

**Newburyport Conservation Commission**  
May 2, 2017  
Senior/Community Center Board Room  
Minutes

**1. Call to Order**

Chair Joe Teixeira called a meeting of the Newburyport Conservation Commission to order at 6:48 p.m.

**2. Roll Call**

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

**3. Minutes**

Steve Moore moved to approve the minutes of the April 18, 2017 meeting as submitted. Dan Bourdeau seconded the motion. The motion was unanimously approved.

**4. Old and New Business**

**Plum Island Updates**

A meeting to review the proposed public accessways options has been scheduled for May 4 at PITA Hall at 6:30 p.m.

**Filing Deadlines and Application Submission Requirements**

The recommended new filing deadline would be Fridays at 12:00 p.m. This would allow Julia Godtfredsen to distribute the packets at meetings, saving on postage. She will work with Dianne Boisvert on the language of the filing instructions.

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

**Ian Lucy**

257-259 Water Street

Request for Determination of Applicability

Mary Rimmer represented the applicant, who wishes to remove one set of stairs at the rear of the structure and extend the length of a second set. There would be no change to the amount of impervious area or any increased impact to the resource area. Steve Moore moved to issue a Negative 2 Determination. Dan Bourdeau seconded the motion. The motion was unanimously approved.

**Wojcicki Holdings, LLC**

143A State Street

Request for Certificate of Compliance

DEP File #051-0926

John Paulson of Atlantic Engineering represented the applicant. He said the only difference between the proposed and as-built plans was the substitution of riprap for the impervious membrane that was to be installed along the driveway of the neighboring property. This represents a significant change in the buffer zone and was done without a request for

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modification. The Commission members wish to visit the site. Steve Moore moved to continue the request to the May 16 meeting. Dan Bourdeau seconded the motion. The motion was unanimously approved.

**6. Public Hearings**

Steve Moore moved to open the public hearings. Dan Bourdeau seconded the motion. The motion was unanimously approved.

**Howard and Dorothy Fairweather**

3-5 Collins Farm Road

Notice of Intent

DEP File #051-0968

Chip Nylen said the applicant might prefer that a conservation easement be placed on the property rather than a conservation restriction due to the length of time he believes the State would need to review and approve the restriction. The document, whether it is a restriction or an easement, must be enforceable by the Commission in perpetuity. The entire property, with the exception of the building envelope, would be the subject of the restriction or easement. The applicant will pursue both avenues. Ann Lagasse, 1 Piper's Quarry, said she intends to add two parcels she owns to the restriction. Steve Moore moved to close the public hearing. Dan Bourdeau seconded the motion. The motion was unanimously approved.

**Newburyport Manager, LLC**

72, 86-90 Merrimac Street, 58 McKay's Wharf, and Brown's Wharf

Notice of Intent

DEP File #051-0969

The Commission members visited the site on April 11. Katie Barnicle provided a written response to comments made at the site visit and during the April 4 meeting. The response included the clarification of: 1) the use of word redevelopment with regards to the walkway and the pipe and how the stormwater standards apply to those parts of the project, 2) the phragmites control plan, 3) the mitigation plan and the sedimentation control plan, 4) the impacts to the resource area, 5) the connection to Michael's Harborside at the gate in the chain link fence and 6) mitigation. She provided: 1) the language indicating the walkway is a condition of the Chapter 91 license for Michael's Harborside, 2) a cross section of the riprap and headwall proposed for the saltmarsh and 3) a construction sequence. She confirmed the size of the crushed stormwater pipe and said the sizes of the existing and proposed pipes have been matched in order that there is no increased flow into the saltmarsh. The Notice of Intent has been updated. The addition of saltmarsh vegetation to the area from which the phragmites are being removed was discussed. Additional planting and monitoring will be added to the construction sequencing. Ms. Barnicle requested the Commission approve the interim walkway, which requires a variance for work in the 25-foot no-disturb zone. She also requested the approval for the repair and maintenance of the existing pipe, which is allowed as an exemption and exception under the local ordinance and as a limited project under the WPA.

Joe Teixeira opened the hearing to comments from the public. David Powell, 3 Salem Street, questioned the accuracy of the plans and the applicant's commitment to the stewardship

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of the property. He said the existing conditions plan does not show the marine railway. He encouraged the Commission to require that applications be filed electronically.

Steve Moore moved to close the public hearing. Doug Muir seconded the motion. The motion was unanimously approved.

**Thomas Lawrence**

17 82nd Street

Notice of Intent

DEP File #051-0971

David Vine recused himself from the discussion. Tom Hughes represented the applicant and submitted plans for two options for the deck and a letter describing three alternatives. The only alternative that would not necessitate a waiver or variance would be an at-grade patio. Mr. Hughes said this would require the planting of 114 square feet of vegetation as mitigation and would not result in any environmental gain in terms of dune function improvement. With the first option the deck would be raised four inches. In this scenario the deck would not be two feet above grade in all locations but only one landing would be needed. In the second option the deck would be raised 7". In this scenario the entire deck, with the exception of the two landings, would be two feet above grade after the loam has been removed. In both options sand would be added to the 82<sup>nd</sup> Street right of way, 968 square feet of concrete would be removed and a clamshell path with rope guides would be added. The applicant and some members of the Commission expressed a preferred for the first option.

