

Fairhaven Conservation Commission

January 13, 2014

Present: Chairperson, Jay Simmons, Janine Peccini, Louise Barteau  
Simone Bourgeois, Geoff Haworth (arrived at 6:35 p.m.), Steve Perreira

Also in attendance: John Rockwell & Wayne Fostin

Meeting called to order at 6:34pm

Jay Simmons advised everyone that the meeting was being televised and recorded.

Simone Bourgeois made a motion to approve the December 9, 2013 minutes, Steve Perreira 2<sup>nd</sup>. All in favor.

**1. Pursuant to Section 192.7 of the Code** of the Town of Fairhaven the Fairhaven conservation Commission will hold a Public Hearing on January 13, 2014 to consider adopting the following regulation pursuant to Chapter 192 (Wetlands) of the Code of Fairhaven which can be viewed in the Building Department from 8:30 a.m. to 4:30 p.m.

Attorney Tom Crotty sent correspondence back to the Board after reviewing this, and John Rockwell suggests that the Commission and himself needs time to review what he wrote.

Jay Simmons asked if anyone in the audience was present for this hearing, to which there were not.

Louise Barteau made a motion to close the public hearing on the proposed regulation and was seconded by Steve Perreira. The motion passed unanimously.

**2. Request for Determination**, Applicant Ronald & Linda Templeton Location 196 Dogwood Street, plot 43B lot 206. Purpose construct addition within an AE flood zone.

Wayne Fostin asked the Commission to table, as the applicant was at another meeting and would be a little late.

Per the applicant's request to table, Geoff Haworth made a motion to table and was seconded by Steve Perreira. The motion passed unanimously.

**3. Notice of Intent**, Applicant Michael & Sheryl Coppa location 24 Point Street, plot 28b, lot 203. Purpose construct single family dwelling within the buffer zone to a coastal beach, coastal dune, and coastal bank and within a VE flood zone.

Engineer, Carmelo Nicolosi was present. He presented the plans to the Board. He stated they wanted to propose a single family dwelling in the Pope Beach area, and graze the existing dwelling. The property has Town water & sewer, raising grade to 7", with deck on East & West. He stated nobody has lived at property since Hurricane Bob. The applicant's purchased the property in 2011.

Jay Simmons asked what the grade of the road is.

Mr. Nicolosi stated it was elevated to 6" in the front of house, and will grade up to 7", so ½" change. He stated there was a DEP file number with no comments, and they are proposing hay bales and sil fence.

Simone Bourgeois asked if they intend to demolish the existing home.

Mr. Nicolosi said yes.

Jay Simmons asked if there was any requirement to go in front of the Planning Board or ZBA.

Wayne Fostin said the project will require variances so they will go in front of the Zoning Board of Appeals.

Resident, John Fontecchio of 9 Bonney Street was present and shared his concern about the high tide and the raised grade with concern lots of water.

John Rockwell spoke on the issue of flooding and how the water flows would go back into Buzzards Bay, not into the adjoining property.

Mr. Fontecchio explained the principals of the damming effect.

John Copachiski of 22 Point Street asked the Commission what exactly their role was with this property; and Jay Simmons explained they are concerned with the proximity to the Beach, not the building construction of the home.

Janine Peccini asked about the elevation.

Mr. Nicolosi said they were going to level out area around the proposed structure.

Simone Bourgeois asked if they didn't elevate would there be repercussions to the building.

Steve Perreira made a motion for an onsite on January 19<sup>th</sup> with the hearing continued to January 27<sup>th</sup> and was seconded by Louise Barteau. The motion passed unanimously.

**4. Notice of Intent** Applicant Antonio DeCunha Location 8 Windward Way, plot 29 Lot 2C. Purpose construct masonry walls on north and south property lines, construct new deck and patio, clear brush, and remove small caliber trees within the 100' buffer zone to salt marsh and within an AE flood zone.

Engineer, Jeff Palmer was present. He said there was an RDA back in 2011 to do some of the renovations, but that the applicant's continued the work without coming back in.

Louise Barteau reminded the Board this was the one they did an on-site for that they found construction debris in a hole on the property.

Simone Bourgeois said it was put there to look like fill.

Jay Simmons asked if there was a proposal to remove the debris/brush fill.

Mr. Palmer said there was not, he wasn't sure what the board was referring to.

Geoff Haworth had pictures on his phone that he had taken at the site visit, and shared with the Commission members as well as the engineer.

John Rockwell said he had a question about the wetland line and that the Commission should look into the line. Mr. Rockwell said he would contact the engineer's office to do an on-site to verify the wetland line.

