

Newburyport Conservation Commission

July 19, 2011

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, Steve Moore, Dan Warchol, Mary Casey, Doug Muir and James O'Brien and Planning Director Andy Port.

3. Minutes

Doug Muir moved to approve the minutes of the June 28, 2011 meeting. Dan Warchol seconded the motion. The motion was unanimously approved.

Paul Healy moved to approve the minutes of the July 5, 2011 meeting. Steve Moore seconded the motion. The motion was unanimously approved.

4. General Business

Mayor's Proposal for a Single Plum Island Conservation Agent

Commission members discussed a proposal to hire Doug Packer as the Conservation Agent for Plum Island. Mr. Parker is the Conservation Agent for the Town of Newbury and would be hired to work 20 hours per week for \$20,000. Steve Moore asked how Mr. Packer would be able to work his current 35 hours per week for Newbury and an additional 20 hours for Newburyport. Andy Port said the details would have to be decided. He said it would be desirable to have a one agent for Plum Island. Joe Teixeira said there would then be a dividing line between the island and the rest of the city. Dan Warchol said there is a resource area at the train station that crosses city lines. Andy Port said the one-year position might be a temporary one that would later be expanded to include the entire City. He said he thinks one agent could cover all of Newbury and Newburyport and the duties in Newburyport could be handled in 25 to 30 hours per week. Joe Teixeira said Mary Reilly worked 30 hours per week and asked how many hours she spent not doing her job. Andy Port said he was not implying that she did not do her job but he thinks the job could be done more efficiently. Paul Healy said he does not think there are many efficiencies that could be gained. Dan Warchol said it seems the number of hours is more than is achievable. Mary Casey said Mr. Packer is both the agent and a voting member of the Conservation Commission and she is not certain how this is permissible. She said Mr. Packer would not be a voting member of the Newburyport commission. Steve Moore said an important part of the job is being available in the office to meet with applicants and an agent working 55 hours in two towns would not have many hours to be available to the public. Mary Casey asked if Commission members could be present at the City Council subcommittee meeting. Andy Port said he would notify them of the date of the meeting.

Minor Modification for Beach Walkover and Public Access at 53rd, 55th, 57th and 61st Streets

Newburyport Conservation Commission
July 19, 2011

Steve Moore said he would like the Commission to receive a written document signed by all involved parties that describes the chain of responsibility for moving the gangway for predicted storms and the emergency process for unexpected storms. Andy Port will be responsible for preparing the document, which will also include the specific dates that the gangway will be installed in the spring and removed for the winter.

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

Mark & Kim DePiero

2 Jefferson Street

Request for Certificate of Compliance

DEP File #051-0794

A partial Certificate of Compliance was issued in November 2009. The Order of Conditions required the plantings to be monitored for the 2009 and 2010 growing seasons and a written report issued. At the June 15, 2010 meeting Bill Decie reported survival rate of the Spartina was 92% and requested that a full Certificate of Compliance be issued. The Certificate was issued with the condition that a report on the survival of the plant materials during the second growing season be submitted by June 30, 2011. Mr. Decie submitted a written report and photographs of the work. Paul Healy moved to remove the ongoing condition. Steve Moore seconded the motion. The motion was unanimously approved.

Norman Day

10 Perry Way

Request for Determination of Applicability

John Sava appeared for the applicant, who is proposing to install a covered loading dock over an existing bituminous driveway. The covered dock would not have gutters and the runoff would flow into the swale behind the building. The size of the loading dock was shown on the plans as being 11' x 13'. Mr. Sava requested that this be increased to 12' x 14'. The larger dock would not extend past the existing driveway. Paul Healy moved to issue a Negative 3 Determination with the condition that erosion control be maintained during the course of the construction. Doug Muir seconded. The motion was unanimously approved.

Mary Casey moved to recess the meeting and open the public hearings. Dan Warchol seconded the motion. The motion was unanimously approved.

