

CONSERVATION COMMISSION

May 4, 2020

Minutes

Mr. Simmons opened the meeting at 6:35p.m.

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, Amy DeSalvatore, Geoff Haworth, Dan Doyle, and Nick Carrigg. Also in attendance remotely was Conservation Agent, Whitney McClees.

Ms. McClees read the Remote Access Information in for the record.

1. Present: Chairperson, Jay Simmons, Geoff Haworth, Gary Lavalette, Nick Sylvia, Daniel Doyle, and Amy DeSalvatore, and Nicholas Carrigg were all present remotely through Zoom.

Conservation Agent, Whitney McClees was also present remotely.

2. Absent: None.

3. Minutes

- a) Approve the minutes of April 27, 2020 – Geoff Haworth made a motion to approve the minutes and was seconded by Gary Lavalette. Motion approved unanimously (7-0) through a roll call vote.

4. Action

- a) Discussion regarding May 18, 2020 Conservation Commission Meeting

Ms. McClees stated the conflict of the May 18, 2020 meeting was the rescheduled Town Election, but that has been rescheduled again. She said there are no new filings scheduled for that date. The new June 8, 2020 Town Election might interfere with the Conservation Meeting for that date.

Ms. McClees said there are a few continued meetings scheduled for May 18th, she will allow the Commission to decide whether or not they want to move forward with that meeting.

Ms. DeSalvatore stated she thinks the Commission should wait until after the Planning Board reviews the applicants that are before them.

Mr. Haworth felt that he believes the Commission should move ahead for the May 18, 2020 meeting, as peer reviewer is due this week. He said they should put their request in first versus go back and forth.

Mr. Simmons asked about a June 1st meeting looks like it should be in the works.

The Commission agreed to stick with the May 18, 2020 meeting.

Ms. McClees stated that a decision needed to be made about the June 8, 2020 meeting. She said that the second meeting in June is June 22, 2020. The first meeting would be June 8, 2020, however that is the rescheduled Town Election.

Mr. Haworth stated he felt the first June meeting should take place between June 1st and June 14th.

Mr. Haworth made a motion to cancel the June 8, 2020 meeting and change that to June 1, 2020 meeting and it was seconded by Gary Lavalette. Motion passed unanimously by roll call vote (7-0-0).

b) Request for Proposed Bylaw Change from EPA regarding Harbor Superfund Site

Ms. McClees stated she received an email from Dave Patterson, from the EPA regarding the Harbor Superfund Site who was preparing their five year review of the project and they are looking to identify and remedy the impact, work they are doing in the harbor. She gave an overview of the last 5 years of what was done successfully in New Bedford with regards to their Wetlands Ordinance.

Mr. Haworth asked if there would be any potential negative impacts doing this. He also had concerns that it may restrict or limit the authority of the commission in any way..

Ms. McClees stated she didn't believe so, they just want to be added to abutters' lists, to essentially be notified.

Jay Simmons asked if it would be appropriate for town counsel to review this once commission reviews.

Mr. Haworth stated that bylaw changes are usually automatically reviewed by town counsel anyway.

Mr. Doyle shared the same concerns, as he said he was not a big fan of EPA overruling the Commission and that he doesn't want to give up the Commission's power to anyone else.

Mr. Simmons also shared the same concerns but said there was plenty of time to review what they're requesting.

Ms. McClees stated based on the language they're asking to be included, not asking for language to give them any authority.

Mr. Simmons opened it up for any public comment, there was none He asked Ms. McClees to keep it on the agenda for future discussions.

4. Certificates of Compliance

SE 023-1255: 46 Torrington Road

Request for Certificate of Compliance for an Order of Conditions issued July 17, 2017 permitting the construction of a pile-supported timber boardwalk across a wetland to provide access to the beach.

Ms. McClees stated the Notice of Intent was submitted for the following work:

- Construct an elevated boardwalk (3-4' wide by 477' long) to provide pedestrian access from the existing single-family dwelling, through a wetland system, to the beach.
- The walkway will begin 11 feet up-gradient of easterly edge of the wetland and terminate on the coastal dune
- A helical pile support system will be used

Mr. Simmons asked if the original proposal was to put timber into the ground vs. metal tubes. Ms. McClees said it was not.

