

**Newburyport Conservation Commission**  
October 2, 2018  
Senior Community Center, 331 High Street  
Minutes

**1. Call to Order**

Chair Joe Teixeira called a meeting of the Newburyport Conservation Commission to order at 6:46 p.m.

**2. Roll Call**

In attendance were members Joe Teixeira, Steve Moore, Paul Healy, David Vine, Doug Muir, and Dan Warchol. Dan Bourdeau was absent. Conservation Administrator Julia Godtfredsen was also in attendance.

**3. Minutes**

Paul Healy moved to approve the minutes of the August 21, 2018, meeting as submitted. David Vine seconded the motion. The motion was unanimously approved.

**4. Old and New Business**

**Plum Island Updates**

The focus of the most recent MRBA meeting was an Army Corp. report that concluded the work to repair the jetties was not the cause of erosion on North Reservation Terrace. Short-term solutions for North Reservation Terrace will be the topic of discussion at the next meeting.

**5. Certificates of Compliance, Requests for Determinations, Requests for Minor Modifications**

**Craig Pessina, Chart House Development. LLC**

23 Hale Street

Request for Certificate of Compliance

DEP File #051-0948

Tom Hughes represented the applicant and reported the bounds have been installed and an as-built plan has been submitted. Julia Godtfredsen said the site is well vegetated and the work appears to have been according to the plans. The Versa-Lock wall is larger than was planned but the deviation has no major impact on the resource area. Paul Healy moved to issue a Certificate of Compliance for 23 Hale Street. Steve Moore seconded the motion. The motion was unanimously approved.

**Evergreen Commons LLC**

18 Boyd Drive

Homeowners Association Document Update

DEP File #051-0973

Lisa Mead represented the applicant and requested the Commission approve the sign that is to be installed in the garage of each home. The draft sign was revised to contain less information. The design will be developed after the content has been finalized. The Commissioner members would like the sign to emphasize that the homeowners could jeopardize the quality of their drinking water if they were to not adhere to the restrictions. They requested a graphic of a faucet be added to the sign and a larger font be used at the top of the sign. Doug Muir moved to approve

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the sign with the changes discussed. Steve Moore seconded the motion. The motion was unanimously approved.

The Planning Board reviewed and approved the homeowners' association document after it was revised to incorporate comments made by Doug Muir. Steve Moore moved to approve the homeowners' association document. Doug Muir seconded the motion. The motion was unanimously approved.

**Miriam Clark and Jeffrey Snow**

2 74<sup>th</sup> Street

Request for Certificate of Compliance

DEP File # 051-0798

Julia Godtfredsen said the work to demolish an existing home and replace it with one on pilings was done according to the plans. The site is well vegetated with beach grass. Paul Healy moved to issue a Certificate of Compliance for 2 74<sup>th</sup> Street. Doug Muir seconded the motion. The motion was unanimously approved.

**Jon-Eric White, Newburyport DPS**

West End Sewer Right-of-way

Request for Certificate of Compliance

DEP File #051-0985

Julia Godtfredsen inspected the site and reported the access road has been completed. The side slopes have been stabilized with native grasses. There were some deviations from the approved plans but these resulted in improvements to the site. Steve Moore moved to issue a Certificate of Compliance for the West End Sewer Right-of-way. David Vine seconded the motion. The motion was unanimously approved.

**William Barrett**

158 Old Point Road

Request for Certificate of Compliance

DEP File #051-0965

Julia Godtfredsen reported the work to demolish an existing home and replace it with one on pilings was done according to the plans. The new structure is at least three feet above grade and the site is well vegetated with native species. A partial Certificate of Compliance had been previously issued. The installation of the plant materials was the only outstanding item. Paul Healy moved to issue a Certificate of Compliance for 158 Old Point Road. Steve Moore seconded the motion. The motion was unanimously approved.

