that a stormwater report had been submitted by Apex Companies, LLC. She would recommend a peer review of the stormwater report assessed.

Chris Stillman stated initially the concern was the paving of the parking lot. He stated they have outlined standard plantings, whereas it would be the most impactful process for mitigation and restoration. They did put in catch basins on the property to help with the rainwater flow.

Chris stated Nye has already put a silt fence up.

Jay Simmons asked what the maintenance schedule proposal was.

Ms. McClees stated that she has received it and hasn't been able to read through the whole document, but it was available if the Commission members wanted to read it.

Mr. Haworth stated that its standard practice to have a peer review plan of the stormwater report.

Mr. Haworth made a motion to continue to August 26, 2019 per the applicant's request and the commission would seek a peer review plan of the stormwater report and was seconded by Ed Dorschied. Motion passed unanimously. Agent will work out with the applicant for the peer review.

NEW PUBLIC HEARINGS:

h) **CON 023-082: Hoppy's Landing, 55 Goulart Memorial Drive**

Request for Determination of Applicability filed by Town of Fairhaven Public Works for the cutting of some vegetation that has grown between and on top of the boulders at the property located at 55 Goulart Memorial Drive, Assessors Map 42, Lot 23A. Work to take place in Land Subject to Coastal Storm Flowage/Zone VE, Coastal Beach, Buffer Zone to Coastal Dune, Buffer Zone to Salt Marsh, and Buffer Zone to Rocky Intertidal Shore.

Ms. McClees stated there was a request to withdraw.

Timothy Cox, Fairhaven Harbormaster was present and stated he had a discussion with the Town Administrator, Mr. Rees this afternoon that the deed is conservation of land, but goes through harbormaster if something wants to be done down there.

Mr. Furtado, Superintendent of DPW, submitted the original filing stated he wanted to request weeds and vegetation between the boulders at the property to cut the weeds. He said subsequently he learned that it is not DPW owned, it's owned by Conservation Commission, therefore he couldn't make the request and legally had to ask that it be withdrawn.

Frank Coelho, Chairperson of the Marine Resource Advisory Committee was also present and he stated that he came before the commission a few years ago to move the dirt mound that was on the property. At that time the request was made to the DPW to move the mound of dirt which they did.

Mr. Cox said when the pile of dirt was man made and asked to be removed. Other issue vehicles driving out on the point of Hoppy's, put rocks out there to avoid people from driving out.

Discussion on the vegetation that is there currently.

Jay Simmons stated that before the board currently is a withdrawal, and the correct owner should reapply for the application.

Gary Lavalette asked about if the clearing takes place, you can't alter lower than 2'. Mr. Haworth stated he remembers consultant, John Rockwell stating that information.

Mr. Cox stated he would recommend a meeting with Mr. Furtado and Ms. McClees to discuss the options at that property.

Mr. Coelho stated he would like to be a part of this meeting as he is chairperson of the Marine Resource Division.

Mr. Haworth made a motion to approve the request of the withdrawal for Hoppy's Landing, 55 Goulart Memorial Drive and was seconded by Daniel Doyle. Motion passed unanimously.

i) **CON 023-083: 25 Nelson:**

Request for Determination of Applicability filed by Town of Fairhaven Public Works for the installation of two leaching basins to prevent localized flooding, to prevent further damage to the road, to provide water quality benefits, and to reduce erosion at the property located at 25 Nelson Avenue, Assessors Map 43, Lot 217. Work to take place in Land Subject to Coastal Storm Flowage/Zone VE.

Mr. Furtado, Superintendent of the DPW was present for this applicant advising that the DPW wanted to put in leaching basins to comply with MS4 permit. He said the catch basins would be underground, perforated, geo text tile material – water subsequently filter in to the groundwater in that area. He said the people that live down there have tremendous flooding.

John Louis, 23 Nelson Ave. Extremely supportive of anything that would help with the flooding.

