

CONSERVATION COMMISSION

March 23, 2020

Minutes

It was advised that the meeting was being conducted remotely consistent with Governor Baker's Executive order of March 12, 2020, due to the current State of Emergency in the Commonwealth due to the outbreak of COVID-19. The Governor's Order suspends the requirement of Open Meeting Law to have all meetings in a publicly accessible physical location.

For this meeting, the Conservation Commission convened by telephone and video conference via Zoom as posted on the Town's website identifying how the public may join. The meeting was recorded and televised live, and some attendees participated by phone and video conference.

The meeting was attended remotely by Jay Simmons, Gary Lavalette, Nick Sylvia, Daniel Doyle, Amy DeSalvatore and Nicholas Carrigg.

Present in the banquet room were members Geoff Haworth and Daniel Doyle, along with Conservation Agent, Whitney McClees.

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

2. Absent: None.

Ms. McClees was also in attendance. Ms. McClees read the Remote Access information in for the record.

Minutes:

- a) March 9, 2020 – Geoff Haworth made a motion to accept the March 9, 2020 minutes and was seconded by Dan Doyle. The motion passed unanimously with a roll call vote of the Commission (7-0-0).

4. PUBLIC HEARINGS**Continued to Future Meeting**

- a) SE 023-1297, CON-19-051: **Hiller Avenue & Timothy Street, Assessors Map 28C, Lots 71 and 71A – *continued to May 18***
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.
- b) SE 023-1296, CON-19-050: **46 Sconticut Neck Road – *continued to April 27***
Notice of Intent filed by Joshua Alves, Alexander Gray 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.

c) SE 023-1309, CON 023-110: **1 Bella Vista Island – *continued to April 13***

Notice of Intent filed by Heiam Alsawalhi for the reconstruction of an existing eastern groin, modification of the existing seawall, dredging the bridge channel, providing beach nourishment, a line of wooden posts and planting a lawn in the non-jurisdictional depressions, the construction of a ten-foot-wide crushed stone path to the beach, and an after-the-fact electric gate at the causeway bridge at the property located at 1 Bella Vista Island, Assessors Map 43B, Lots 326, 359, and 360. Work to take place in Land Under Ocean, Coastal Beach, Coastal Bank, Land Subject to Coastal Storm Flowage and buffer zone to Salt Marsh.

New Requests for Determination of Applicability

d) CON 023-129: 22 Alder Street

Request for Determination of Applicability filed by Mark Silverman for the construction of a 16x12 deck in the rear of the house on three sonotubes at the property located at 22 Alder Street, Assessors Map 43A, Lots 19. Work to take place in buffer zone to Coastal Beach and Land Subject to Coastal Storm Flowage.

Mr. Simmons opened the public hearing for the RDA of 22 Alder Street.

Ms. McClees reviewed her staff report of the 16x12 deck on three sonotubes. Ms. McClees recommended closing public hearing and issue a Negative 2 and Negative 6 Determination.

Mr. Simmons asked each individual member if there were any concerns, there were not.

Mr. Dana Pickup was present remotely for the applicant, he also had no concerns.

Geoff Haworth made a motion to close the public hearing on 22 Alder Street; and to issue a Negative 2 and a Negative 6 and was seconded by Daniel Doyle. The motion passed unanimously with a roll call vote of the Commission (7-0-0).

Ms. McClees advised how the signatures would take place on approvals and she will make arrangements with the applicant to get them the paperwork.

e) **CON 023-131: 43 Elizabeth Street**

Request for Determination of Applicability filed by Michel El-Khoury for the removal of the existing carport and asphalt driveway and construction of a 2- car garage at the property located at 43 Elizabeth Street, Assessors Map 27, Lot 8K. Work to take place in buffer zone to Bordering Vegetated Wetland.

Mr. Simmons opened the public hearing for 43 Elizabeth Street.

Ms. McClees reviewed her staff report dated March 16, 2020 for 43 Elizabeth Street to construct a 2-car garage attached to the house with full master bedroom above. Ms. McClees recommended closing the public hearing and issuing a Negative 3 and Negative 6 Determination with three conditions as stated in her staff report.

Applicant, Michel El-Khoury was present in the room.

Mr. Haworth had concerns for the wash-out but no further questions.

Ms. DeSalvatore asked about the overall impervious coverage of the lot. She asked what the percentage was.

Ms. McClees stated that she wasn't sure what the percentage was but she didn't think it would be over the impervious amount allowed.

No other board member had any questions at this time.