**Erica Palm**

5 Harbor Street

Request for Certificate of Compliance

DEP File #051-0953

Julia Godtfredsen visited the site, where two decks were replaced with one larger one, a path to the beach was added and Japanese knotweed was removed. She reported the work was done according to the plans. Paul Healy moved to issue a Certificate of Compliance for 5 Harbor Street. Steve Moore seconded the motion. The motion was unanimously approved.

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Doug Muir moved to open the public hearings. Steve Moore seconded the motion. The motion was unanimously approved.

**6. Public Hearings**

**Rochester Electronics c/o Gary Mamigonian**

9 Malcolm Hoyt Drive

Notice of Intent

DEP File #051-0999

Peter Ogren of Hayes Engineering represented the applicant, who is proposing to scarify and regrade the existing parking lot and rebuilt the catch basins. Erosion control has been added along the limit of work, as was requested by the Commission members at a previous meeting. A condition will be added about the use of the dewatering bags to alleviate concerns about the silt. Steve Moore moved to close the public hearing. David Vine seconded the motion. The motion was unanimously approved.

**Rochester Electronics c/o Gary Mamigonian**

10 Malcolm Hoyt Drive

Notice of Intent

DEP File #051-0998

Peter Ogren of Hayes Engineering represented the applicant, who is proposing to remove silt from the bottom of the detention pond and stabilize its sloughing banks with rip rap and a gabion wall. The trees will be protected with snow fencing during construction. Steve Moore moved to close the public hearing. Paul Healy seconded the motion. The motion was unanimously approved.

**Arthur Brewer II**

16 K Street

Notice of Intent

DEP File #051-0994

Matt Tessier of Arc Surveying and Engineering Services presented information on the existing conditions at 16 K Street. He said there are two structures in a dilapidated condition on the site, most of which is in the FEMA V-Zone. The applicant is proposing to construct a 632 square-foot structure with a driveway and walkway. Mark Griffin also represented the applicant and said that due to the presence of structures on the lot, the proposal would not be classified as development, which pertains on vacant lots and which is prohibited in the V-Zone. He also said the proposal would not exceed a 20% increase in the footprint of the existing structures, the threshold for allowing redevelopment in the V-Zone.

Julia Godtfredsen pointed out the property was not listed on the inventory of vacant lots that was compiled before water and sewer connections were brought to the island. Since 2005 the City has not assessed the lot as having structures on it. She said the piles of debris on the lot do not meet the definition of a structure.

Mark Griffin responded that the DPS issued a letter dated November 4, 2016, stating the lot would be eligible for water and sewer hookups. He went on to say the lot is not vacant because it contains the remains of two structures. The buildings did not lose their identity as

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structures simply because they are dilapidated. He said that in the view of the assessor, the structures on the lot have no value and therefore could not be taxed. He said he does not see in the ordinance that the Conservation Commission is to use taxation as a measure of whether or not a lot is vacant. Instead, the purview of the Commission would be to use the buildings for the purpose of calculating the square footage of the existing footprints.

Steve Moore read from the ordinance, which defines a structure as combination of materials having a roof enclosed within exterior walls. He concluded the materials that exist on the lot do not meet the definition of a structure. The lot rather contains remnants of structures. The thing to be considered is that which exists on the site now, not that which once was.

The hearing was opened to comments from the public. Lisa Mead said an email was received from the DPS stating stubs were not added for water and sewer connections, making the lot unbuildable. She also spoke about the history of the site, which she said had originally been four lots. The lots were merged in 1989 to meet the requirements for the construction of a house on L Street. She said the issue is one for the Zoning Board and the applicant should have sought relief from other boards before coming before the Conservation Commission. She asked them to deny the application because there is no existing building on the property, making it ineligible for redevelopment in the V-Zone and there is no candy cane for a sewer hookup.

Tom Hughes presented his reasons that the Commission should reject the proposal based on resource-area issues. He said the whole lot is in the riverfront area, which would require an alternatives analysis. He said the buffer zone and resource areas have been inaccurately depicted. Tracy Peter represented the applicant and presented her resource area determination. She said the trench used to determine the resource area boundaries is hand-dug and not natural.

