

Newburyport Conservation Commission

February 21, 2012

City Council Chambers

Minutes

1. Call to Order

A meeting of the Newburyport Conservation Commission was called to order by Chairman Joe Teixeira at 6:30 p.m.

2. Roll Call

In attendance were members Joe Teixeira, Paul Healy, Mary Casey, Steve Moore, Dan Warchol, Jim O'Brien and Doug Muir and Conservation Administrator Julia Godtfredsen.

3. Minutes

Steve Moore moved to approve the minutes of the February 7, 2012, meeting as amended. Mary Casey seconded the motion. The motion was unanimously approved.

4. General Business

Wetlands Ordinance

The City Council Planning and Development subcommittee will next discuss the ordinance on February 23 at 7:00 p.m. The subcommittee has not yet submitted any questions about the ordinance to the Conservation Commission.

Springwell Investments Conservation Restriction

Doug Muir said he reviewed his concerns about the revisions to the conservation restriction with David Santomenna of the Essex County Greenbelt Association. He recommended the City and Greenbelt insist that the boundaries of the property be walked before the conservation restriction is signed. He said the counsel for Springwell Investments was late in returning its comments to Greenbelt and not much progress has been made on the revisions the counsel initiated. The restriction must be signed before the City will issue an occupancy permit. Several homes have already been constructed. The revisions might require further review by the State.

Crow Lane Landfill Survey

Joe Teixeira recused himself from the discussion. The Mayor has requested that \$2,925 be used from the Commission's account for the survey of the metes and bounds and rights-of-way around the landfill that was done to determine if the landfill had encroached on City property. Steve Moore said he would not be in favor of the request, as a survey had already been done in 2003 or 2004. Julia Godtfredsen said the Commission's funds would be the best fit for the expense. She said the City commissioned the new survey and the Mayor was probably not aware that the area had previously been surveyed. Doug Muir said the survey benefited the City and not just the Conservation Commission. He also said he would have liked the Commission to be consulted before the survey was undertaken and added that the statute gives the Commission the authority to determine how its money is spent. Steve Moore said the Commission should pay for the survey in the interest of goodwill, but it must be clear that this is not to happen again. Paul Healy suggested that the discussion be tabled until the new survey is compared to the previous

one to determine whether or not it was beneficial. The discussion was tabled until later in the meeting.

Plum Island South Jetty Repair Project

Plans to repair the south jetty include the stockpiling of large stones on the island. Commission members expressed concern about the destruction of the dunes. Jim O'Brien said he attended meetings with the Army Corp. and the Beach Management Committee and said the plans have not yet been well developed. He said the rock would be stockpiled in the Plum Island parking lot or at the former Coast Guard station through the summer and the work would take place in the fall, after the conclusion of the piping plover nesting season. A crane would be used for the work on the landward side of the jetty and barges would be used for the remainder of the work. He said his impression was that it would be cheaper to repair the dunes after the fact. Commission members would like the Notice of Intent to include a summary of the other alternatives the applicant considered. Paul Healy said the Notice of Intent should be received as soon as possible, even if this requires that the project be divided into two sections, with one Notice filed for the stockpiling of the rock and another for the work on the jetty.

5. Enforcement

Crow Lane Landfill

Joe Teixeira recused himself from the discussion. Chip Nylan appeared for New Ventures. He said the face of the landfill has been stabilized with haybales and the remaining problem is in the southwest corner of landfill. Mary Rimmer will submit a plan to remove the sediment in the spring. The face will also be reseeded at that time. In addition to the repair of the washout areas, a change in the infrastructure might be necessary to alter the drainage. A summary of the actions that will be taken and a timetable for the work will be submitted. New Ventures did not request that the Enforcement Order be rescinded. Steve Moore said erosion is occurring in more than one location and there is sediment in several parts of the wetlands. He also said water flows down Crow Lane into the Little River and water continually flows out of the pipe from the detention basin, which should only be for overflow. Mr. Nylan said he would confirm that the water in the pipe flows from the face in addition to the detention basin.

6. Certificates of Compliance, Requests for Determinations, Requests for Minor Modifications

None

7. Public Hearings

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

Commonwealth of Massachusetts, Highway Division

Whittier Bridge

Notice of Intent

DEP File #051-0875

The plans were revised in response to comments made by the peer reviewer. Commission members reviewed the draft special conditions that were submitted by the applicant. Paul Healy

commented that there should be more than one preconstruction meeting. The applicant responded that regular meetings for all involved parties are planned, which would eliminate the need for other preconstruction meetings.

There were discrepancies in the figures pertaining to the riverfront area and a revised riverfront area mitigation table was submitted. An updated Notice of Intent that includes the amount of impact in the 100-foot and 200-foot zones will be submitted.

Paul Healy asked about the saltmarsh restoration. The applicant said that because the shading analysis indicates the saltmarsh would not be impacted, monitoring would not be necessary. DEP concurred with the shading analysis. Paul Healy pointed out that in the conditions the Commission has drafted, item #53 calls for monitoring. The applicant is not willing to include monitoring in the Order of Conditions and has sent a letter stating this position to the Mayor. Julia Godtfredsen asked how the monitoring would impact the schedule. The response was that an appeal by Mass DOT would slow the process by four to six months. Steve Moore said the applicant's study indicates that shading adversely impacts *Spartina alterniflora*. Julia Godtfredsen said the Commission members are not convinced there would be no impact and are asking that the existing healthy marsh be monitored. She added that the burden of proof is on the applicant. The applicant said that while the species in the saltmarsh might change, the function of the saltmarsh would not be altered. Steve Moore said there are not many species that would replace *Spartina alterniflora*. The applicant said local conditions other than shading might impact the saltmarsh and Mass DOT does not want to be held accountable for these. Paul Healy said the applicant has done due diligence and DEP agrees with the findings. He said if the saltmarsh were impacted it would not be known if it was due to shading or other impacts such as the outfall or the oil spill. Joe Teixeira said 1,300 square feet of saltmarsh is being added near the outfall and he wants to make sure it survives. There will be monthly reports by an environmental monitor and there will be a two-year warranty on the replication materials.

The plans must to be stamped and signed by a professional engineer. The Commission will continue to work on the draft conditions for the March 6 meeting. Paul Healy moved to close the public hearing. Doug Muir seconded the motion. The motion was unanimously approved.

Paul Healy moved to close public hearings. Dan Warchol seconded the motion. The motion was unanimously approved.

8. Orders of Conditions

None

9. Other Business

Landfill Survey Discussion Continued

Joe Teixeira recused himself from the discussion. Dan Warchol said he is not in favor of funding the survey. He said he thinks it would be more appropriate for another department to pay the bill, such of the Office of the Assessor because it concerns a boundary assessment. He also said the Commission's funds have been growing slowly over time and the Commission might wish to use them for a future project. Commission members agreed that they would like to express their displeasure with the way the matter was handled. Doug Muir moved to pay for the survey with Commission funds and to communicate to the Mayor the Commission was not satisfied with the

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way the issue was handled and would not allow it in the future. Paul Healy seconded the motion. The motion was approved with Joe Teixeira abstaining and Dan Warchol voting in opposition.

Plum Island Sand

Joe Teixeira said Allison Heartquist told him the Beach Management Committee wishes to add sand between 53rd and 57th Streets. He told her an amendment to the NOI must be filed by April 1. Once issued, the permit would allow sand to be added each year without additional filings. It would also provide guidelines for adding sand in emergency situations.

9. Adjournment

Paul Healy moved adjourn the meeting at 8:50 p.m. Steve Moore seconded the motion. The motion was unanimously approved.