

Conservation Commission Minutes
Monday, October 28, 2019 at 6:30 pm
Town Hall, 40 Center Street
Fairhaven, Massachusetts

1. Chairman's Welcome and Media Notification

Chairman Jay Simmons opened the meeting at 6:33pm and informed the public that the meeting was being televised and recorded.

2. Quorum/Attendance.

Present: Chairman Jay Simmons, Vice Chair Geoff Haworth, Nick Sylvia, Gary Lavalette, Dan Doyle

Absent: Amy DeSalvatore, Nick Carrigg

Conservation Agent Whitney McClees was present.

3. Approval of Minutes of the meetings of September 16, September 30, and October 15, 2019.

Mr. Haworth made motion to approve meeting minutes of September 16, 2019, seconded by Mr. Lavalette, this motion passed unanimously.

Mr. Haworth made motion to approve meeting minutes of September 30, 2019, seconded by Mr. Sylvia, this motion passed unanimously.

Mr. Haworth made motion to approve meeting minutes of September 15, 2019, seconded by Mr. Sylvia this motion passed unanimously.

4. **Requests for Extensions:** None

5. **Requests for Certificates of Compliance**

a) SE 023-1170: **56 Goulart Memorial Drive**

Order of Conditions issued November 5, 2013 for the authorization of existing and proposed structures, and dredging and disposal area.

Ms. McClees explained that without an as-built plan, she was unable to determine if there was compliance with the Order of Conditions. According to Harbormaster, the shellfish mitigation was never completed. The area was surveyed but no fees were ever paid. Based on the current fee schedule, the shellfish mitigation fee will be dependent on how much the area was disturbed. In order to determine whether work was done in compliance with the Order of Conditions, an as-built will need to be submitted.

Jay Simmons explained have applicant appear at next meeting and bring as-built.

Geoff Haworth motion to not issue a Certificate of Compliance for SE 023-1170: 56 Goulart Memorial Drive until an as-built is provided and have the owner appear at the next meeting they are available. Seconded by Mr. Lavalette, this motion passed unanimously.

Continued Public Hearings

- b) SE 023-1302, CON-19-066: **6 Emerson Avenue – continued to December 9, 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.
- c) SE 023-1297, CON-19-051: **Hiller Avenue & Timothy Street, Assessors Map 28C, Lots 71 and 71A – continued to November 25, 2019**
Notice of Intent filed by Robert Rodrigues 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.
- d) SE 023-1303, CON 023-075: **240 Alden Road – request for continuance to November 25, 2019**
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.

Geoff Haworth made a motion to continue public hearing until November 25, 2019 at applicant's request, seconded by Dan Doyle, this motion passed unanimously.

- e) SE 023-1286, CON-19-029: **200 Mill Road – continued to October 28, 2019**
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.

Geoff Haworth made a motion to continue public hearing until December 9, 2019 at applicant's request, seconded by Nick Carrigg, this motion passed unanimously.

- f) SE 023-1296, CON-19-050: **46 Sconticut Neck Road – continued to October 28, 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.

Geoff Haworth made a motion to continue public hearing until November 25, 2019 at the applicant's request, seconded by Mr. Lavalette, this motion passed unanimously.

- g) SE 023-1299, CON 023-081: **Bridge Street, Assessors Map 36, Lot 15 – continued to October 28, 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.

Geoff Haworth made a motion to continue the public hearing until November 25, 2019 at applicant's request, seconded by Nick Sylvia, this motion passed unanimously.

h) SE 023-1308, CON 023-095: **Huttleston Avenue, Assessors Map 31, Lots 115A & 117C – continued to October 28, 2019**

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.

Geoff Haworth made a motion to continue the public hearing until November 25, 2019 at applicant's request, seconded by Nick Sylvia, this motion passed unanimously.

New Public Hearings

i) CON 023-097: **115 Weeden Road**

Request for Determination of Applicability filed by Missy and Arthur Cimbron for the determination of whether the property located at 115 Weeden Road, Assessors Map 32, Lot 44 is subject to the Wetlands Protection Act and the Fairhaven Wetlands Bylaw. No work is proposed.

Missy Cimbron was present.

The applicants are requesting that the Conservation Commission make a determination as to whether their property is an area subject to jurisdiction under the Wetlands Protection Act and the Fairhaven Wetlands Bylaw. No work is proposed.

