

Conservation Commission
Minutes
Tuesday, October 15, 2019 at 6:30 pm
Town Hall, 40 Center Street
Fairhaven, Massachusetts

1. Chairman's Welcome and Media Notification

Jay Simmons opened meeting at 6:36 pm and informed the public that the meeting was being televised and recorded.

2. Quorum/Attendance

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

Whitney McClees, Conservation Agent, was also present.

3. Approval of Minutes of the meetings of September 16 and September 30, 2019

No minutes were available for the Commission to review and will be reviewed for the next meeting.

4. **Requests for Extensions: None**

5. **Requests for Certificates of Compliance: None**

6. **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 023-1302, CON-19-066: **6 Emerson Avenue – *continued to December 9, 2019***
SE 023-1296, CON-19-050: **46 Sconticut Neck Road – *request for continuance to October 28, 2019***

Geoff Haworth made a motion to continue 46 Sconticut Neck Road until October 28, 2019 at the applicant's request, seconded by Nick Carrigg. This motion passed unanimously (6-0-0).

- c) SE 023-1297, CON-19-051: **Hiller Avenue & Timothy Street, Assessors Map 28C, Lots 71 and 71A – *request for continuance to November 25, 2019***

Geoff Haworth made a motion to continue Hiller Avenue & Timothy Street until November 25, 2019 at the applicant's request, seconded by Nick Carrigg. This motion passed unanimously (6-0-0).

- d) SE 023-1303, CON 023-075: **240 Alden Road – *request for continuance to October 28, 2019***

Geoff Haworth made a motion to continue 240 Alden Road at the applicant's request, seconded by Nick Carrigg. This motion passed unanimously (6-0-0).

- e) CON 023-091: **21 Silver Shell Beach Drive – *continued to October 15, 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.

Ms. McClees reviewed the updated from the applicant since the previous meeting. She explained that they brought in two different proposals to address low spot on the lot across the street from

their house. The two proposals are to either bring loam up 2 inches at grass line in rear and grade to street with a berm on the fence line or to bring loam up approximately 2 inches 7 feet back from the road with a berm along the fence line with a swell in the center, moving water to the rear of the property.

Ms. McClees stated that it might be preferable to have the water run to the rear of the property so that pollutants are being filtered out rather than picking up pollutants on the street and then running into the catch basin. She also noted that if a project is needed in the future on both properties to address the flooding in the front yard of 21 Silver Shell Beach, a joint filing could be done rather than two separate filings.

Ms. McClees noted that the revised request for determination encompassed fixing the driveway apron, doing some fill in the lot across the street, and reserving the right to do some fill in the front yard if the repairs to the apron and catch basin in the road don't address the flooding.

Mr. Haworth questioned the grades of the catch basin and agreed with revised plan and noted that it seems to address all of the comments from the Board.

Geoff Haworth made motion to close public hearing and issue a Negative 3 Determination and a Negative 6 Determination with recommended conditions that are listed in the staff report dated October 11, 2019, seconded by Gary Lavalette. This motion passed with five members in favor and Mr. Doyle in abstention (5-0-1).

f) SE 023-1299, CON 023-081: **Bridge Street, Assessors Map 36, Lot 15 – *continued to October 15, 2019***

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.

Craig Lutz and Rich Rheume were present.

Ms. McClees explained that the peer reviewer completed a field assessment on October 2, 2019 and reviewed the comments she provided in her staff report. The structures need to be revised to take into account the new wetland line.

Mr. Rheume explained the original line and where the changes were. The original line underestimated the existing wetland. The western area is entirely a wet meadow. The eastern area has a little less wetland, so there is just enough room between the two wetland areas to place the structures without needing to fill wetlands.

Mr. Lutz explained that when the Multiflora rose was removed, there has been a lot of growth of native species.

Mr. Lavalette asked if the changes to the line meant there is less property to work with.

Mr. Lutz noted that with the shift in the eastern wetland line, there is now enough upland area to avoid replication entirely. He questioned whether it was possible to vote on the wetland line itself and then request a continuance for two weeks to bring forth a new plan.