Steve Perreira made a motion that John Rockwell do an on-site at his convenience and continued the public hearing to January 27<sup>th</sup> and was seconded by Geoff Haworth. The motion passed unanimously.

**2. Request for Determination**, Applicant Ronald & Linda Templeton Location 196 Dogwood Street, Plot 43B lot 206 Purpose construct addition within an AE flood zone.

Simone Bourgeois made a motion to remove this Public Hearing from the table, as the applicant's representative was present and was seconded by Janine Peccini. The motion passed unanimously.

Mike Ristuccia was present representing the Templeton's. He said it was a manicured lawn and clear where the addition is going to go.

Jay Simmons asked Wayne Fostin if he's been out there, to which Mr. Fostin said he has.

Wayne Fostin said yes, it "appears" to be clear without a measuring tape.

Mr. Ristuccia said the property was flagged about 7 years ago, and the reflagged but not approved.

Wayne Fostin confirmed it was not an approved line.

Steve Perreira made a motion for an on-site for January 19<sup>th</sup>, followed with a continuation for the Public Hearing on the January 27<sup>th</sup> and was seconded by Louise Barteau. The motion passed unanimously.

John Rockwell did state that there may be different abutters that would need to be notified for the wetland line than the deck.

Mr. Ristuccia stated they have all been notified.

**Enforcement Orders:**

None.

**RESCHEDULED PUBLIC HEARINGS:**

**1. Request for Determination**, Applicant Robert Ferreira Location 6 Newton Street, Plot 22B lots 292, 420, 429. Purpose remove old barn from lot 292. Vista prune knot weed from lots 420, 429 within 100' buffer zone of BVW, after the fact.

Steve Perreira made a motion to continue to February 24<sup>th</sup> per the applicant's request and was seconded by Janine Peccini. The motion passed unanimously.

**2. Notice of Intent**, Applicant Timothy Powers Location Thompson Street Plot 2 Lot 2. Purpose construction single family dwelling within the 100' buffer zone to BVW.

**3. Notice of Intent** Applicant NSTAR Electric & Gas Corporation Location Thompson Street, Plot 2 Lots 37-38. Purpose construct single family dwelling within the 100' buffer zone to BVW and within a shaded X flood zone.

**4. Notice of Intent** Applicant NSTAR Electric & Gas Corporation. Location Thompson Street Plot 2/4 Lots 5/28. Purpose construct a single family dwelling within the 100' buffer zone to BVW and shaded X flood zone.

**5. Notice of Intent**, Applicant NSTAR Electric & Gas Corporation Location Doane Street, Plot 2 Lots 5.101.288. Purpose construct single family dwelling within the 100' buffer zone to BVW and within a shaded X flood zone.

**6. Notice of Intent**, Applicant NSTAR Electric & Gas Corporation Location Farmfield Street. Plot 2 Lot 4 Purpose construct single family dwelling within the 100' buffer zone to BE and with an AE flood zone.

**7. Notice of Intent**, Applicant NSTAR Electric & Gas Corporation. Location Farmfield Street Plot 4 Lots 105, 108, 114, 116, 161. Purpose construct a single family dwelling within 100' buffer zone to BVW and within a VE flood zone.

Steve Perreira asked if abutters were re-notified, and if it was certified.

Engineer, Ken Conti said that abutters were re-notified by a letter, not certified, as the Board did not indicate that it had to be certified at the last meeting.

Jay Simmons read into the record an email by an abutter, Chris Tapper.

Geoff Haworth said he thought that they should continue this hearing and have the applicant send out abutter notices by certified mail, to give the abutters an opportunity to be notified and speak on this matter.

Louise Barteau asked if they by statutory have that right.

Mr. Conti said that they offered to send out the notification to abutters and they did, and the Board did not specify whether to send it out certified.

Resident, Jeffrey Lucas said that he received his notification today; and although he appreciated the notification, he did just receive today. He said this project has been continued so many times and he has been here continuously.

Geoff Haworth made a motion to continue the hearing and ask Mr. Conti to re-notify the abutters by certified mail.

Discussion ensued whether they should just continue the hearing, or to hear what a few abutters who were present wanted to express.

Louise Barteau asked if they have statutory backing to continue.

John Rockwell stated that the applicant has fulfilled his requirement with the first notification and that abutters would've needed to follow along with continuances. Mr. Rockwell did state, however that even though Mr. Conti did agree and send out re-notifications, the fact that some of the abutters just received them tonight was 'not fair/not right'.