6. Public Hearings

Tim Tracy

28 53rd Street and Multiple Lots

Notice of Intent

DEP File #051-0860

Tim Tracy said he has received a response from Natural Heritage. The letter stated that no work, including maintenance, would be allowed between April 1 and August 31. Paul Healy asked if adding material over the coir bags is a part of the annual maintenance plan. Mr. Tracy said he plans to place sand over approximately 40 feet of coir bags after August 31. Additional sand might be added at a later date if the sand washes away. Under the permit he would be able to

Newburyport Conservation Commission
July 19, 2011

add sand for a three-year period, but must notify the Conservation Agent in writing before doing so. If additional maintenance is needed after three years, the applicant would be required to request an extension. Dorothy Sweeney, 17 53rd Street, asked if neighbors would be notified if a change were to be made to right of way. Andy Port said this would be the responsibility of the City, not the Commission. Doug Muir moved to close the public hearing. Dan Warchol seconded the motion. The motion was unanimously approved.

Michael Arcidi, Port Associates Limited Partnership

4-6 Hale Street

Notice of Intent

DEP File #051-0867

Tom Hughes appeared for the applicant. The public hearing had been continued from the July 5 meeting because the applicant was appearing before the Planning Board on July 6. The Planning Board closed its public hearing. No changes have been made to the plans since last meeting. Andy Port drafted an Order of Conditions. Mr. Hughes requested that the reference to the restoration area be removed from the project description and that the public hearing be closed. Cynthia Welch-Philippino, 14 Coltin Drive, said she is opposed to the project. Doug Muir moved to close the public hearing. Mary Casey seconded the motion. The motion was unanimously approved.

Marc Emmons

9 Doe Run Drive

Notice of Intent

DEP File #051-0869

Joe Teixeira recused himself from the discussion. Jeff Andrews of Wetland Preservation, Inc. appeared for the applicant, who plans to remove the fill that was added to the property without a permit. The deck, stairs and walkway are to be reconstructed. A wall and storm-water pump system will be installed to protect the house. Water that flows from the front of the house along the driveway will be pumped behind the wall into a swale that leads to the restoration area. Steve Moore said he would like the boardwalk at the rear of the property to be removed. Paul Healy moved to close the public hearing. Mary Casey seconded the motion. The motion was unanimously approved.

Scott Kinter

1 Lancaster Road

Notice of Intent

DEP File #051-0870

Maureen Hanley appeared for the applicant, who is proposing to construct a single-family dwelling with a garage, porch and patio within the 100-foot buffer zone of a BVW. Commission members expressed concern about the planting plan at the site visit. Three red maples were added to the plan. Steve Moore asked about the trees that were marked on the site. Ms. Hanley said the trees are to be removed, as are all of the trees within the hay bale line. David Durgin, 16 Shandel Drive, said he is concerned about drainage. Ms. Hanley said the site is flat with sandy soils and the water would infiltrate quickly. Loree and Steve Hazard, 3 Lancaster Road, said they are concerned about having water in their finished basement and the soil is not sandy, but

Newburyport Conservation Commission
July 19, 2011

rather clay. Ms. Hanley said that although no test borings have been done, she disagrees that there is a clay soil on the site. Mr. and Mrs. Hazard submitted a letter to the Commission that expressed their concerns about the project. They asked why the applicant would be allowed to remove trees from the site and said the water table is variable. Ms. Hanley agreed that water flows on the site but said the applicant is allowed by law to build within 100 feet of wetland and is proposing a 25-foot no disturb zone. She said there is not a certified vernal pool on property. At one time Port Engineering had identified a vernal pool but did not have it certified. Paul Healy asked about the water table in area of house. Ms. Hanley said no testing has been done for the height of the water table. He also asked about the settling area that was referenced in the letter. Steve Moore said that when the Commission members walked the site they did not find a large settling area. He said he would like the size of the patio to be reduced by five feet in order that it be a greater distance from the wetland and more trees might be preserved. Dan Warchol asked how the project would be impacted if the stream were perennial rather than intermittent and if a peer review would be necessary to make this determination. Ms. Hanley said documentation that the stream is intermittent was provided. Steve Moore said no obvious flowing water was observed during the site visit. Mary Casey said she would like more trees to be preserved. Joe Teixeira said he does not want the roof drainage to impact the neighbors. The applicant agreed to add gutters and a chamber. The Commission members requested that a revised set of plans with the agreed-upon changes be submitted and that the applicant clearly mark the no-cut zone on the site. Dan Warchol moved to continue the public hearing to August 2. Mary Casey seconded the motion. The motion was unanimously approved.

