

**Newburyport Conservation Commission**  
Minutes of the July 7, 2009 Meeting

**1. Call to Order**

A meeting of the Newburyport Conservation Commission was called to order by Chairman Paul Healy at 7:05 p.m.

**2. Roll Call**

In attendance were members Paul Healy, Steve Moore, Doug Muir, Joe Teixeira, Dan Warchol, Mary Casey and Jannell Zarba and conservation agent Mary Reilly.

**3. Minutes**

The minutes of the June 16, 2009 meeting were approved as amended.

**4. Certificates of Compliance, Requests for Determination and Requests for Minor Modifications**

**Donald Flanders**

Across from 296 Water Street

Request for Determination of Applicability

The applicant wishes to cut the high grasses that block his view of the river. The vegetation is identified on the RDA as elephant grass, which might be phragmites and Japanese bamboo (knotweed.) The Massachusetts Audubon Society owns the property on which the vegetation is growing, which is located across Water Street from Mr. Flanders' property. Mr. Flanders would not be able to cut the vegetation without permission from that organization. Doug Muir said that cutting will not necessarily solve the problem and could make the vegetation grow back even thicker. The applicant must provide a plan that shows the exact location of the cutting and indicates how and how often the vegetation will be cut. He must also obtain written permission from the property owner. No work may take place until a permit is issued. Any digging or chemical application would require a Notice of Intent. Continued to July 21.

**5. Public Hearings**

Steve Moore moved to recess the meeting and open the public hearings. Joe Teixeira seconded the motion. All voted in favor.

**Terry Jones, Weeping Willow Realty Trust**

7 Graf Road

Notice of Intent

DEP File #051-0802

The applicant requested a continuance to July 21. Doug Muir asked about the continuance policy. Paul Healy said the applicant is actively working on the project. Doug Muir moved to grant the continuance to July 21 because progress is being made on a new plan. Dan Warchol seconded the motion. All voted in favor.

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**Warren Russo**

182 Northern Boulevard  
Request to Amend Order of Conditions  
DEP File #051-0804

The applicant provided plans showing the relocation of 2,200 square feet of beach grass. The request for an amendment is made necessary by the applicant's submission of a Notice of Intent for a garage in the location that the grasses were to have been planted. The discussion was tabled until a decision is made on the Notice of Intent for 182 Northern Boulevard (DEP file #051-0824). Joe Teixeira moved to close the public hearing. Mary Casey seconded the motion. All voted in favor.

**Warren Russo**

182 Northern Boulevard  
Notice of Intent  
DEP File #051-0824

The applicant presented plans for a two-car garage. Joe Teixeira pointed that including the area in front of the house, the driveway and the area that is under the deck, there already exists parking for seven to ten cars on the site. He said the proposed structure does not meet the performance standards for accessory buildings on a coastal dune. Doug Muir said that State regulations allow for a small shed or small parking area for residents and the garage is neither. A large garage would not be in the interest of the Wetlands Protection Act. Mr. Russo said he provided the items that were requested at the previous meeting and spent money on plans in anticipation that the project would be approved. Steve Moore explained that the plans were necessary for the Commission to be able to make a decision; all applications must include a complete set of plans. Dan Warchol pointed out that Mr. Russo had previously excavated underneath the deck in order to create a covered parking area and Mr. Russo confirmed that the space is put to that use. The planting of beach grass on the site was to be done in mitigation for the excavation, which had not been permitted. The removal of the bituminous driveway and its replacement with crushed stone was to be done under an Order of Conditions that was issued in October 2008. Steve Moore moved to close the public hearing. Joe Teixeira seconded the motion. All voted in favor.

**Kenneth LaBrecque**

3 Parker Street  
Notice of Intent  
DEP File #051-0825

Bill Decie appeared for the applicant. He said that changing a portion of the paved area to a permeable surface would impact storm water to such a small degree that it does not warrant the redesign of the detention basin. Steve Moore asked about the installation of a green roof. Mr. Decie said the soil on the site would not bear the additional weight of the material on the roof. Dan Warchol asked about snow removal and storage. He pointed out there is not much space for storing snow except for in the detention basin. The applicant must submit a revised plan that indicates where snow is to be stored and includes the shed that is to be removed before work may begin. Steve Moore moved to close the public hearing. Dan Warchol seconded the motion. All voted in favor.