Mr. Haworth made a motion to close the public hearing for 43 Elizabeth Street and made a motion to issue a Negative 3 and Negative 6 Determination with the conditions as listed on the Staff Report dated March 16, 2020. The motion was seconded by Dan Doyle. The motion passed unanimously with a roll call vote of the Commission (7-0-0).

f) CON 023-132: Sconticut Neck Road, Map 43, Lots 193-195

Request for Determination of Applicability filed by Paul Starkie for the clearing of brush and planting of grass trees to remain, at the property located at Sconticut Neck Road, Assessors Map 43, lots 193-195. Work to take place in Land Subject to Coastal Storm Flowage.

Mr. Simmons opened the public hearing for Sconticut Neck Road, Map 43, Lots 193-195.

Mr. Paul Starkie was present in the room.

Ms. McClees reviewed her staff report dated March 17, 2020. Ms. McClees shared the property via GIS. She stated the applicant wanted to clear underbrush leaving the trees and grass.

Ms. McClees asked the applicant how he is proposing to remove the underbrush. The applicant responded that he planned to use a backhoe.

Ms. McClees asked the applicant what the plan is for the existing foundation on the property.

Mr. Starkie stated that it is not a foundation, but a shell driveway and pine trees were planted thru the shell driveway.

Mr. Haworth says his concern is that he's destroying everything there.

Mr. Starkie said he isn't destroying anything, stating it has been like that for ten to fifteen years. He said it has always been maintained as lawn at that property and it had overgrown in the last 10-15 years and has recently purchased the property and he just wants to return it to what it was 10 years ago.

Ms. DeSalvatore said she drove there today and the road was already flooded at that area. She says it needs a significant shrub planting in that area.

Mr. Simmons stated he shared the same concerns as Mr. Haworth and Ms. DeSalvatore.

Mr. Starkie said he wanted to just put the property as it was years ago. He said it was just grassy woods.

Ms. McClees recapped what Mr. Doyle asked from the banquet room, and that was if there was any plans to build a structure on the property. Mr. Starkie said there was not.

Mr. Lavalette stated he would defer to Ms. McClees' judgement on what plantings should be there.

Ms. DeSalvatore would like to see more than just "some plantings". She doesn't feel the public hearing should be closed and that plans should be brought before the Commission.

Ms. McClees stated she recommended two proposed conditions – one to work with the agent for the plantings and second that no mature trees be removed and existing trees not be damaged. She said the Commission could add another regarding the transplanted trees.

Ms. DeSalvatore would like to see native plants and a plan come before the Commission. She said she has some concerns.

Ms. McClees stated there was a grass lawn about ten years ago and she can't specifically say what's on the area at the moment. She said it probably has invasive species based on the presence of invasive species in the surrounding area.

Mr. Haworth stated that the procedure of the process should be moved onward quickly in these times as it is right now. He said the Commission has a very good staff person and it should be up to her insight to conduct business with the applicant.

Mr. Simmons agreed that Ms. McClees is an capable person to deal with the applicant directly.

Ms. DeSalvatore stated that she doesn't want to approve a plan unseen.

Mr. Starkie stated he is doing the work himself and the longer it is stretched out the longer it will take to get the land to look better.

Mr. Simmons stated that the look isn't the concern for the Commission.

Mr. Haworth explained the property in the flood zone is the Commission's concern, not how the property 'looks' per say.

Ms. McClees read a letter of support that came in from an abutter, David Carreau.

Ms. DeSalvatore again just expressed her concern that this should be continued.

Mr. Haworth stated that the applicant wants a decision tonight and was not requesting a continuance.

Mr. Haworth made a motion to close the public hearing for Sconticut Neck Road and issue a Negative 3 and Negative 6 Determination with the conditions as listed on the staff report; and was seconded by Gary Lavalette.

Ms. DeSalvatore asked how the applicant will work with Ms. McClees given the current situation.

Ms. McClees stated she is working remotely from home and has a phone, she said there is time to work out the details as a plan needs to be done within the next 90 days. She said it doesn't need to be a face to face meeting with the applicant.

No other public comment.

Mr. Simmons proceeded with a roll call vote and all members voted in favor except for Ms. DeSalvatore who was in opposition. Motion passed 6-1.

Request for Amended Order of Conditions

g) Request for Amended Order of Conditions filed by Edward and Lisa Lavalette for reconfiguration of the approved plans and reduction in impervious surface at the property located on Torrington Road, Assessors Map 29B, Lot 171. Work to take place within the Buffer Zone to Bordering Vegetated Wetland and Land Subject to Coastal Storm Flowage.

Mr. Simmons stated that the applicant, Ed Lavalette and Commission member, Gary Lavalette are not related and there is no link between the two, and therefore no conflict of interest.

Ms. McClees reviewed her staff report. She showed the approved March 4, 2019 plan to the Commission members, which includes a retaining wall around a pool. There have since been new plans submitted with a date of January 13 2020 with the retaining wall and pool removed as well as other changes.

Applicant, Ed Lavalette was present remotely and had no comment.

Mr. Simmons stated he was in favor of this new project.