Mr. Haworth asked about any special conditions.

Ms. McClees stated they could cut 18" wide on one side and cut phragmites.

Ms. DeSalvatore asked how they are going to maintain it.

Ms. DeSalvatore would like to see a clearer definition of how they are going to maintain it.

Mr. Haworth made a motion to issue the Certificate of Compliance and an on-going condition (the 5th bullet) as recommended by Ms. McClees – to be no wider than 18" and was seconded by Gary Lavalette. Motion passed unanimously by roll call vote (7-0-0).

5. Continued to a Future Meeting

c) SE 023-1297, CON-19-051: Hiller Avenue & Timothy Street, Assessors Map 28C, Lots 71 and 71A – continued to May 18, request for continuance to September 28

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.

Mr. Simmons states he is hoping that this can be done at a live meeting versus online as he knows there is a lot of public comment for and against this project.

Ms. McClees read a letter from the applicant's attorney asked for a 120 day continuance.

Mr. Haworth stated he would like to see it pushed it out 60 days vs. 120 days. He would like to push it out to July 6, 2020.

Mr. Sylvia stated that the courts are not opening any time soon. No one is going into court room until June 1st. He said no one knows what date they are actually going to get for a court date, as everything is in flux at this time.

Ms. DeSalvatore said they should give adequate time. It may be long term on via and zoom is quite capable of handling a larger amount of people and that the Commission should think about that option if necessary. She is okay with 60 days and reviewing at that time.

The rest of the board members agreed to the 60 days.

Mr. Haworth stated he had some concerns that there may be Commission members thinking about dropping off the board, and that could cause quorum issues in the future. He just wanted to express that thought to everyone on the Commission.

Mr. Haworth made a motion to continue the public hearing at the applicant's request to only July 6, 2020 vs. September 28, 2020 and was seconded by Gary Lavalette. Motion passed unanimously by roll call vote (7-0-0).

d) SE 023-1296, CON-19-050: 46 Sconticut Neck Road – continued to June 8

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.

Ms. McClees will contact applicant and advise them the June 8th meeting is now the June 1st meeting.

Continued Notices of Intent

- e) SE 023-1299, CON 023-081: **Bridge Street, Assessors Map 36, Lot 15 – request for continuance to May 18 or next meeting**

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 is still waiting for storm water peer review, it should be received by Wednesday.

Mr. Haworth made a motion to continue to May 18, 2020 at applicant's request and was seconded by Gary Lavalette. Motion passed unanimously by roll call vote (7-0-0).

- f) SE 023-1308, CON 023-095: **Huttleston Avenue, Assessors Map 31, Lots 115A & 117C – request for continuance to May 18 or next meeting**

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.

Ms. McClees stated this project is waiting for peer review as well.

Mr. Haworth made a motion to continue to May 18, 2020. On the motion, Mr. Lavalette asked if the issue of the state drain line, if pre-existing, is being looked into.

Ms. McClees stated if it was the State jurisdiction it would be a question for DOT.

Mr. Lavalette asked if it was being addressed. No results as of yet per Ms. McClees.

Mr. Haworth said the revisions on the last plan – the planning board was pushing to address this issue as well. Not a forgotten issue.

Vinnie Furtado, Superintendent of Public Works, who was present in the call stated he was fairly certain that is a DOT situation. He will follow up.

Mr. Simmons asked him to forward any info to Ms. McClees and Mr. Foley.

Gary Lavalette second the motion made by Mr. Haworth. Motion passed unanimously by roll call vote (7-0-0).

- g) SE 023-1309, CON 023-110: **1 Bella Vista Island – request for continuance to May 18 or next meeting**

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.

Ms. McClees stated she was still waiting for the applicant to provide more information.

Mr. Haworth recommended a site visit before their next meeting. Ms. McClees will contact the engineer to ask for a site visit be scheduled prior to the May 18, 2020 meeting.

Mr. Lavalette stated he would like to volunteer to go out there and coordinate a visit, to get more familiarized with situation.