Penn Reeve, 21 Nelson Ave is in support of resolving the problem. He said there was a low point in the road and the water collects in the road.

Mr. Furtado stated the maintenance of the road would have to be required and stayed on top of it.

Mr. Simmons asked what the typical maintenance of the units itself was.

Mr. Furtado stated it would be site specific, condition would predict that.

Carol Reeve, 21 Nelson Ave asked why the road just couldn't be regraded, if there was just a low collecting spot on the road.

Ms. McClees stated the water has to go somewhere, and would be pushed either down the road or on someone's property.

Mr. Reeve says the road slopes down to the North and could just be regraded.

Mr. Furtado stated he felt this was the best solution to the road.

The Reeves said they felt it would be easier to re-asphalt the road.

Frank Coelho, BPW board member stated he got a call from Jeff Swift, 25 Nelson Ave who is favor of project.

Mr. Haworth stated it was a better idea to filter through the ground, as presented.

Ms. McClees reviewed her staff report with the commission.

Mr. Haworth made a motion to close the public hearing and to issue a Negative 3 with three conditions: work with agent for pre-construction, and also added the conditions as outlined in the Staff Report pertaining to adequate erosion and sedimentation control measures as well as BLD-3. The motion was seconded by Ed Dorschied. Motion passed unanimously.

j) CON 023-084: West Island Town Beach

Request for Determination of Applicability filed by Town of Fairhaven Public Works for the opinion of the Conservation Commission on what is needed to incorporate into the design phase of a future paving/drainage project at the property located at Assessors Map 43C, Lot 424. No work is proposed in this filing.

Mr. Furtado was also present for this application. He said he trying to find fact information before calling on an engineer, stating he would like to pave the parking lot for parking lot lines. Would like to put something together that Commission could approve.

Ms. McClees referred to her Staff Report, stating there were quite a few different resource areas in that area. She reviewed her Staff Report to the Commission.

Mr. Haworth suggested impervious material.

Mr. Simmons stated Mr. Furtado to work with the agent to recommend how to move forward with an application.

Mr. Cox thought they could put higher guard rails out on the South Side; thinks it's a great project.

Mr. Furtado asked for the withdrawal of the Request for Determination.

Mr. Haworth made a motion to accept the withdrawal of the RDA and was seconded by Ed Dorschied. The motion passed unanimously.

k) CON 023-079: 88 Fort Street

Notice of Intent filed by the Terje Tonnessen Revocable Trust - 2015 for the reconstruction of a stone/concrete seawall at the property located at 88 Fort Street, Assessors Map 5, Lots 4 and 5. Work to take place in Land Subject to Coastal Storm Flowage/Zone AE and Buffer Zone to Coastal Beach.

Dave Davignon was present representing Mr. & Mrs. Tonnessen. Southern wall is not licensed. Piece of the wall put in 1912, sometime after wall expanded. Mr. Davignon described how the wall would be replaced. Proposing to clean out the beach area of the rocks, stripping the stones from the beach

repurposing it behind the wall. 85' running all the way back, vertical wall – more of a landscaping feature. Finish grade is elevation 7.0.

Jay Simmons asked about the fill and topped with woodchips on the tree – way it is designed it may cause that tree to die prematurely.

Mr. Haworth asked about the stockade fence behind the tree.. looks like there was 2x12 boards against the fence, to hold the fill back. Mr. Davignon stated they could address that.

Ms. McClees reviewed her Staff Report. She stated that MA DEP added a few comments to the project as well as MA DMF, Division of Marine Fisheries.

Mr. Davignon stated he would answer their questions in writing for the record.

Ms. McClees further read her Staff Report with her recommendations.

Ms. McClees asked if the structure can be located above high mean water.

Mr. Davignon stated they could, but would like to do as historically was there. Ms. McClees stated that DEP put it in their comments. Mr. Davignon said yes they could, but they prefer not to.

Mr. Haworth stated there was significant vegetation stripped and filled, 8-12”.

