

**Fairhaven Conservation Commission
November 4, 2019
6:00 P.M. – Town Hall
Minutes**

Chairperson, Jay Simmons opened the meeting at 6:24 p.m. and advised the meeting was being taped to be televised by Cable Access.

PRESENT: Jay Simmons, Geoff Haworth, Amy DeSalvatore, Nick Sylvia, Nicholas Carrigg, Daniel Doyle and Gary Lavalette

Conservation Agent, Whitney McClees was also present.

ABSENT: None.

Discussion/Possible Action:

- a) Bylaw Discussion regarding water withdrawal from Mill Pond

Mr. Simmons stated he read the regulations that it could be any water withdrawal from any water source. Ms. McClees agreed.

The Committee referred to the Wetlands Chapter 192.

Ms. McClees referred to the document highlighting 192-2 Regulated activities. She read from B. Any bank, beach, creek, dune, lake, river, pond, stream, estuary, or ocean; or within 100' of these resource area. She also read the definition of alter.

Ms. DeSalvatore stated that removing the water is altering.

Mr. Haworth stated that DEP had a regulation for 90 days you're allowed 100,000 gallons a day. He said the question came up with local residents asking about someone removing water from the pond. He also said that Town Counsel would be present tonight to further discuss.

Ms. DeSalvatore stated that she wondered if we had to demonstrate whether there was an alteration that takes place.

Ms. McClees said her reading of it is any disturbance of water level or water table.

Mr. Haworth said his concern goes further to what and how they are removing the water; hose that has pesticides on it or oil on it and then goes into the pond.

Ms. McClees stated if there was contamination on the pump that is going into the pond- then there is dumping, discharging or filling with any material which would alter the elevation as stated in the regulations.

Mr. Lavalette raised his own concerns that this could open a can of worms, with residents thinking they can just get water whenever they would like and whose liability checks in when it's Town Property.

Attorney Tom Crotty was present at 6:35p.m. Mr. Simmons expressed that the Committee was having a discussion on the bylaw, Chapter 192-Wetlands in regards to definitions and removing water from resources areas.

Attorney Crotty stated a few years ago, the local Towns stated they wanted to write a bylaw to advise not to allow pumping the water, he just wasn't sure where it ended up.

Mr. Simmons thought there should be a permit considered to obtain the water and get it more regulated.

Mr. Crotty stated that if you want to prohibit, you need a bylaw that says that. He said there ought to be a more specific by-law – a general provision that you can't draw out of surface water except your own property, or fire dept in an emergency. Mr. Crotty's suggestion was a specific bylaw would need to be created.

Ms. McClees asked Attorney Crotty, if removing the water under Chapter 192 enforceable the way the bylaw is written right now. She asked if a cease and desist could be issued.

Attorney Crotty said the cease and desist order can absolutely be issued and enforced based on the Wetland Regulation.

Jay Simmons recused himself from second discussion of the public hearing at 6:44pm

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

Mr. Lavalette made a motion to ratify the Enforcement Order regarding the installation of gravel and was seconded by Daniel Doyle. The motion carries unanimously with Mr. Simmons recusing himself.

Mr. Simmons returned at 6:45pm.

Geoff Haworth made a motion to go into executive session not to return to open session for the purpose of discussing the 3 North Street, North Street Layout West of Cherry Street, North Street Marsh and potentially discussing the withdrawal of water from Mill Pond and was seconded by Daniel Doyle. All members agreed to go into executive session with an affirmative through roll call of each member.

Respectively submitted,

Patricia A. Pacella

Documents reviewed:

1. Wetlands Chapter 192 – From the Code of The Town of Fairhaven