

Conservation Commission
MINUTES
Monday, September 30, 2019 at 6:30 pm
Town Hall, 40 Center Street
Fairhaven, Massachusetts

1. Chairman's Welcome and Media Notification

Chairman, Jay Simmons opened the Public Meeting at 6:33 p.m. and advised the public that the meeting was being televised and recorded.

2. Quorum/Attendance

Present: Chairperson, Jay Simmons, Nick Carrigg, Dan Doyle, Gary Lavalette, Geoff Haworth, Amy DeSalvatore and Nick Sylvia

Conservation Agent, Whitney McClees was also present.

3. Approval of Minutes: None

4. Requests for Extensions: None

5. Requests for Certificates of Compliance: None

6. Field Change Request: 277 Bridge Street, SE 023-1246

Request to replace the approved Stormceptor units with First Defense units.

Nick Carrigg recused himself from the conversation.

Ms. McClees explained that the engineer provided signed and stamped memo with attached technical specifications, the original units were evaluated and approved with order of conditions. She also asked the Commission if they feel that the applicant should provide peer reviewer fee now in anticipation of the peer reviews that will need to be done midway through the construction and after construction is completed. Stormceptor units 8 weeks, they can't order replacement until field changes are approved. Ms. McClees explained the technological specifications that the engineer provided, the First Defense units providing slightly better treatment than the Stormceptor units.

Discussion regarding project going before Planning Board.

Ms. McClees questioned the peer review fee and when it should be collected regarding assessment of as-built plans.

Geoff Haworth made a motion to approve the field change contingent on approval by the Planning Board, and was seconded by Gary Lavalette. Motion passed unanimously (6-0-0).

Nick Carrigg returned to the room and resumed his role as Commissioner.

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

Continued Public Hearings:

- a. **SE 023-1286, CON-19-029: 200 Mill Road – *continued to October 28, 2019***
- b. **SE 023-1297, CON-19-051: Hiller Avenue & Timothy Street, Assessors Map 28C, Lots 71 and 71A – *continued to October 15, 2019***
- c. **SE 023-1303, CON 023-075: 240 Alden Road – *request for continuance to October 15, 2019***
Geoff Haworth made a motion to continue 240 Alden Road at the applicant's request to October 15, 2019 and seconded by Nick Carrigg. The motion passed unanimously (7-0-0).
- d. **SE 023-1299, CON 023-081: Bridge Street, Assessors Map 36, Lot 15 – *request for continuance to October 15, 2019.***
Geoff Haworth made a motion to continue Bridge Street at the applicant's request to October 15, 2019 and seconded by Nick Carrigg. The motion passed unanimously (7-0-0).
- e. **SE 023-1302, CON-19-066: 6 Emerson Avenue – *request for continuance to December 9, 2019.***
Geoff Haworth made a motion to continue 6 Emerson Ave at the applicant's request to December 9, 2019 and that the applicant shall re-advertise and re-notify abutters for that meeting. Seconded by Nick Sylvia, this motion passed unanimously (7-0-0).
- h. **SE 023-1296, CON-19-050: 46 Sconticut Neck Road – *continued to September 30, 2019***
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.

Taken out of order.

Geoff Haworth made a motion to continue SE 023-1296, CON-19-050: 46 Sconticut Neck Road until October 15, 2019 at the applicant's request, seconded by Nick Carrigg, this motion passed unanimously (7-0-0).
- f. **CON 023-089: 56 Balsam Street – *continued to September 30, 2019***
Request for Determination of Applicability filed after-the-fact by Edmond Lacombe for the installation of a paved driveway at the property located at 56 Balsam Street, Assessors Map 43C, Lot 13. Work to take place Land Subject to Coastal Storm Flowage Zone VE.

Mr. and Mrs. Lacombe were present.

Ms. McClees explained that the owners submitted a letter and an amended RDA and came by the office and spoke to her. They discussed removing part of the driveway that will place lot coverage just below the 25%, and reduce impervious surfaces.

Mr. Haworth stated he did a site visit and felt the revision would be a perfect resolution.

Nick Carrigg questioned the 14' x 23' and questioned curb cut.