At the April meeting Mr. Hughes said the applicant has investigated a dune nourishment plan for the shared property. Sarah Bellino, attorney for the applicant, said it would not be possible to provide a notice for an RDA because one of the four owners of the property is not known. It appears that without the work on the shared parcel the requirement for an overriding public benefit needed for a variance would not be met. The mitigation being proposed is not more extensive than that for a standard Notice of Intent. A precedent would be set if the applicant were allowed to retain the deck. Mr. Hughes must submit draft findings for the next meeting and copies of correspondence with neighbor Sara Bulger regarding research into the location of the missing property owner, who is a relative of hers. Steve Moore moved to continue the public hearing to the May 16 meeting. Doug Muir seconded the motion. The motion was unanimously approved.

**George Charos**

Merrimack River in front of 82nd Street

Notice of Intent

DEP File #051-0970

Tom Hughes represented the applicant, who has proposed a plan for a ten-year maintenance-dredging program. The MEPA certificate was issued. Natural Heritage issued conditions and time restrictions. Steve Moore moved to close the public hearing. Dan Bourdeau seconded the motion. The motion was unanimously approved.

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**Lorraine and Michael Riley**

2 Spofford Street

Notice of Intent

DEP File #051-0972

Tom Hughes represented the applicants, who are proposing to demolish two structures and replace them with a single-family house, resulting in 4,700 square feet of alteration. A Natural Heritage letter was received that stated the project would not result in a take and would be exempt under the MESA review. Louise Duda, 6 Spofford Street, said she has lived on an adjacent property for the past 30 years and the proposed location of the structures would block her views of the river. Mr. Hughes forwarded to the applicant her request that the location of the garage be reconsidered. The Commission does not have purview over views. Steve Moore moved to close the public hearing. Dan Bourdeau seconded the motion. The motion was unanimously approved.

**Paige Baumann**

21 Shore Street

Amended Notice of Intent

DEP File #051-0917

DEP has appealed the plan to install a wall under the sand. A concept for an alternative plan was sent to DEP but no response has been received as of yet. Dan Warchol moved to continue the public hearing to the May 16 meeting. Dan Bourdeau seconded the motion. The motion was unanimously approved.

Steve Moore moved to close the public hearing portion of the meeting. Dan Bourdeau seconded the motion. The motion was unanimously approved.

**7. Orders of Conditions**

**Howard and Dorothy Fairweather**

3-5 Collins Farm Road

DEP File #051-0968

Doug Muir moved to issue an Order of Conditions with the special condition that 1) prior to the issuance of an occupancy permit the applicant shall have executed and recorded at the Registry of Deeds either a conservation restriction approved under MGL 184 Sections 31-33 or a conservation easement, either of which is mutually acceptable to both the applicant and the City and is enforceable by the City in perpetuity, 2) such a restriction or easement shall apply to the 3.45 acres as shown on the approved conservation easement plan and 3) the document must be reviewed and approved by the Conservation Commission and the City prior to its execution. Steve Moore seconded the motion. The motion was unanimously approved.

**Newburyport Manager, LLC**

72, 86-90 Merrimac Street, 58 McKay's Wharf, and Brown's Wharf

DEP File #051-0969

Steve Moore moved to issue an Order of Conditions with the special conditions that 1) prior to the start of work the applicant shall provide written construction phase details for the work within the saltmarsh and its restoration, including a saltmarsh restoration monitoring plan, 2)

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prior to the start of work the applicant shall submit to the Commission and the City's Department of Public Services an operations and maintenance plan for the new stormwater outfall and Tideflex valve and no work on the stormwater outfall shall begin until the Commission has reviewed and approved of the operations and maintenance plan, 3) the applicant shall maintain the drainage feature and shall remove and dispose of debris in the BVW, saltmarsh area and buffer zone regularly during construction and on an annual basis, and 4) the phragmites control plan shall be implemented as specified in the plan submitted by AECOM dated April 25, 2017 and the applicant or subsequent owner shall complete the cutting by the end of July each year. Doug Muir seconded the motion. The motion was unanimously approved. Steve Moore moved to issuance a variance as outlined in the Notice of Intent Section 5.2.3. David Vine seconded the motion. The motion was unanimously approved.

**George Charos**

Merrimack River in front of 82nd Street  
DEP File #051-0970

Steve Moore moved to issue an Order of Conditions with the special conditions that 1) all work shall be done in accordance with the time of year and other restrictions as specified by the Natural Heritage Endangered Special Program, Division of Marine Fisheries, NOAA and CZM and 2) the dredged sand shall be stored on Plum Island at Olga Way or another location approved by the City for immediate or future use by the City or other party approved by the City. Dan Bourdeau seconded the motion. The motion was unanimously approved.

**Lorraine and Michael Riley**

2 Spofford Street  
DEP File #051-0972

Steve Moore moved to issue an Order of Conditions. Dan Bourdeau seconded the motion. The motion was unanimously approved.

**8. Other Business**

Joe Teixeira said he stopped a new bridge from being constructed at the vernal pool near Hale Street. The existing bridge has been removed. He recommended the installation of a bog bridge be allowed and suggested the Commission might buy the wood for the project.

The Commission members discussed paying for overtime for Julia Godtfredsen. She currently receives comp time. She said she is satisfied with the current system at this time and will inform the Commission if the comp time accrues to the point she is unable to use it.

**9. Adjournment**

Steve Moore moved to adjourn the meeting at 10:41 p.m. David Vine seconded the motion. The motion was unanimously approved.