Mr. Rheume explained that the Planning Board suggested they go through zoning for variances and Conservation before being heard by Planning Board. He noted that they will be asking for waivers for some of the stormwater regulations.

Ms. McClees noted that the project will still need to be peer reviewed for stormwater. She also asked if based on recent discussions with other projects, the Commission would like to see a 25-foot no-disturb zone off the wetland line.

Mr. Rheume noted that there will be a 15-foot no disturb zone and the detention basin and rain gardens will additionally provide buffer between the developed areas and the wetland.

Mr. Haworth noted that there seems to be a good enough buffer there.

Mr. Haworth made a motion to accept the line as depicted on the plans dated October 8, 2019 for 250 Bridge Street, seconded Nick Carrigg, this motion passed with four in favor and two abstentions by Nick Sylvia and Gary Lavalette (4-0-2).

Mr. Haworth made a motion to continue at the applicant's request 20 October 28, 2019, seconded by Nick Carrigg. This motion passed unanimously (6-0-0).

New Public Hearings

g) CON 023-094: **219 Sconticut Neck Road**

Request for Determination of Applicability filed by Evan Pereira for the removal of a rock wall, placement of some fill, and installation of a fence at the property located at 219 Sconticut Neck Road, Assessors Map 28B, Lot 595. Work to take place in Land Subject to Coastal Storm Flowage/Zone VE.

Evan Pereira was present.

Ms. McClees explained that this project resulted from a cease and desist that was posted about the removal of deteriorating rock wall on the northern back yard. The proposed project is to add a small amount of fill to raise the grade to match the neighbor's land grade. The fill will slope at a 4-1 ratio. The project also proposes the installation of a 6-ft fence 6 inches off the ground and to use the removed rock wall to help rebuild the rock wall on the east side of back yard, no greater than 4 feet in height.

Ms. McClees noted that it appears that there will be no net change in where the stormwater is going, it will still be directed to the rear of the property. She also noted that the fence and rock wall would likely be exempt if not in the flood zone.

Mr. Haworth explained his site visit that resulted in the cease and desist and noted that it is an approvable project that just needs the appropriate permits.

Mr. Haworth made a motion to close public hearing and issue a Negative 2 and Negative 6 Determination, with the added condition that all fill must be clean fill with no contaminants, seconded by Nick Carrigg. This motion passed unanimously (6-0-0).

h) CON 023-096: **732 Sconticut Neck Road**

Request for Determination of Applicability filed by Saltwinds Trust for a septic repair to bring the property into Title 5 compliance by installing a 1500-gallon septic tank, 1,000-gallon pump chamber, and 5-bedroom leaching area at the property located at 732 Sconticut Neck Road, Assessors Map 42, Lot 6. Work to take place in Land Subject to Coastal Storm Flowage/Zones VE and AE.

Dave Davignon of Schneider, Davignon, and Leone was present.

Mr. Davignon explained the history of the property and a recent ANR subdivision process through the Planning Board to divide the property into 4 lots and as a condition of selling the property,

they need to have a Title 5 compliant septic system. The proposal is to bring the property into Title 5 compliance by installing a 2000-gallon septic tank with leeching area located on lawn area.

Mr. Simmons asked if it was 2000-gallon versus 1500-gallon.

Mr. Davignon noted that it was a typo. He continued explaining the project. All the work will take place on existing lawn areas. All access will be through existing driveway. The house in back currently gets water from another building and they are proposing to run a separate water line from Sconticut Neck for the house.

Mr. Simmons asked about a sewer line.

Mr. Davignon explained that the rear house has its own septic system.

Mr. Lavalette questioned whether any water lines would need to be raised.

Mr. Davignon explained that a gravity line would be used.

Mr. Carrigg questioned where the water flows on the property and whether there would be pooling around the raised system.

Mr. Davignon explained that the houses are on a high part of the property and water flows away from it in all directions.

Mr. Haworth questioned whether they have been before the Board of Health.

Ms. McClees explained that the closest wetland resource area was over 300 feet away and that this will likely result in an improvement to groundwater quality and aid in the prevention of pollution. She also noted that as far as she can tell, the grades are not substantially changing. It appears to be a net improvement.