Discussion ensued regarding material to re-place the asphalt.

Geoff Haworth questioned drains.

Mr. Haworth made a motion to close the public hearing and was second by Nick Carrigg. The motion passed unanimously.

Mr. Haworth made a motion to issue a Negative 6 and Negative 3 for plans dated September 6, 2019 with three conditions (listed below), and was seconded by Nick Carrigg. The motion passed unanimously (7-0-0).

- The Conservation Agent is contacted for an inspection once the removal of the northern area of the driveway (14' x 23') is complete
- At no point shall there be any impact to any of the surrounding resource areas
- Anything you replace the removed area with shall be entirely pervious

g. **CON 023-091: 21 Silver Shell Beach Drive – *continued to September 30, 2019***

Request for Determination of Applicability filed by Kenneth and Sandra Balthazar for the addition of some fill, loam, and seed at three locations at the property located at 21 Silver Shell Beach Drive, Assessors Map 41, Lots 41 and 29. Work to take place in Land Subject to Coastal Storm Flowage Zone VE and Buffer Zone to Coastal Beach and Bordering Vegetated Wetland.

Kenneth and Sandra Balthazar were both present

Whitney McClees provided a recap of the discussion at the previous meeting with regard to where the water will go if the areas in question were to be filled. Ms. McClees also indicated that Mr. Lavalette had conducted a site visit and had taken some photographs.

Mr. Lavalette explained that it seems the majority of the water on the road runs to the low point near the catch basin and there appears to be a frost heave around the catch basin, preventing water from successfully draining into it. He also expressed his opinion regarding the water running over a low spot on the driveway apron of the property and the inability to run into the catch basin due to the frost heave. His opinion is to begin with baby steps and lower the catch basin and raise the driveway apron with curbing to see how much of the flooding is addressed with those changes.

Mr. Lavalette also discussed his findings on Lot 29 from across the street regarding the depression on the property as well as the depression in the backyard around the septic system.

Ms. McClees noted that in the previous meeting she expressed no issues with filling around the septic system since it would have been graded appropriately when the project was finished.

Mr. Haworth also conducted a site visit and looked at the drain and he noted the drain is raised, which may or may not be contributing to the flooding problem. Mr. Haworth expressed his concern that if the property is filled, it will push all of the water onto the neighboring property both on Lot 41 and Lot 29.

Discussion between Mr. Haworth and Mr. Balthazar regarding where the water will go if the depression on Lot 29 is filled.

Mrs. Balthazar questioned the possibility of placing a berm on the north side of Lot 29 to retain water on site.

Mr. Haworth indicated that would be an option and noted that the concern of the Board is to ensure that a problem isn't created for someone else as a result of a decision of the Board.

Discussion on the feasibility of a berm on Lot 29 and whether or not that would address the issue.

Discussion regarding adding shells to park on Lot 29.

Mr. Haworth indicated that his opinion was the amount of fill in the front yard is limited by the height of the footings on the house.

Ms. McClees explained that the neighbor, Mr. Alexander, reached out and indicated that he would be interested in doing a joint filing for filling across both properties.

Dave Davignon questioned the ability to run a pipe from the yard to the catch basin on the corner of Chamber and Silver Shell.

Mr. Lavalette expressed his interest in what would happen with current conditions in a rainstorm.

Discussion regarding speaking with Department of Public Works regarding the frost heave around the catch basin.

Applicant requests to withdraw the repair to the septic area from the application.

Geoff Haworth made a motion to accept the withdrawal of the repair to the septic area, seconded by Nick Carring, this motion passed unanimously (7-0-0).

Geoff Haworth made a motion to continue 21 Silver Shell Beach Drive at the applicant's request to October 15, 2019, seconded by Gary Lavalette. This motion passed unanimously (7-0-0).

i. **SE 023-1307, CON 023-090: 46 Charity Stevens Lane – *continued to September 30, 2019***

Notice of Intent filed by Clean Energy Collective, LLC for the construction of new ground-mounted photovoltaic solar arrays, gravel driveways, stormwater facilities, electrical equipment pads, energy storage systems, and above- and below-ground utility lines at the property located at 46 Charity Stevens Lane, Assessors Map 40, Lot 8. Work to take place in Buffer Zone to Bordering Vegetated Wetland.