Mr. Haworth made a motion to continue at applicants request to May 18, 2020 and was seconded by Gary Lavalette. Motion passed unanimously by roll call vote (7-0-0).

New Notices of Intent

h) SE 023-1316, CON 023-136: **Billy's Way and Treasure Bay Lane**

Notice of Intent filed by Vincent Furtado, Fairhaven Department of Public Works for Billy's Way roadway improvement, including a closed drainage system utilizing an existing discharge pipe and the paving of roadway to alleviate frequent washouts/flooding of the gravel roadway and private property in the Billy's Way and Treasure Bay Lane right of way, Assessors Map 29A. Work to take place in buffer zone to Coastal Dune and Coastal Beach and Land Subject to Coastal Storm Flowage.

Ms. McClees stated this NOI proposes to improve Billy's Way. The project proposes to improve Billy's Way from the intersection of Sconticut Neck Road westerly approximately 450 feet to the end with the installation of roadway pavement, curbing, and a closed drainage system that connects to the existing outfall pipe off Reservation Road.

Michael Carter, GCG engineer was present.

Mr. Carter stated it was a gravel road, they were looking to put drainage at the end of roadway to help prevent water to what it's doing now (washing out to bottom of street), with the intention of stabilizing the gravel road. He explained the catch basin has filters and the filters will drain out sediment – two catch basins on Renovation Road for overall drainage improvements. Not encroaching neighbor property. He said there will be no real clearing; silt fence will be put in and they are not changing grade of the road.

Mr. Haworth stated he was not opposed, but wanted to know if the streets were accepted streets in the Town.

Mr. Furtado stated he believed they were both accepted streets.

Mr. Haworth stated he tried to go down Treasure Bay and there were boulders across the street.

Mr. Furtado stated he would look into it.

Mr. Carter stated the street would be restored to what it is currently. Grass in the northern area and gravel in southern point of the driveway.

Mr. Simmons asked if anyone would like to speak from the public, hearing none they moved on.

Ms. McClees asked about long term pollution plan to Mike Carter.

Mr. Carter said there would be annual maintenance by DPW.

Mr. Haworth made a motion to close the public hearing for Billy's Way and Treasure Bay Lane and per the staff report, dated April 30, 2020 issue the Order of Conditions with the 50 conditions as listed in the Staff Report with an added condition to remove the boulders and not re-install them and was seconded by Gary Lavalette. Motion passed with six members in favor by roll call vote (6-0-1) with Amy DeSalvatore abstaining.

Ms. DeSalvatore stated she had a reservation of adding more asphalt surface in a flood area, as it is counterproductive.

Mr. Simmons stated it is a public way that was put forth by Town Meeting.

i) SE 023-1317, CON 023-137: **Farmfield Street and Harbor View Avenue**

Notice of Intent filed by Vincent Furtado, Fairhaven Department of Public Works for Farmfield Street and Harbor View Avenue roadway improvement, including the extension of a closed drainage system, installation of a water main, regrading of the roadways and paving the end of Farmfield Street to alleviate frequent washouts and erosion of adjacent properties in the Farmfield Street and Harbor View Avenue right of way, Assessors Map 2. Work to take place in buffer zone to Coastal Dune and Coastal Beach and Land Subject to Coastal Storm Flowage.

Ms. McClees reviewed her staff report dated April 30, 2020.

Mr. Simmons asked about the design.

Mr. Carter explained the design in more detail – repaved Turner to Stetson; Stetson to Harborview that will be gravel about 180' and the remainder to Carlton Ave will be re-graveled. Harborview is a private way.

Discussion ensued.

Mr. Furtado stated came about because of erosion down there and water main project happening down there as well.

Mr. Haworth asked if the water main project didn't get approved at Town Meeting would this still occur.

Mr. Furtado said yes, he didn't expect that the water main wouldn't go through at Town Meeting.

The Commission members had a few other questions for Mr. Carter.

Mr. Simmons opened the public comment.

Wendy Drumm, 1 Stetson Avenue, stated it was a good plan but she questioned whether the new drain would be underground.