Mr. Haworth made a motion to close public hearing and issue a Negative 2 and Negative 6 Determination with the condition that Board of Health approve the plan, seconded by Nick Carrigg. This motion passed unanimously (6-0-0).

i) **CON 023-095: Huttleston Avenue, Assessors Map 31, Lots 115A & 117C**

Notice of Intent filed by Dana Lewis for the construction of four 3-unit residential buildings with ancillary earthwork and utilities, along with two storage buildings and a shed at the property located on Huttleston Avenue near Gellette Road, Assessors Map 31, Lots 115A and 117C. Work to take place in Buffer Zone to Bordering Vegetated Wetlands.

Rich Rheaume of Prime Engineering was present.

Mr. Rheaume explained the history of the land and that they had originally filed the plans as non-jurisdictional wetlands but that the Agent informed him of a current Order of Conditions approving the line as a Bordering Vegetated Wetland.

Ms. McClees noted that there is a current Order of Conditions that expires March 6, 2020.

Discussion regarding exact location of property.

Discussion regarding grading.

Geoff Haworth questioned where the runoff will be located, and Mr. Rheaume explained that it will be eliminated.

Discussion where the catch basin discharges and the waivers that they are looking to request from the Planning Board for stormwater based on the comments from the peer reviewer.

Mr. Rheaume noted that they will be disturbing more than an acre and as such are required to file a Notice of Intent with the EPA and provide a Stormwater Pollution Prevention Plan.

Fernando Pinto questioned where the water would go.

Mr. Rheaume explained it will follow the slope down away from Mr. Pinto's land.

Mr. Pinto noted that in a heavy rainstorm his land gets wet.

Discussion of existing catch basins and where the water runs currently and the plan to install a detention basin to control the water drainage.

Nathan Bekemeier from 354 Huttleston Avenue explained the flooding and drainage in the area.

Donald Walton expressed concerns about flooding and drainage.

Mr. Bekemeier questioned what percentage of what is being proposed is non-permeable. Maybe a solution can be to take away some buildings.

Mr. Rheaume explained the calculations that go into designing the stormwater facilities.

Ms. McClees noted that based on plans provided, required maximum lot coverage is 50% and they've proposed 38.6%. Required maximum building coverage is 25% and they are proposing 11.7%.

Daniel DeJesus expressed concerns about water in basements.

Mr. Simmons noted that there will be no excess water leaving the site.

Mr. Rheaume noted that these houses will not have basements.

Martha Mayer asked about borings or trenches and if the town has historic USGS maps of the area.

Arne Ole Anderson expressed concerns about drainage.

Mr. Haworth explained the existing conditions on site with regard to elevation and drainage.

Discussion regarding the piping on the plans and it was suggested that the easements and piping could be brought up with Town DPW and Mass DOT.

Ms. McClees noted that the notation of the resource area on the plan is incorrect and it should be changed on the plans. She also noted that the previous filing approved the clearing of the area but maintained 25-foot setback to the wetland line, so the Commission could consider asking the same distance of setback for this project. She also commented on some of the proposed vegetation is non-native rather than native.

Mr. Rheaume noted that Planning Board requires they have street trees and that he would look into alternatives.

Ms. McClees commented on the proposed erosion and sedimentation control and asked that no hay be used on site. She also noted that some sort of erosion control be installed on the upgradient side of the silt fence.

Mr. Rheaume requested a continuance to October 28, 2019.

Mr. Haworth made a motion to continue Huttleston Ave, Assessors Map 31, Lots 115A & 117C until October 28, 2019 at the applicant's request, seconded by Nick Carrigg. This motion passed unanimously (6-0-0).

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

a) Discussion regarding Town Beach on West Island – waiting for \$300 fine

Whitney McClees that she have received the \$300 dollar fine.

b) 16 Silver Shell Beach Drive

Mr. Simmons stated that he, Mr. Lavalette, and Ms. McClees conducted a site visit.