The Commission members discussed whether they should hire a consultant, seek the opinion of the City Solicitor or wait for the Zoning Board to make a determination. Steve Moore said the Commission must make a decision based on its own ordinance. A Zoning Board determination would not provide information on whether or not structures exist the site. Several members said they were satisfied that the assessor has determined the lot is vacant. Even if it were not vacant, the existing materials do not meet the definition of a structure under the ordinance. The property is not on the list of buildable lots. It is not connected to the water and sewer lines and the City does not intend to make such a connection.

Doug Muir moved to close the public hearing. Steve Moore seconded the motion. The motion was approved with David Vine abstaining.

**Jefferson Court Nominee Trust**

2 Jefferson Court

Notice of Intent

DEP File #051-1000

Tom Hughes represented the applicant, who is proposing to add a swimming pool and deck and replace the plant materials in the terraced area between the house and the river. An existing shed and patio would be removed. The terraced area is largely made of ledge and would be planted with native species that would add habitat value. Some of the proposed work would be within the 25-foot no-disturb zone but would be exempt under the ordinance. A site visit will take place on Thursday, October 4 at 5:00 p.m. Steve Moore moved to continue the public hearing until the October 16 meeting. Doug Muir seconded the motion. The motion was unanimously approved.

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Steve Moore moved to close the public hearings. Joe Teixeira seconded the motion. The motion was unanimously approved.

**7. Orders of Conditions**

**Rochester Electronics c/o Gary Mamigonian**

9 Malcolm Hoyt Drive

DEP File #051-0999

Doug Muir moved to issue an Order of Conditions with the special conditions that 1) the stormwater management system shall be maintained into perpetuity, which includes the regular cleaning and maintenance of the swales, in accordance with the approved stormwater operation and maintenance plan and 2) any silt accumulated in the dewatering filter bags shall be collected in an on-site paved area and removed from the site in a truck. Paul Healy seconded the motion. The motion was unanimously approved.

**Rochester Electronics c/o Gary Mamigonian**

10 Malcolm Hoyt Drive

DEP File #051-0998

Steve Moore moved to issue an Order of Conditions with the special conditions that 1) all mature trees shown on the plan shall be marked in the field and protected with construction fencing during construction and any trees damaged during construction shall be replaced, 2) any silt accumulated in the dewatering filter bags shall be collected in an on-site paved area and removed from the site in a truck, 3) any spillage of silt or soil on the street from the backhoe or other construction equipment shall be cleaned as necessary by a street sweeper and 4) any silt or sediment to be removed from the site shall be immediately placed in a watertight container to prevent leakage onto the site or roadways during transportation for offsite disposal. Dan Warchol seconded the motion. The motion was unanimously approved.

**Arthur Brewer II**

16 K Street

DEP File #051-0994

Doug Muir moved to deny the Order of Conditions on the grounds there are no existing buildings on the lot and development is prohibited in the FEMA V-Zone under Section 6.5-28 B1 of the Wetland Protection Ordinance. Paul Healy seconded the motion. Dan Warchol said he would be in favor of the denial but for reasons other than that the building remains do not meet the definition of a structure under the ordinance. The motion was approved with Dan Warchol voting against it and David Vine abstaining.

**8. Enforcement**

2 Opportunity Way

Joe Teixeira recently observed landscapers mowing the constructed wetlands at 2 Opportunity Way. The swales had been mowed in the past and the Commission required that the property owner replant them. The area will be evaluated in the spring to determine which shrubs must be replanted.

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**9 Doe Run Drive**

Joe Teixeira recused himself from the discussion. An Enforcement Order had been issued several years ago after the owner had added fill to the property. A large, above-ground swimming pool and deck has now been installed in the wetland restoration area that had been created as a result of this Enforcement Order. The owner refused to accept a certified letter that was recently mailed about the matter. The letter will now be delivered by the City Marshall.

**9. Adjournment**

Steve Moore moved to adjourn the meeting at 10:25 p.m. Dan Warchol seconded the motion. The motion was unanimously approved.