Mr. Carter said yes, there would be no water drained on the street.

Ms. Drumm asked how the drains are cleaned and maintained.

Mr. Furtado replied at least cleaned out once a year.

Dave Davignon, Engineer was present representing direct abutter, Ray Robitaille who lives on Carlton Ave/Ellis Avenue – in general in favor of project – road is just horrendous, twenty potholes; flat section of land that is now flooded – fear is the catch basins (filtered bags in) – sediment is going to fill it up & more water will be added to the streets. The street narrows down to a one-lane road – why not pave the whole road. He is not sure this is going to make it better.

Mr. Furtado acknowledged Mr. Davignon's concerns. He wanted Mr. Carter to respond first as the engineer on the project.

Mr. Carter stated this was a private way and you couldn't spend public dollars to improve a private way.

Mr. Davignon would like to ask commission to allow the street to be repaved if everything fell into place.

Mr. Simmons says he would agree, as it is part on DPW and the neighborhood needs to approve it as well to make it a public street way vs. being a private.

Mr. Furtado stated he agreed with Mr. Davignon. He said with the Commission's blessing he could move forward to find monies to pave the street as a whole.

Ms. McClees asked the commission to perhaps vote on what's in front of them and amendment after the fact for anything further.

Abutter, Mark Sotiropoulos of 20 Harborview Avenue shared concerns about project, as it is a tarred area and his driveway is all gravel.

Mr. Haworth stated that Robert Hobson was trying to get through the Zoom phone conference but was having difficulty. He would state what Mr. Hobson was trying to convey the best he understood it.

Mr. Haworth stated per Mr. Hobson who couldn't get through has asked Mr. Haworth to state the following – he feels the residents have not requested to pave that area, and that he feels that the residents need to go to Town Meeting to pave the road – not something Commission needs to deal with at this time.

Mr. Furtado agrees that everything would have to go in front of Board of Public Works.

Mr. Lavalatte asked if there would be added expense to pave the rest of the street after the fact.

Ms. McClees reminded the Commission they should only be discussing what's in front of them at this time. They can't approve something that's not in front of them.

Ms. Drumm – continuation of more paving, ultimately a great idea – but right now immediate need to mitigate drainage issues at this time.

Mr. Davignon not looking to hold up the project – positive in a lot of ways – would like to see the filters taken out of the catch basins close to Carlton Ave – could exacerbate the current situation into a potentially worse drainage situation. Saw plan put up that wasn't on the screen – when revised plan submitted? Two different plans – the follow up to that is pavement shown on new plan is extended on private land.

Mr. Carter stated the plan was revised.

Ms. McClees stated both plans are on the website, including the revision plans.

Mr. Haworth asked if Ms. McClees would require an as-built.

She stated that was a standard condition.

Mr. Haworth made a motion close the public hearing and issue an order of conditions, from Staff Report dated April 30, 2020 with 50 Conditions and to add the condition that at the discretion of BPW CB3 & CB4 could either remain in the place as depicted on the plans or be moved to the end of asphalt where it meets gravel as the BPW or engineer feels it will work and was seconded by Gary Lavalette. Motion passed unanimously 7-0 via roll call vote in the affirmative.

6. Violations/Enforcement Orders/Cease and Desist Notices

a. 29 Shore Drive

Ms. McClees – additional on a single-family dwelling without permits – letter was sent to property owner – to attend tonight's meeting. Addition already completed – in the velocity zone & within 100' buffer zone. Doesn't comply with FEMA standard codes – commission to advise how to move forward – recommendation per staff report.... No further work should occur until permit is issued... after the fact NOI needs to be filed. No enforcement order has been issued to date.

Brian Reis of 29 Shore Drive was present. He said he had an existing deck and wanted to enclose it, so he added walls – like a 3 season room with no heat – but the deck was existing and didn't think I needed a permit.

Mr. Simmons asked Ms. McClees if the deck was existing.

Ms. McClees stated it was brought to her attention via the Building Commissioner.

Mr. Simmons asked if deck was on the house was originally permitted.