Ms. McClees noted that they posted a Cease and Desist on October 7, 2019 based on large piles of concrete and removal of the concrete pad. The following day, the property owner called for more information and Ms. McClees noted that she explained that potentially a filing would be needed. The contractor explained that the project involved the removal, repair, and replacement of the existing concrete patio and no increase to impervious surfaces would occur and that all debris would be trucked off site.

Mr. Lavalette questioned the seawall and the protection from the ocean.

Mr. Simmons noted that there has to be a filing if they are reconstructing the wall. He stated that his opinion was as long as they do what they say they will do, the Board can let it stand at this time.

Mr. Haworth noted that people need to have a conversation with the Agent when they are thinking of doing projects in areas within Conservation jurisdiction.

Discussion on administrative review by the Agent.

Commission decided to allow Agent to pursue this as an Administrative Review.

c) 44 Torrington Road

Jay Simmons did a site visit and noted that Ms. McClees received a call on this and noted that there are trees down that shouldn't be.

Ms. McClees explained that she spoke to the owners and explained that they were in in the AE flood zone and possibly buffer zone to Bordering Vegetated Wetland. The owner thought he wasn't in the flood zone. Ms. McClees noted that she gave a verbal cease and desist, and owner confirmed no further work will occur. In addition to flood zone, it appears that there are bordering vegetated wetlands 23 feet west of the stone wall according a current order of conditions for neighboring property. I couldn't tell from site visit if they were on wetland or buffer zone, but either way they are in flood zone and a filing was needed to do this work.

Mr. Haworth noted that now that the trees are cut, it's a matter of asking for forgiveness, but it's not practical to plant trees of that caliper.

Discussion about removal of trees and restoration plan

Mr. Haworth stated that the property owner needs to come to the October 28 meeting and present where the trees actually are.

The conclusion was no stumping of trees and cut and remove trees by hand with no machinery and the owners be present at the October 28, 2019 meeting.

Jay Simmons recused himself at 8: 07 for (d, e, f and g)
Geoff Haworth assumed role of Chair.

d) **131 Dogwood Street**

Ms. McClees noted that she received a report from the neighboring property owner that boulders and debris were being placed in the isolated vegetated wetland. She conducted a site visit and found that the boulders were entirely outside the wetland and there was no issue from Conservation.

Geoff Haworth opened items 7. e, f and g.

e) **3 North Street, North Street Layout West of Cherry Street, North Street Marsh, Assessors Map 15, Lot 43**

Geoff Haworth was notified that the area had been sodded. He did site visit and found that the North Street Layout had been graded and sod laid out. The work is outside limit of work of the current Order of Conditions. Mr. Haworth issued a cease and desist and violation of Order of conditions. Th reason I combined this is because it's all bordering each other.

Discussion of whether it is a zoning and planning issue and a Conservation issue when working outside limit of work and in a resource area.

Discussion regarding the Certificate of Compliance process for the existing Order of Conditions.

Whitney McClees called engineer haven't heard back yet and will continue to follow up with him.

Geoff Haworth expressed that he would like to see that street layout restored back to into its original condition and file for a permit if he would like to do any kind of work that is outside of the Order of Conditions. Mr. Haworth reviewed Section 192-11 of the Bylaw regarding fines.

Discussion regarding issuing 25 dollar fine a day.

Nick Carrigg made a motion to authorize the agent to issue an enforcement order to the property owner of 3 North Street for the North Street Layout to be ratified at the next meeting to remove and restore to original conditions within 30 days and for every day thereafter, it will be a \$25 fine that it is not rectified, seconded by Dan Doyle. This motion passed unanimously (5-0-0).

Jay Simmons rejoined the Commission at 9:02

8. **General Business:**

a) Bills:

- Massachusetts Association of Conservation Commissions - \$15.00 for Erosion and Sedimentation Control Field Guide
- Staples - \$110.98 for office supplies
- GCG Associates, Inc. - \$632.50 for stormwater peer review of 46 Sconticut Neck Road
- Forestry Suppliers - \$215.61 for field supplies

Geoff Haworth made a motion to adjourn at 9:05pm, seconded by Nick Carrigg, this motion passed unanimously (6-0-0).

Respectfully submitted,
Shallyn Rodriguez

Recording Secretary