Greg Carey from Clean Energy Collective, Rich Tabaczynski from Atlantic Design Engineers, and Scott Goddard from Goddard Consulting were present.

Ms. McClees reviewed the project history and noted that the peer reviewer's second letter indicated that all stormwater issues have been addressed and it meets all of the regulations it needs to me. Ms. McClees also reviewed the submitted revisions to the plans and documents addressing both comments from the Commission and comments from the stormwater peer reviewer.

Ms. McClees inquired about the amount of vegetation in the buffer zone to bordering and isolated vegetated wetland that is proposed to be removed.

Mr. Carey stated that there will be no coppicing of trees within and outside of buffer zones.

Mr. Tabaczynski noted that 2720 square feet of trees will be cleared rather than 5600 in the southwestern portion of the buffer zone to the bordering vegetated wetland. He also noted that about 2700 square feet of trees will be cleared in the buffer zone to isolated wetlands on the southwestern portion of the property.

Mr. Haworth questioned how the panel configuration had changed to accommodate the 25-foot no disturb zone.

Ms. McClees reviewed some of the recommended conditions.

Mr. Haworth noted that he is very pleased to see the 25-foot no disturb zone. He also noted that even though there is about 5000 square feet of tree cutting within the jurisdiction of the Conservation Commission, the revision is an improvement over what was initially submitted.

Mr. Carrigg commented that it is nice to see an applicant who has gone to the trouble of responding to the Commission's comments.

Mr. Simmons asked if there was anyone in the audience who wished to be heard. No one responded.

Mr. Haworth made a motion to close the public hearing for 46 Charity Stevens Lane, seconded by Nick Carrigg. Motion passed unanimously (7-0-0).

Mr. Haworth made a motion to approve the plans dated September 24, 2019 and issue an Order of Conditions with the 56 special conditions listed in the Staff Report dated September 30, 2019, seconded by Nick Carrigg.

Discussion regarding conditions relating to subsequent permitting and tree removal.

Motion passed unanimously (7-0-0).

New Public Hearings

j. **NONE**

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

a. Town Beach on West Island – waiting for \$300 fine

Ms. McClees stated she received the letter sent marked return to sender. She is working with the Harbormaster for updated contact information.

Mr. Carrigg questioned the time that has gone into this, and whether or not the \$300 fine would actually cover it.

Discussion ensued.

Mr. Haworth explained that he was in the Conservation Office when the Harbormaster called the individual and the number came back as no longer in service and suggested the Harbormaster and Agent reach out to the Environmental Police.

Mr. Simmons noted that it should stay on the agenda and then Ms. McClees will provide another update when available.

b. 40 Wapatma Lane

Mr. Faneuf, representing property owner Martha Tichon, explained the wetland delineation and provided outline for existing fencing. He provided an aerial photograph of the area of concern. The pink line shows the wetland boundary and the yellow lines represent the paddock, both active and inactive paddock. Mr. Faneuf reviewed the existing conditions on the site.

Ms. McClees explained that the inactive paddock is only recently inactive and asked if it was intending to stay inactive.

Mr. Faneuf stated that the property owner wants to stay in compliance with the Commission.

Ms. McClees asked the Commission if they would like to see the same issues that were addressed on the adjacent property with regard to horse manure management and water quality addressed for this property.

Mr. Lavalette questioned the inactive paddock.

Mr. Faneuf explained that the fencing around the majority of the inactive paddock would be easily removed. The fencing between the inactive and active paddock is wooden post and harder to remove. Mr. Faneuf indicated that what Mrs. Tichon is hoping for is to have the wooden fencing remain and abandon the inactive paddock and remove the fencing and adjust the electric fencing of the active paddock outside of the wetland.

Mr. Haworth questioned some of the locations of the flags.

Mr. Simmons questioned the date of the aerial photograph. Mr. Faneuf indicated that the photograph was likely from April, year undetermined.

Ms. DeSalvatore indicated that it appears the wetland line needs to be reviewed.

Mr. Simmons explained that this was a response to a violation, not a filing.