Mr. Haworth stated he was in favor of the new project and a net gain for the commission and sees no reason not to go forward.

Mr. Carrigg had no comment at this time.

Ms. DeSalvatore stated she was happy to see the vertical wall disappear. She would like more information on the grading.

Ms. McClees stated that the amount of fill and grading has decreased due to the reduction in scope of the project.

Mr. Sylvia stated he was fine with the project.

Mr. Haworth made a motion to close the public hearing and issue an Amended Order of Conditions for the plans dated January 13, 2020 for Torrington with conditions listed in the staff report dated March 19, 2020, and was seconded by Gary Lavalette. The motion passed unanimously with a roll call vote of the Commission (7-0-0).

Continued Notices of Intent:

h) SE 023-1302, Con 19-066: 6 Emerson Avenue

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.

Mike Ristuccia was present remotely on behalf of the applicant.

Ms. McClees reviewed her staff report dated March 23, 2020. Ms. McClees stated plans submitted March 16, 2020 were inconsistent to previous plans and then plans were resubmitted March 20, 2020.

Mr. Ristuccia stated that the owner of the property approached him to get the project where she should be heading with the Commission. He said the concrete driveway was taken out and other plans were minimized. He says he brings it more into compliance. He said it's a plan that the commission can review and look at and approve.

Ms. McClees said it was a better plan than originally proposed. The garage structure would have to comply with FEMA and flood zone building code. She stated that proposed recommendation the plantings on Southern border line should include the plants/shrubbery as per her staff report.

Mr. Haworth stated he had concerns on the gravel around the garage that might be concrete in the future. He said there were future concerns that might just happen. He is comfortable with the project as it is now.

Mr. Carrigg had no concerns at this time.

Ms. DeSalvatore stated that she didn't feel they had the option of having a paved driveway. She said she saw plenty of places with gravel driveway and garages. She was fine with the project as is.

Mr. Lavalette had questions on the collection tank.

Ms. McClees stated a condition can be added for the small apron if need be. Discussion ensued.

Mr. Haworth made a motion to close public hearing and issue an Order of Conditions for 6 Emerson Ave for plans dated March 20, 2020 with the conditions listed in the staff report dated March 23, 2020 with the added condition that in the area that is identified as gravel apron on the approved plans, the applicant has the option to have that gravel apron be impervious as long as the total amount of approved impervious surface on the property does not increase.

On the question, Ms. DeSalvatore asked for a planting plan.

Ms. McClees stated the planting plan was in one of the conditions, and Ms. McClees read the condition. Ms. DeSalvatore was fine with it.

Mr. Lavalette asked if possibly the papers could be dropped off at a central location versus Ms. McClees chasing all the members to sign.

Ms. McClees advised per Governor Baker's order for tomorrow, there will be no public buildings open. She will move forward with dropping off the sign-off individual papers to the members.

The motion was seconded by Daniel Doyle. The motion passed unanimously with a roll call vote of the Commission (7-0-0).

i) SE 023-1299, 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.

Ms. McClees stated she received a request to continue at 4:30pm today.

Mr. Haworth made a motion to continue per the applicants request and was seconded by Gary Lavalette. The motion passed unanimously with a roll call vote of the Commission (7-0-0).

j) SE 023-1308, CON 023-095: Huttleston Avenue, Assessors Map 31, Lots 115A & 117C

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.

Ms. McClees received corresponding asking for a continuance until April 13, 2020.

Mr. Haworth made a motion to continue to April 13, 2020 per the applicant request and seconded by Gary Lavalette. The motion passed unanimously with a roll call vote of the Commission (7-0-0).

5. Violations/Enforcement Orders/Cease and Desist Notices

a) 44 Torrington Road: replication plan submitted

Ms. McClees stated a revised plan was submitted. She reviewed her staff report dated March 19, 2020. She stated revised plans were submitted and the fine has yet to be paid.

Ms. DeSalvatore had concerns for the interested parties that were online but aren't now.

Ms. McClees stated this was not a public hearing.

Mr. Lavalette stated he had concerns about the fine that hasn't been paid yet. He feels the fine needs to be paid before the Commission moves forward. He believes a stand needs to be made by the Commission, and he will be not voting.

Peter Therrien, Prime Engineering, attended remotely for the applicant.

Bob Gray, the wetland scientist was present via remote conferencing. He said he has no answer to why the fine hasn't been paid. He was secured through Field Engineering and does not know the property owner.

Ms. McClees said she spoke to Field Engineering earlier and stated it was likely that the Commission wouldn't be moving forward until the fine was paid. She asked them for a timeline. She read from the email from the engineer that stated he understood and that he would call the owner directly.

Mr. Simmons stated he concurred with Mr. Lavalette that they shouldn't move forward until the fine is paid.