Ms. McClees conducted a site visit on September 9 with the MassDEP Circuit Rider and determined that though there is some wetland vegetation at the property, the soil characteristics do not indicate hydric/wetland soils. They did not observe a perennial stream nor did they observe indicators of an intermittent stream and none are noted on the USGS Quad. Therefore, it was the opinion of both the Circuit Rider and the Agent that there is not a wetland on the property.

However, due to a previous Superseding Order of Conditions and Certificate of Compliance through MassDEP, it is the Agent's recommendation that the property owner file a Request for Determination of Applicability to have the Conservation Commission officially determine that the property is not jurisdictional.

Geoff Haworth made a motion to close the public hearing and issue a Negative 1 and Negative 6 Determination for CON 023-097: 115 Weeden Road, seconded by Gary Lavalette, this motion passed unanimously.

j) CON 023-098: **20 Adams Street**

Request for Determination of Applicability filed by 20 Adams Street LLC for the installation of a paved driveway on the property located at 20 Adams Street, Assessors Map 10, Lot 154A. Work to take place within Land Subject to Coastal Storm Flowage/Zone AE.

Mr. Simmons noted that his cousin was in the audience and asked if he had any financial interest in the property. There was no financial interest, so Mr. Simmons stated that he did not believe he had a conflict of interest.

David Ferreira was present.

Ms. McClees explained that only a small portion of the eastern edge of the property along Adams Street falls within the flood zone. She explained that the applicant is proposing to install a 1-2 car driveway to the left of the existing single family home.

The majority of the driveway would be outside of the jurisdiction of the Wetlands Protection Act. The Fairhaven Wetlands Bylaw assigns a 100-foot buffer zone to the flood zone, which does encompass the entire property, but the Agent commented that she didn't think the Commission had enforced that in the past.

Mr. Haworth asked what the size of the driveway would be.

The applicant noted that it would be approximately 15 feet.

Abutter Jeff Simmons expressed concerns regarding buffer zone to his fence line and drainage impacting his property.

Geoff Haworth questioned the lot coverage and impervious surfaces so check with BPW for a driveway permit and the Building department regarding lot coverage.

Geoff Haworth made a motion to close public hearing for CON 023-098: 20 Adams Street and issue a Negative 2 and Negative 6 Determination and note that the Commission has instructed applicant to go to BPW and zoning and pitch the driveway appropriately away from the neighbor's property, seconded by Dan Doyle, this motion passed unanimously.

k) CON 023-099: **87 Balsam Street – Lot 140**

Request for Determination of Applicability filed by Lawrence and Shannon Pereira to add some fill, loam, and seed at the property located at 87 Balsam Street, Assessors Map 43A, Lot 140. Work to take place in Land Subject to Coastal Storm Flowage/Zone VE.

Theresa Pereira was present.

Ms. McClees explained that the applicant would like to grade the land on Lot 140 where there is an existing depression, add loam and plant grass. Ms. McClees noted that based on site visits she has conducted, the property appears to be pitched back to front towards the road. As long as they keep same pitch of property, Ms. McClees noted that it didn't appear that it would greatly change the existing drainage.

Geoff Haworth questioned the plan for working with the boulders on the property.

Ms. McClees noted that her understanding from the property owner is that they would be filling around them rather than excavating them out. She also noted that it is currently bare soil and in her opinion, any vegetation is better than no vegetation in a flood zone.

Mr. Haworth made a motion to close the public hearing for CON 023-099: 87 Balsam Street – Lot 140 and issue Negative 2 and Negative 6 Determination with the conditions that any fill be clean fill and that

the property grade remains properly pitched toward the road, seconded by Nick Sylvia, this motion passed unanimously.

l) CON 023-100: **1 Stetson Avenue**

Request for Determination of Applicability filed by Wendy Drumm for a beach nourishment project to fill an eroded area of the beach at the property located at 1 Stetson Avenue, Assessors Map 2, Lots 256, 262, and 263. Work to take place in Land Subject to Coastal Storm Flowage/Zone VE, on Coastal Beach, and in Buffer Zone to Coastal Dune.

Wendy Drumm was present.

Ms. McClees explained that the applicant proposes to replace an eroded area of the beach with appropriate sand material and notes that the work will be done by hand: wheelbarrowed from truck and shoveled in to fill the ditch. The ditch is about 20 feet long and about 1-3 feet deep. About 4 cubic yards of sand will be required.