Ms. McClees asked to review the data sheets.

Mr. Haworth stated that he would not be comfortable approving this line now or in the future and stated that potentially moving the fence 25 feet off the proposed line to address the violation.

Discussion regarding necessity of peer review of the wetland line.

Ms. DeSalvatore noted that the Commission is asking them to cease and desist activities in the wetlands and therefore the Commission needs to know where the wetlands are.

Ms. McClees noted that her greatest concern was the portion of the paddock that is now inactive.

Mr. Faneuf noted that Mrs. Tichon has no objection and that will remain inactive.

Ms. DeSalvatore questioned whether a filing could be required.

Ms. McClees discussed options of what would require a filing versus what wouldn't.

Mr. Carrigg asked if they need to file to remove the electric fence. Mr. Simmons stated they do not.

Mr. Faneuf explained that some of the fencing can be pulled and removed or readjusted 25 feet off the wetland line. The wooden fencing wouldn't be pulled as easily.

Ms. DeSalvatore asked if they could put a berm in along the wooden fence that runs adjacent to the wetland.

Discussion regarding a berm and potential filing.

Mr. Simmons asked what the grades were.

Mr. Faneuf discussed potential plans for different types of filings and asked if it would be possible to address things under the violation rather than a formal filing.

Ms. McClees said it would be nice to see 25 ft off wetland line, and proposed berm between b5-b7 under RDA.

Ms. DeSalvatore asked if the Agent could walk the line with Mr. Faneuf.

Jay Simmons stated that what we're looking at is a potential RDA and the removal of fence around inactive paddock and no work approved on unapproved line and to walk the line with the Agent.

Mr. Faneuf described potential work under RDA and through working with the Agent.

Mr. Faneuf and Ms. McClees will walk the line and bring further information back to the Commission if/when necessary.

c. 88 Fort Street

Dave Davignon was present.

Mr. Simmons summarized the history of this violation.

Whitney McClees explained that this addendum plan is the plan that was withdrawn from permit that was issued from western part of property. It is being addressed by separate violation due to location of fill. Ms. McClees reviewed the revised addendum plan and submitted letter from the arborist and memo from representative. Ms. McClees noted that based on the revised documents that have been submitted, it appears all of the comments from the previous meeting have been addressed.

Ms. McClees reviewed her recommendations from the staff report.

Mr. Davignon elaborated on the proposed wall and other measures addressing drainage.

Discussion on deep root feeding.

Mr. Haworth made a motion to accept the plan as submitted and accept the memo outlined in the staff report dated September 30, 2019 with the addition that they provide a timeline and frequency for the deep root feeding to be done by the arborist, seconded by Nick Carrigg. This motion passed unanimously (7-0-0).

9. General Business:

a) Bills

\$225 for reimbursement to Whitney McClees for two MACC courses

Ms. McClees noted that with the completion of those two courses, she has completed the certificate program.

b) Discussed MACC Fall Conference – October 19, Devens Common Center

- c) Discussed next meeting: TUESDAY, October 15

10. Any other business

- a. Ms. McClees discussed a potential violation at 32 Abbey Street that was brought to her attention after the agenda was posted.

She noted the property is in flood zone and show pictures and noted that Mr. Haworth posted a cease and desist and that the property owner contacted her within 12 hours.

Ms. McClees explained that she conducted a site visit and the work the property owner is intending to do.

Discussion regarding project in the rear of the house.

The Commission came to the consensus that if the walkway in the rear is the only work he wants to do, he can do that. If any other work is being proposed, a filing will be needed.

- b. Mr. Lavalette discussed a project he would like to do to address some of the debris that accumulates on Fort Phoenix beach.

Jay Simmons recused himself from the Commission and Mr. Haworth took over as Chair.

- c. Mr. Sylvia asked about an update on North Street.

Ms. McClees provided the information she had received the same day of the meeting.

Jay Simmons returned as Chair.

Brief discussion regarding the Mullin Rule for Board members.

Geoff Haworth made a motion to adjourn, seconded by Nick Carrigg. Motion passes unanimously.

Respectfully Submitted,
Shallyn Rodriguez