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### **City of Newburyport Beach Management Plan**

Plum Island

Notice of Intent

DEP File Number 051-0829

Christine Player of Vine Associates presented a summary of the beach management plan that is required for the dredging project that is proposed for the mouth of the river. Joe Teixeira asked that the presentation be made available on the city web site. Members of the public asked about parking, funding and the purpose of snow fencing. The plan includes language about private fencing, but the plan only applies to the State-owned beach that is managed by the City. It cannot be applied to the private property that abuts the beach. The portion of the plan that pertains to private fencing will be deleted and some clarification will be provided on the issue of abutting public and private properties. Notices of Intent would not be required for any work that meets the guidelines put forth in the plan. Doug Muir moved to continue the public hearing to July 21. Joe Teixeira seconded the motion. All voted in favor.

### **City of Newburyport Dredging Project**

Merrimack River

Notice of Intent

Christine Player presented plans for the maintenance dredging of the federal entrance channel to -15 mean low water and the placement of the dredged material on beach areas with critical erosion. The dredge area is within the jurisdiction of the City, but the nourishment areas are outside of it. The material will first be deposited in Newbury and later on Salisbury beach. In the past there has been an indirect nourishment of the beach when dredged material was deposited offshore and moved onto the beach by wave action. The Army Corp. is required to use the least expensive method, which is the indirect method. The State has partnered with the Army Corp. in order that the sand may instead be directly deposited on the beach. The applicant is proposing to install a 1,420-foot long temporary pipeline across the Newburyport portion of the Plum Island beach in order to bring 120,000 cubic yards of sand to the beach in Newbury. The pipeline will be placed between mean high water and the toe of the dune. The work is to be done between October 15 and March 15. When it has been completed the pipeline will be removed and any disturbed areas will be restored. The depositing of sand will provide a short-term solution to the erosion problem. The dredging should be done every three to five years but has not been done for the past ten years due to a lack of funding.

Steve Moore said he objects to the pipeline. DEP prohibits solid structures, even if they are temporary, from being placed on the beach. He said the pipeline would be in place during the storm season, a time when erosion takes place. He is concerned that the pipeline would cause further erosion. He would like to see the pipeline placed on a more direct line from the dredging area to the nourishment area or deposited offshore in order that it might naturally move onshore during the summer. He pointed out that the material that was recently placed in the center of Newbury was lost during a storm that was not very large. Doug Muir said in some places mean high water is above the toe of the dune. Dan Warchol said the floating pipeline would be subject to major wave action. The Commission is being asked to approve a pipeline without being given any alternatives. The members of the Commission wish to see the alternatives that were rejected. Jannell Zarba said the Commission has not been given enough information. Paul Healy asked if the Army Corp. would replace any sand that is lost due to erosion caused by the pipeline. This could be a condition of permitting, but would require that

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the beach be measured and monitored. Steve Moore said he would like the location of the pipeline to be staked. A member of the public commented that this is not a new technique; a pipeline was used in the 1950s and relief in any form that is available should be permitted.

The Commission is to be provided with alternate pipeline routes, information on a submerged rather than floating pipeline, information on potential erosion caused by the pipeline, a cross section of beach at its narrowest point showing the location of the pipeline and photographs of similar projects. Joe Teixeira moved to continue the public hearing July 21. Steve Moore seconded the motion. All voted in favor.

### **Mass. Highway Department**

Whittier Bridge

Notice of Intent

DEP File #051-0831

The Mass. Highway Department is in the process of conducting environmental testing in anticipation of work on the Whittier Bridge and is proposing to bore in 29 locations.

Two barges will be used, with the holes being drilled by rigs on board. Each hole will take two to four days to drill and it is expected that the project be completed within two months. It is anticipated that the work will take place between mid August and mid October, but will be completed no later than the end of November. The only resource impacted is land under ocean and the total impacted area is approximately 4 square feet. Natural Heritage has no concerns with the work as it is proposed. DEP comments have not yet been received but are not expected to be a concern. The work should be done outside of the migration season for fish, which is between March 15 and June 15. Steve Moore moved to close the public hearing. Dan Warchol seconded the motion. All voted in favor.