Ms. McClees noted that she reviewed the MassDEP Beach Nourishment Guide, which notes that “the most important factor for beach nourishment projects is the grain size distribution of the source material as compared to the native beach material, also referred to as sediment compatibility.”

In her opinion, the placement of sand/sediment should match the existing slope of the beach. Additionally, monitoring is needed to ensure success of project, especially monitoring before and after storm seasons.

Ms. McClees noted that the MassDEP Beach Nourishment Guide states that it is the Conservation Commission’s responsibility to see that no project will alter the flow of water along the Beach and thereby interfere with sediment deposition, erosion or grain size of the Beach material.

Ms. McClees asked how do the applicant intends to determine what is brought in is a match with what is on site.

Ms. Drumm explained that she is looking at different companies to make sure that the grain size matches. Ms. Drumm explained that she also read the MassDEP Beach Nourishment Guide.

Mr. Simmons noted that he would like to know where the fill will be sourced from and Ms. McClees agreed.

Ms. Drumm noted that she would have to ask the vendor.

Mr. Simmons questioned if the issue that caused the erosion has been solved.

Ms. Drumm indicated that she thought so, but was not positive.

Ms. McClees questioned whether there is a plan for monitoring once the project is completed.

Ms. Drumm noted that she has lived there for four years and is very familiar with the area.

Ms. McClees noted her concerns with the introduction of invasive species.

Mr. Simmons noted that having clean fill that does not contain seed helps with that.

Ms. McClees questioned the width of the gulley.

Ms. Drumm noted that it started at about 2 feet wide and widened to about 4 feet.

Mr. Lavalette questioned whether that was a pathway for beach access. Ms. Drumm indicated that it was not.

Mr. Haworth asked if Ms. Drumm had looked at it this morning to see if the rain from the previous evening had made the gulley worse.

Ms. Drumm noted that it didn't appear to have been washed out further.

- Geoff Haworth made a motion to close public hearing CON 023-100: 1 Stetson Avenue and issue a Negative 3 and Negative 6 Determination with the following conditions:
 - The source and details of the fill to be brought in shall be submitted to the Commission or its Agent for review and approval prior to beginning the project.
 - The applicant shall submit a plan for monitoring to the Commission or its Agent for review and approval prior to beginning the project.
 - The extent of the fill shall be only to match the existing slope of the beach, not greater than the existing slope.

Seconded by Dan Doyle, this motion passed unanimously.

Jay Simmons explained that concludes the public hearings.

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

a) 40 Wapatma Lane

Brandon Faneuf was present

Whitney McClees explained that she performed a site visit with Brandon Faneuf on October 18, 2019 which reviewed the wetland line and looked at the soils in different areas along the wetland line and she agrees with the placement of the flags. She noted that she and Mr. Faneuf discussed the proposed changes with grandson on site, including moving the paddock about 25 feet off the line and removing fencing from the inactive paddock.

There will be a forthcoming RDA filing to install berm along the sloped edges of the paddock.

Discussion regarding the berm and the filing for the berm along the edge of paddock.

Mr. Lavalette questioned whether the horse manure caused changes in soil or growth patterns.

Ms. McClees explained that the reason for the berm is to reduce amount of nutrients that were getting into wetlands and prevent excessive growth or eutrophication.

Mr. Faneuf explained the location of where the horses spend most of their time and weeds that started to grow in the area.

Discussion regarding managing horse manure.

Jay Simmons explained that explained that he didn't want the wetlands being destroyed by the horse.

Geoff Haworth questioned timeline of the next filing and Mr. Fanneuf agreed to 90 days. Discussion whether to accept the line in which agent is comfortable with the wetland line.

Mr. Haworth made a motion that the applicant submit an RDA within 90 days for 40 Wapatma Lane, seconded by Dan Doyle, this motion passed unanimously.

b) **44 Torrington Road**

Applicants are out of town.

Whitney McClees explained that have been 15 mature trees that were cut down, which she believed were black cherry trees. She explained that she took a look at the soil and stumps and that it was in the flood zone and explained where she didn't see any wetland soil and the line from the approved filing next door may have changed. The agent explained that she spoke with owner and he explained that he hired someone to remove the trunks and branches and chip them. She explained to the property owner that work needed to be done by hand and that the stumps needed to remain.

Geoff Haworth explained that the owner wanted a view and recommends a fine of \$4500, \$300 for each tree that was cut.

Dan Doyle recommended that the property owner replace the trees.