Mr. Reis stated the deck was there and permitted thirty years ago. He said there was a ramp build out that he removed as well, so perhaps dug a little to not have the ramp.

Mr. Haworth stated he can take a ride down to view if there were any alterations – structurally may not have the proper footings.

Mr. Simmons was not sure wants to overstep for something that may /may not come before Commission.

Mr. Lavalette said he would wait to see what the Building Dept is going to do for structurally safe and to be in compliant.

Mr. Reis said he has spoken to Rick Charon and wants to do things right going forward.

Mr. Haworth asked if he hired a contractor or did the work himself.

Mr. Reis said he did it himself.

Mr. Haworth asked if it would be okay if he went down to look at it and Mr. Reis stated it would be okay.

Mr. Simmons thinks we should wait until we hear back from building commissioner to make any decisions going forward.

Mr. Reis said the sonotubes have been there a long time, he did add some 4x4's.

Mr. Haworth stated that no additional work should be done until he hears from Building Department or Conservation.

b. 86-88 Middle Street: request for additional time to submit after-the-fact NOI

Ms. McClees – supposed to have an after-the-fact NOI in by May 1st, letter submitted on 4/26/20 – asked for additional time to submit the NOI after the fact due to current state of emergency – requesting another extension for rear of property... didn't specify length of time – was original due to file March 1st, extended to April 1st, then May 1st with 30 day extensions – 3rd extension – recommendation, 30 day extension – no work should be done until a permit is issued.

Mr. Haworth said there's a lot of issues here and a lot of filings that need to be completed.

Mr. Haworth made a motion to extend required filing deadline to June 22, 2020 and to have them submit draft documents if a full filing was not possible no later than 7 days prior to that meeting date and was seconded by Gary Lavalette. Motion passed unanimously 7-0 (with all in affirmative via roll call vote.)

c. 44 Torrington Road: revised restoration plan submitted

d. 7 Waybridge Road

Mr. Simmons he was advised there is a check forthcoming for the fine.

Ms. McClees stated the check should be received by the end of this week.

Mr. Simmons asked if the Commission's questions were satisfied on the plans.

Mr. Lavalette asked Ms. McClees the protocol when she sends a letter out for a demand or a fine, does she include the legal portion of what chapter, section they are violating.

Ms. McClees said she usually does. She said the bylaw does not state a timeline that a fine has to be paid, and she feel like we are micromanaging these restoration plans – we need to move forward on the restoration.

Mr. Lavalette said he thinks the commission needs to come up with a better plan for fines to be paid in a timely manner.

Ms. McClees asked Mr. Lavalette to send an email to put on a future meeting date regarding his suggestions; but now would like to move on, as this is not on the agenda to discuss openly.

Bob Gray, Sabatia Inc., was on the video conference call and stated he would just like to get moving on the restoration plan.

Mr. Haworth made a motion approve the revised restoration plan dated May 2, 2020 and associated plan dated April 28, 2020 with the following conditions – per the staff report adding “section 11; after 198” along with the fourteen bullet points listed in the staff report dated May 4, 2020 and was seconded by Gary Lavalette.

On the question, Mr. Lavalette asked about the jurisdiction on the irrigation system.

Ms. McClees stated it would be installed as the plan indicated.

The motion passed unanimously, with 7-0 in the affirmative via roll call vote.

Ms. McClees stated that 7 Waybridge is addressed on the same plan and should be covered as such.

7. General Business

a) Bills

There were 3 bills that were paid.

- \$67.98 to Staples for office supplies
- \$105.00 to the Bristol County Registry of Deeds for recording fee for the certificate of vote
- \$152.00 to Monaghan Printing Company, Inc. for Conservation Commission envelopes

b) Next Meeting: May 18, 2020

8. Any other business that may properly come before the Commission not reasonably anticipated 48 hours in advance of the meeting.

Ms. DeSalvatore asked if we are all set to not sign individually and was advised that land court does not accept one signature.

Mr. Haworth made a motion to adjourn and was seconded by Gary Lavalette – motion passed unanimously 7-0 with all in affirmative via roll call at 10:38p.m.

Respectfully submitted,
Patricia A. Pacella
Recording Secretary