Louise Barteau said although she agreed, she would like to offer the two people that are present to speak tonight if they would like.

Jay Simmons asked the two abutters if they minded coming back to the 27<sup>th</sup> meeting, to which both said they would not.

Jay Simmons said that Mr. Haworth's motion didn't seem to be unreasonable.

Mr. Conti said that there intent was obviously not for abutters to receive the notices today for tonight's meeting. He said they didn't want to send the notices out to early because people may forget, and that the noticed went out early last week.

Jay Simmons said that because there were extreme continuances over and over on this project, it would be better if they continued it one more time so the abutters could be notified via certified mail.

On the motion that Mr. Haworth made, Simone Bourgeois 2<sup>nd</sup>. The motion passed unanimously.

Simone Bourgeois thanked Mr. Conti for sending the notifications out a second time, and now a third time.

**8. Notice of Intent**, Applicant Helam Aleswhil, Location 1 Bella Vista Island. Plot 438, lots 326, 359, 360. Purpose reconstruction of existing groin, installation of a 40' wooden pier and construction of a ten foot wide crushed stone path to the beach within a VE flood zone.

Wayne Fostin said he has not received anything from the applicant to continue or anything.

John Rockwell said that the applicant is required to request a continuance and if none is made, the Commission is obligated to close the hearing.

Mike Ristuccia asked without the applicant being present were the abutters able to speak, then he asked if the applicant has a timeline to perform the Order of Conditions. More specifically, regarding the bridge.

John Rockwell stated that because of the Open Meeting Law the Commission cannot discuss unless it was on the agenda specifically from the abutters.

Louise Barteau made a motion to close the public hearing and was seconded by Steve Perreira. The motion passed unanimously.

**9. Request for Determination**, Applicant Carl Gustafson Location 7 Sippican Street, Plot 42A Lot 257-259. Purpose install a solid vinyl fence on north property line within a VE flood zone.

Mrs. Gustafson was present, along with Carol Tyson (a former Conservation Commission member.)

Louise Barteau stated that FEMA was pretty clear re: fencing.

Janine Peccini stated they want to make sure that the fence is not reinforced and is a breakaway fence.

Mrs. Gustafson said the panels are 8' sections and the material is designed to give way.

Wayne Fostin stated it had to be 2-5" off the ground for adequate airflow.

Carol Tyson said that FEMA does not make regulations on fences.

Janine Peccini stated that they do look at FEMA's advisory on fences.

Simone Bourgeois asked if the fence would be abutting the neighbor's fence, Mrs. Gustafson said it would.

Jay Simmons read an email from David Davignon into the record that asked that the plan he did for Mr. George Fairbanks, and is in this RDA not be used.

Carol Tyson said that they had Ken Ferreira do their plan.

Jay Simmons asked Mr. Rockwell and Mr. Fostin if it mattered tonight that the plan listed with the applicant's RDA has Mr. Davignon's name on it, has any affect on what happens tonight.

John Rockwell and Wayne Fostin said, 'no.'

Brief discussion on term 'breakaway' fence.

Steve Perreira made a motion for a -2 and was seconded by Geoff Haworth. The motion passed unanimously.

**10. Request for Determination**, Applicant Roger Deshaies Location 10 Hacker Street. Plot 28A lot 051. Purpose install 10x12 shed within the 100' buffer zone to BVW and within a VE flood zone.

Wayne Fostin said there were no site plans found.

John Rockwell stated it was a small project and he would be happy to go out and delineate the wetland line.

Steve Perreria made a motion to continue the hearing to January 27<sup>th</sup> and was seconded by Louise Barteau. The motion passed unanimously.

**11. Notice of Intent**, Applicant Joseph Luiz Location 32 Welcome Street Plot 32B lot 1F.  
Purpose construct a family dwelling within 100' buffer zone to BVW.

Steve Borbo stated he was at on-site and waited 45 minutes, the Commission was a little late and they missed each other.

He discussed the plans with the Commission.

Steve Perreira made a motion to approve with the following conditions:

REC-1, REC-3, EMC-1, SIL-2, DEB-1, that the old sil be removed, and ADD-1

Janine Peccini asked that the back of the house where the bank drops to the river try to be kept as natural as possible. The Commission discussed how to possibly word this into a condition, then they just went with the 7 special conditions listed above.

Geoff Haworth seconded the motion. The motion was voted unanimously.

**OTHER BUSINESS:**

3 Hidden Drive

Engineer, John Cornell showed a revised plan. He said there was a cease & desist order on property because they didn't have the hay bales and sil fences up.