Mr. Simmons suggested he work with the agent for vegetation and what works with the homeowners.

Mr. Haworth made a motion to continue to August 26, 2019 at the applicant's request, seconded by Dan Doyle. The motion passed unanimously.

i) **CON 023-081: Bridge Street, Assessors Map 36, Lot 15**

Notice of Intent filed by Craig Lutz, Carapace LLC for the construction of an auto dealership with ancillary paved parking on vacant lot at the property located at Bridge Street, Assessors Map 36, Lot 15. Work to take place in Bordering Vegetated Wetland.

Brandon Faneuf (ESI), Richard Rheaume (Prime), and Craig Lutz (Alden Mazda) were all present.

Richard Rheaume explained the background of the project stating a filing was done three years ago. Line was done by Brandon Faneuf and the Commission's consultant, John Rockwell at that time. An order of conditions was done at that time.

Mr. Lutz stated thought it would take longer through Town (franchise of Mazda-pretty strict facility negotiations). Finished NOI with Mazda, two months later, Mazda corporate didn't approve the move from Fairhaven to Bridge Street; Mazda wanted it in Dartmouth. He said he had to sue Mazda Corporate and now four years later, bringing it back to franchise facility on 250 Bridge St.

Design plans still has meeting all stormwater standards.

Ms. McClees stated the wetland line has expired. Disturbance of line has been mowed. She reviewed her staff report and concerns.

Ms. McClees was of the opinion that the delineation line should be peer reviewed at the very least.

Mr. Rheaume stated Mr. Faneuf went out there for assessment and majority of the vegetation is upland vegetation.

Mr. Faneuf stated that he believes the same wetland line is still out there as it was four years ago.

Mr. Haworth asked if John Rockwell could come back to peer review the wetland line.

Ms. McClees stated she has been on the site and performed a test plot of vegetation and soils in an area outside the line and it is wetlands. Ms. McClees concerned that some of the proposed property has more wetlands than indicated on the plan.

Ms. McClees recommended a peer preview be done, maybe with a fresh set of eyes.

Mr. Rheaume didn't see why another peer review was necessary.

Ms. McClees stated she wouldn't want to see something permitted with a line that isn't accurate.

Mr. Lutz stated that he would recommend Mr. Rockwell to do the peer review, and not bring in another set of eyes, another opinion could convolute the project.

Mr. Haworth stated that our agent has a concern and we should hear that concern.

Mr. Lutz stated he had no objection to a peer review.

Mr. Haworth thinks we should just have it peer reviewed & move it forward to see if there have been any changes in four years.

Mr. Simmons asked Ms. McClees what her concerns were about John Rockwell doing the peer review.

Ms. McClees stated she thinks it would be good to have a fresh set of eyes on that and she wants to make sure they are following all of the appropriate procedures.

Mr. Simmons stated he would like to see three name proposals presented at the next meeting to the Commission, and one of them being John Rockwell and they would then make their decision for a peer review.

Mr. Haworth made a motion to continue to August 26, 2019 at the applicant's request and the agent will bring back 3 proposal names for peer review with John Rockwell as one of them and bring back to the board on August 26, 2019 and was seconded by Ed Dorschied. The motion passed unanimously.

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

a) Town Beach on WI – waiting for \$300 fine.

Ms. McClees stated she still has not heard back, sending letter for pending documentation

Mr. Haworth made a motion that if it's not paid in thirty days, they would have to come in front of the board, and was seconded by Ed Dorschied. The motion passed unanimously.

b) 56 Balsam Street

Dawn & Edward Lacombe, property owners were in attendance.

Ms. McClees received report of installation of an asphalt driveway in a flood zone without a permit, sent the property owner a violation letter. Mr. Lacombe got the permit through the BPW. Ms. McClees recommended given the property owners 30 days to file RDA.

Mr. Simmons asked about the width of the driveway. Mr. Lacombe stated the width is 26' and supplied the commission with the permit application from the DPW.