Jay Simmons explained that he recommends that he cleans up site and provide new planting plan.

Discussion regarding the next steps to fix this violation.

Mr. Lavalette explained that it would be better serviced if something was replaced.

Jay Simmons explained concerns with issuing large fines.

Discussion ensued.

Jay Simmons explained that he would like to see a filing within 90 days for planting plan and to appear before Conservation Commission.

Mr. Haworth made a motion for 44 Torrington Road to file within the next 90 days and come before the Commission within that time as the Commission is discussing a \$300/tree fine, seconded by Dan Doyle, this motion passed unanimously.

Mr. Simmons recused himself at 7:52pm

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

Geoff Haworth took over as chair and explained violation of grading and installation of sod. He explained that he issued a Cease and Desist, which has now been removed by someone unknown. He explained the pictures that were provided for last meeting.

Geoff Haworth explained that no matter how this is viewed its still un-permitted work being done.

Whitney McClees explained that she spoke to the engineer about issue and explained the concerns of working outside the current limit of work and doing work that was not permitted.

Mr. Lavalette expressed concerns and questioned whether a permit can even be issued without knowing true ownership of property and should be discussed with Town Counsel.

Discussion regarding missing cease and desist posting.

Discussion regarding making this a legal issue.

Discussion regarding discussing matter with other boards.

Geoff Haworth recommended that the agent draft a letter to have this issue heard by Town Counsel.

Whitney McClees explained the Enforcement order that needs to be ratified about clearing behind marsh and explained contents of letter. She also spoke about the issued fine that it is still unpaid.

Dan Doyle made a motion to ratify the Enforcement Order for North Street Marsh (Assessors Map 15, Lot 43, seconded by Mr. Lavalette, this motion passed unanimously.

Whitney McClees explained the Enforcement Order for North Street Layout West of Cherry Street for the sod and grading in violation of the existing Order of Conditions and doing work without a permit.

Dan Doyle made a motion to ratify the Enforcement Order for North Street Layout West of Cherry Street for the sod and grading in violation of the existing Order of Conditions and doing work without a permit, seconded by Mr. Lavalette, this motion passed unanimously.

Dan Doyle made a motion to issue an Enforcement Order for installation of gravel after a cease and desist was issued, work outside the limit of work in violation of the existing Order of Conditions, and work without a permit, seconded by Mr. Lavalette, this motion passed unanimously.

Discussion regarding scheduling a meeting for either November 4 or 12 to further discuss these issues with Town Counsel.

Geoff Haworth closed discussion on North Street at 8:12 pm

Jay Simmons returned to the Board and resumed role as chair at 8:14 pm

7. General Business:

a) Bills

Environmental Consulting and Restoration Inc for \$1,937.50 for wetland peer review of 250 Bridge Street.

GCG Associates, Inc. for \$805.00 for stormwater peer review of 46 Sconticut Neck Rd.

b) Discussion regarding Next meeting on November 25, 2019

Any other business:

Ms. McClees explained that that she received report of a potential violation at 86-88 Middle Street, which falls in AE flood zone. The Zoning Board of Appeals approved a variance for 100% lot coverage in June. She explained that she spoke with the individual regarding filing with Conservation and provided him with Notice of Intent paperwork on three separate occasions. She followed up with him after he received the variance and has not yet had a response from the individual. The rear of the property has been completely cemented in the flood zone.

Jay Simmons explained that he would like to see applicant appear before Commission.

Mr. Haworth explained that he had been informed that there has been withdrawal of water from Mill Pond.

Ms. McClees noted that the Wetlands Protection Act does not regulate withdrawal of water, it only regulates land under water. However, in her opinion, the Bylaw does regulate withdrawal of water.

Mr. Haworth referred to 192-8 in the Bylaw and made note of item C regarding withdrawal of water.

Mr. Haworth noted that an out-of-town company was apparently withdrawing water for commercial uses.

Mr. Simmons noted that the Agent should speak to the appropriate individuals, including the Town Administrator and Town Counsel.

Discussion regarding correct interpretation of Bylaw and requesting company in question to appear before board at next meeting.

Mr. Simmons noted a potential violation on 8 Hathaway Street of cutting around the back of the property and they should appear at the next meeting.

Dan Doyle made a motion to adjourn meeting at 8:29 pm, seconded by Mr. Lavalette, this motion passed unanimously.

Respectfully submitted by,
Shallyn Rodriguez