Jay Simmons asked if they started on a new location without coming before the Board.

Mr. Cornell said yes.

Geoff Haworth said he had gone by the area and noticed there were no hay bales or sil fence up and they were digging a foundation, so they had no intention of coming before the Commission.

Jay Simmons asked if there was any reason why they didn't come before them.

John Rockwell explained it is up to the Commission to determine whether it was a major or minor change of the Order of Conditions, because it may not require a new Notice of Intent.

John Cornell said it was a .25 grade change.

John Rockwell said there were no wetlands. So if the Commission was okay with this tonight they could do something about it tonight.

Abutter, Brian Wotton of 2 Hidden Drive was present and he said he was concerned about the fill and the water in his driveway.

Discussion on what was done without the Commission's permission.

Janine Peccini asked about their jurisdiction.

John Rockwell explained this was Nasketucket River Basin only so it's not a requirement under the wetlands act, but the by-law under ZBA they would need a comment from the Conservation Commission with the Order of Conditions.

A brief discussion on where the wetlands area were on the property.

Geoff Haworth expressed he was upset that things were constructed without permission.

Contractor, Jason Braze said he and the home owner only shifted the house a little with the same setbacks; and it actually makes for a better shift than previously. He said ultimately it was his responsibility, but the only issue he sees is the hay bales and sil fence weren't properly put up.

Janine Peccini explained with a Notice of Intent, they have to come before the Commission with any changes at all.

Simone Bourgeois asked if there should be any concern with the pooling of water.

Jay Simmons said that the sil fences should go up immediately.

Simone Bourgeois said she was concerned about the pooling of water and proposed a site visit.

Mr. Wotton shared his concern for the water as well, as his home is already in a swamp; he is concerned about the elevation in regard to the water.

John Cornell said they would get the sign up, put the hay bales and sil fence up immediately against the retention pond.

John Rockwell recommended an on-site.

Steve Perreira made a motion for an on-site for January 19<sup>th</sup> and the hay bales and sil fences to go up immediately, and the bio retention area to be cleaned up; and was seconded by Geoff Haworth. The motion passed unanimously.

#### **OTHER BUSINESS:**

Wayne Fostin brought everyone's attention to an email from William Roth re: Welcome Street and escrow so that the owners of Welcome Street could go forward on the street acceptance this year.

John Rockwell said that the Welcome Street owners have not complied with the Order of Conditions. Mr. Rockwell asked Mr. Fostin to send Mr. Roth a copy of the letter they sent to Welcome Street. He said it would be difficult to take the escrow money, where they are not in compliance.

Geoff Haworth made a motion to not accept the escrow money, and was seconded by Steve Perreira. The motion passed unanimously.

#### **BILLS:**

\$111.50 & \$80.00 for Fairhaven Neighborhood News.



Geoff Haworth made a motion to pay the Fairhaven Neighborhood News both bills and was seconded by Steve Perreira. The motion passed unanimously.

Wayne Fostin said there was a request from Earl's Marina for their refund of \$907.88.

Steve Perreira made a motion to refund the \$907.88 and was seconded by Geoff Haworth. The motion passed unanimously.

**CERTIFICATE OF COMPLIANCE(S):**

6 Balsam Street – 2 COC's, one for stonewall & one for the addition.

Steve Perreira made a motion to issue the two COC's for 6 Balsam Street and was seconded by Geoff Haworth. The motion passed unanimously.

308 New Boston Road – Septic system in 2006, and it's completed.

Steve Perreira made a motion to issue this COC for 308 New Boston Road and was seconded by Geoff Haworth. The motion passed unanimously.

7 Goulart Memorial Drive – Work was never done from 2004, trying to sell the property & need to clear the title.

Steve Perreira made a motion to issue the COC and was seconded by Geoff Haworth. The motion passed unanimously.

In other business, Louise Barteau brought up Lot 7 on Welcome Street, she said the drain looked oversized and in bad condition and hay bales and sil fences were not up.

Wayne Fostin said that he would call the contractor in the morning to advise.

A brief discussion on work stop orders that the Commission members themselves can issue.

Also, in other business, Pattie Pacella as a member of the Fhvn. Town Government Study Committee informed everyone that they would like to do an interview with Conservation Commission. It seemed all members were interested. She will follow up with an email to everyone for dates/times that are available.

Geoff Haworth made a motion to adjourn and was seconded by Steve Perreira. The motion passed unanimously.

Meeting adjourned at 8:55 p.m.

Respectively submitted,

Patricia A. Pacella  
Recording Secretary