After the fact filing, Mr. Haworth stated it is too much of an extensive driveway to be permitted to have asphalt and even after fact the filing, he wouldn't vote for it.

Ms. McClees stated there has to be a filing.

The board would strongly recommend the filing within 90 days.

Mr. Haworth made a motion for the RDA be filed within the next 90 days, seconded by Ed Dorschied. Motion passed unanimously.

c) Alder Street, Assessors Map 43A, Lots 10-11

Ms. McClees received a report of mowing and cutting of vegetation encroaching on resource areas and in a flood zone. Ms. McClees continued her with her Staff Report. Her recommendation is to continue monitoring to make sure vegetation is able to grow back.

Mr. Simmons asked they follow up with the property owner to see if there was an abutter rebuttal about the mowing.

d) 40 Wapatma Lane – Brandon Faneuf – re: horses on this property; gave pictures to the Commission – stating the issue is the horses getting into the wetland area. Reviewed the pictures he had.

Florence Shuck was in attendance and stated her horses have been on that property since 1975 and is always permitted with the Board of Health. She would just like to see this completed.

Mr. Simmons stated he saw a front loader down there on Easter Sunday dumping soil. He said it was near an adjacent area where work was asked to already stop unpermitted work and that's why we are here tonight.

Mr. Faneuf more fencing on the east side and to move the horses from the wetland area is totally acceptable.

Ms. McClees stated a delineation line should be done, so the Commission knows what they're looking at.

Mr. Faneuf will do a delineation line and come back for discussion.

Mr. Haworth made a motion to file a delineation line within 90 days and come back for discussion, and was seconded by Ed Dorschied. The motion passed unanimously.

e) 33 Bayveiw Avenue

Ms. McClees stated that the owner has been in touch with her, but not present this evening. She stated that the owner indicated that his original idea was going to be too costly and would instead like to remove the gravel/stone from the resource area and spread it around the shed and let the beach/dune vegetation continue to grow. She stated that he was looking for some more guidance from the Commission.

Mr. Simmons asked that Ms. McClees work on a RDA with the applicant.

Ms. McClees will notify him

Mr. Haworth made a motion that the applicant does not need to file if he removes the gravel and doesn't disturb the regrowth – remove the gravel to an offsite location out of the vegetation area, and was seconded by Ed Dorschied. The motion passed unanimously.

f) Chambers Street

Ms. McClees received a report that the paper street extension of Chambers Street was being mowed by someone on a ride-on mower. She recommended that sending letters out to neighboring/area property owners indicating that it is a resource area and should not be maintained, cut, or mowed in any way. She stated she knows where the location of the mower came from, not who was on the mower.

Mr. Haworth stated a conversation with DPW for a sign down there that says no mowing would be a good idea as well.

Jay Simmons made a motion to send out letters to residences in that area to stop mowing that path, and was seconded by Mr. Haworth. The motion passed unanimously.

9. General Business:

a) Bills

MACC - \$55.00 – Wetlands Enforcement Course

Staples - \$69.99 – Office Supplies

b) Upcoming MACC Courses – Ms. McClees advised what courses would be upcoming and if anyone had any interest they could contact her. She will send an email.

c) 9 Goulart Memorial Drive

August 19, 21st or 22nd for a site visit after 5:00p.m. Mr. Simmons will follow up within the next day or so.

10. Any other business.

Ms. McClees, was contacted by 5 Almond Street - one last look before end of season. Pictures have been provided and where it was rototilled has regrown. She was of the opinion that the violation could be cleared.

Mr. Haworth made a motion to end the monitoring of the violation on the property across from 5 Almond Street and was seconded by Ed Dorschied. The Motion passed unanimously.

Mr. Haworth made a motion to adjourn and was seconded by Dan Doyle. The motion passed unanimously. Meeting adjourned at 9:41pm.

Respectively submitted,

Patricia A. Pacella

Recording Secretary