### **U.S. Coast Guard**

63R Water Street

Notice of Intent

DEP File #051-0828

The applicant did not appear. The hearing will be continued to July 21.

### **6. Enforcement**

#### **Carla and Robert Moore**

16 Basin Street

Jannell Zarba recused herself from the discussion. Curt Young represented Carla and Robert Moore. The existing conditions are not consistent with the as-built plan that was submitted with the Request for a Certificate of Compliance. A paved patio and a planting bed with a stone retaining wall that were not approved have been installed. Steve Moore pointed out there are also plantings near the parking area that were not approved. The plants are not native and loam was brought in for their planting. The City did not have a Conservation Agent at the time the Certificate of Compliance was issued, but the planting beds, the plantings near the driveway and the pavers were installed after that time. Dan Warchol said that it is obvious the planting beds and paving were expensive, but the Commission would not have approved them. Beach grass was to have been planted on the site, but this work was not done. Mr. Young acknowledged that the planters are solid structures that are not desirable, but said the pavers allow for some infiltration. Paul Healy said that pavers are not allowed. Mr. Young said the removal of the

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bituminous pavement should mitigate the installation of the pavers. The removal of the bituminous was a part of the Notice of Intent and cannot be offered as mitigation. Steve Moore suggested removing the planters and the plantings along the driveway and that the area surrounding the house be planted with beach grass. Joe Teixeira said the patio is a structure on a dune and is not allowed. Not only would the patio not have been permitted if been included in the Notice of Intent, but also the work was done without a permit after the Certificate of Compliance was issued. In addition, the as-built plan shows areas of beach grass that were never planted. Granite steps that would not have been allowed have also been installed. The photographs that were included with the Request for a Certificate of Compliance showed that wooden steps existed at that time. Mr. Young requested that the matter be continued to July 21.

**7. Orders of Conditions**

**Kenneth LaBrecque**

3 Parker Street

Notice of Intent

DEP File #051-0825

The applicant must submit a plan will show a snow stockpile area and the shed that is to be removed. Snow cannot be stockpiled in or near the detention basin or wetland area. Steve Moore moved to issue an Order of Conditions with the conditions discussed. Joe Teixeira seconded the motion. All voted in favor.

**Warren Russo**

182 Northern Boulevard

Notice of Intent

DEP File #051-0824

Steve Moore said that there is already a small parking area at the front of the property plus covered parking for three cars under the deck. He does not think the project can be permitted because it does not meet the performance standards for a small shed or parking area. A straw vote was taken and no one was in favor of permitting the project. Steve Moore moved to deny an Order of Conditions for 182 Northern Boulevard on the grounds that the project does not meet the performance standards for a coastal dune under 310 CMR 10.28(4) of the Wetlands Protection Act. Joe Teixeira seconded the motion. All voted in favor.

**Warren Russo**

182 Northern Boulevard

Request to Amend Order of Conditions

DEP File #051-0804

Doug Muir moved to approve the amendment. Dan Warchol seconded the motion. All voted in favor.

**Mass. Highway Department**

Whittier Bridge

Notice of Intent

DEP File #051-0831

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Steve Moore moved to issue an Order of Conditions with the condition that the work is done within the National Marine Fisheries and Wildlife Service's timeline for fish migration. Joe Teixeira seconded the motion. All voted in favor.

### **8. Other Business**

Joe Teixeira spoke about problems with ATVs and dirt bikes in the Cooper North Pasture. There are plans to block two access areas with trees and to use a cable to prohibit vehicular access near Crow Lane. Plans also include the installation of two signs. Doug Muir moved to authorize the expenditure of up to \$500 for two signs and to approve the blocking of access. Dan Warchol seconded the motion. All voted in favor.

Steve Moore moved to nominate Joe Teixeira as Chair of the Commission. Mary Casey seconded the motion. All voted in favor. Dan Warchol moved to nominate Jannell Zarba as Vice Chair of the Commission. Mary Casey seconded the motion. All voted in favor.

### **9. Adjournment**

The meeting was adjourned at 12:00 a.m.