Mr. Haworth agreed that the Commission shouldn't go forward – he said that they could ask the wetland scientist to answer some questions as he is present.

Mr. Simmons asked Mr. Gray to speak as he is present on the call.

Mr. Haworth asked Mr. Gray what the amount of time would be to replace the vegetation and reach maturity trees in full growth height.

Mr. Gray said that it was not an answer he can answer stating every wetland area deals with conditions that are stressors to begin with. He said that plants within wetland setting area and sometimes has a problem with transplanting.

Mr. Gray continued stating the larger the tree planted, the greater failure it will be.

Mr. Haworth asked about the species they have chosen and what is normal time for growth in regular upland setting.

Bob Gray stated that was not an easy answer. He said there were a lots of variables and it is hard to say what it is going to take to mature.

Mr. Simmons asked simply how tall trees would be expected to grow.

Mr. Gray stated the species on the list were three: Red Maple, Tupolo and Yellow Birch and they usually grow 40-60' in height. He said the ones that were cut down were Black Gum Tupolo at 40', with age rings of approximately 35-50 years.

Mr. Haworth explained that was his point. That someone took down very old trees and he was of the opinion that this applicant 'doesn't care' as he destroyed the trees there to get his view. Mr. Haworth stated he feels that big enough tree should be planted there that the applicant destroyed purposefully.

Mr. Simmons stated he understands Mr. Haworth's frustration but they can't put back 50 year old trees. We can require a planting plan and a fine which has been issued.

Mr. Gray responded to Mr. Haworth's concerns, with his own experience of being a member and Chairperson of a local Conservation Commission for more than 40 years. He said he understood the frustrations.

Ms. DeSalvatore stated that she believes the homeowner should have a deadline to the April 13, 2020 meeting to pay the fine or incur further fines.

Ms. McClees stated that given the engineer was going to reach out to the homeowner they should wait until the result of that conversation until they move forward. She said in reference to the issue allowed to issue more fines, she wasn't sure 100% positive the bylaw allows incurring more fine fees.

Ms. DeSalvatore asked about the number of shrubs if they are sufficient. She would not be in favor of removal of the stumps on 7 Waybridge Road. She also said she'd be in favor of 5 years, not 3 years of monitoring. She doesn't have a problem with smaller site trees, as they are adequate.

Mr. Haworth read the section of the bylaw regarding fines and interpreted it to the Commission members.

More discussion followed.

Mr. Haworth confirmed that there would be no additional stumping cut, to be left alone.

Mr. Gray is recommending the stumps to remain as is.

Mr. Gray explained why the monitoring was set up for two years. He said he is 70 and wanted to get it off the ground either Spring or Fall. He said he wants to work with the members and agreed upon, and then wants to reach out to wetland scientist that does the actual planting and carry it forward, 2, 3, or five years. He doesn't feel like he would be able to commit to this for the next five year period, as he hopes he won't be doing this at that time.

Mr. Simmons thanked Mr. Gray and stated he could work with Ms. McClees on revisions for their next meeting.

b) 7 Waybridge Road in included in the above matter.

6. Discussion

a) Town Meeting Article: Transfer of Land

Ms. McClees stated after speaking to Mr. Rees and Attorney Crotty, going to recommend to pass over and bring up at a later Town Meeting to put together a report that details each parcel.

Mr. Haworth made a motion to recommend a pass over for this article at Town Meeting and was seconded by Daniel Doyle. The motion passed unanimously with a roll call vote of the Commission (7-0-0).

7. General Business

a) Bills

Ms. McClees reviewed the five bills that are outlined in the Staff Report.

\$550.00 to PowerOptions: Annual Membership Dues

\$2,239.26 to LEC Environmental Consultants: Peer Review of 1 Bella Vista Island

\$10.00 to Chadwick's Awards Unlimited: Name Plate for Gary Lavalette

\$240.00 to Fairhaven Neighborhood News: Legal Ads for 3 meetings (2/10, 2/24, 3/9)

\$2,500.00 to GAF Engineering: Refund of peer review deposit, unused

b) Next Meeting: April 13, 2020

Ms. DeSalvatore stated she was concerned that this meeting was actually a 'public meeting' and people were unable to hear it.

Ms. McClees stated the Governor's order simply states, "as able to be broadcast" etc. She says it has been recorded and they did do test with the Zoom platform.

Mr. Lavalette stated that the 3-lot subdivision is still filling up with water quite a bit.

Ms. McClees said it's supposed to be low and if it is filling up with water, it's doing its job as a wetland replication.

Mr. Haworth made a motion to adjourn and was seconded by Daniel Doyle. The motion passed unanimously at 9:55p.m.

Respectively submitted,

Patricia A. Pacella
Recording Secretary

Documents reviewed:

- 1) Staff Reports by Whitney McClees