Robert and Karla Moore

16 Basin Street

Notice of Intent

Bill Decie appeared for the applicant, who is proposing to install a 10' x 12' shed at the rear of the property. The construction would disrupt 120 square feet of beach grass. Mr. Decie said the applicant would plant 250 square feet of beach grass on the north side of the site near the walkway as mitigation. The applicant is also proposing to convert an existing landing to a 12' x 20' deck. Mr. Decie said that as the deck is over bare sand, no mitigation for this is planned. Steve Moore said that beach grass would possibly grow in this area if it were not for the table and chairs that are located there. Mr. Decie agreed to install beach grass along the entire length of the north side of the property from the street to the proposed shed. Dan Warchol moved to close the public hearing. Steve Moore seconded the motion. The motion was unanimously approved.

Bud Jerrett

17 Graf Road

Notice of Intent

DEP File #051-0864

John Hargraves appeared for the applicant and said Christensen and Sergi has reviewed the plans. Joe Teixeira asked about the mowing of the meadow. The wetland shall be mowed once a year as is indicated in the O & M plan. Paul Healy moved to close the public hearing. Steve Moore seconded the motion. The motion was unanimously approved.

Newburyport Conservation Commission
July 19, 2011

Steve Moore moved to close the public hearings. Mary Casey seconded the motion. The motion was unanimously approved.

7. Enforcement

City of Newburyport

Department of Public Services

Sand Placed at 53rd Street Right of Way

Andy Port began the discussion by saying Tony Funari and Drew Flannigan were available to answer questions about the sand that was placed at the rights of way. Joe Teixeira said he issued an Enforcement Order for the work at 53rd Street and the order should be amended to include 55th Street. He said the placement of sand in these two areas was outside the scope of work that had been approved and a permit would have been required for the work. Mary Casey said that at the previous meeting the Commission was clear that sand was not to be added to the 53rd Street right of way because the permit was not complete and a letter from Natural Heritage was outstanding. Steve Moore said the approved work was for the installation of Mobi mats at 57th and 61st Streets and a gangway for 55th Street. The addition of sand at 55th and 53rd Streets was not included in the permit. Andy Port said the sand was added at 55th Street for the safety of the public while the gangway is being constructed. Paul Healy said the City should have included the placement of sand at 55th Street in its application because it was known that it would take time for the gangway to be constructed. A letter from Natural Heritage has been received that requires no work take place between April 1 and August 31. Doug Muir said the removal of the sand would not be desirable because this would require that work be done during the period in which it is prohibited. Doug Muir said he would be more inclined to require that a Notice of Intent or an RDA be filed than to issue an Enforcement Order. He asked what would be the outcome of the Enforcement Order. Dan Warchol said the City has shown a disregard for the process and he would like the Enforcement Order to be on the record. Paul Healy said having an Enforcement Order on the record would be desirable as it could be used to require a Notice of Intent or address actions such as what should be done if the sand washes away. Doug Muir said he does not think a Notice of Intent is necessary. He asked if the work could be handled by an amendment to the Beach Management Plan. Paul Healy said the Order of Conditions for the Beach Management Plan should be reviewed. Andy Port said the Beach Management Plan did not address any intermediary measures that would be taken before the walkways were installed. The Notice of Intent for the Beach Management Plan was not specific and should be amended. Dan Warchol said the Beach Management Committee should present proposed changes to the plan to the Commission. The Order of Conditions would set the parameters of the work. It should include the prohibition of work between April 1 and August 31 and the requirement that the Conservation Agent and Conservation Commission chair be notified before work is to be done. Dan Warchol moved to issue an Enforcement Order that prohibits any work from taking place on Plum Island before August 31. Mary Casey seconded the motion. The motion was unanimously approved. Dan Warchol moved that the Enforcement Order include the requirement that any work after August 31 must be done in accordance with the Beach Management Plan or otherwise approved by the Commission and the Conservation Agent must be notified before the work takes place. Mary Casey seconded the motion. The motion was unanimously approved.

8. Orders of Conditions

Tim Tracy

28 53rd Street and Multiple Lots

Paul Healy moved to issue an Order of Conditions with the special conditions that 1) no work is to take place between April 1 and August 31, 2) the applicant must request an extension if maintenance is required for longer than three years and 3) the Conservation Agent must be notified before any work is begun. Doug Muir seconded the motion. The motion was unanimously approved.

Michael Arcidi, Port Associates Limited Partnership

4-6 Hale Street

Steve Moore moved to issue an Order of Conditions with special conditions that the invasive species be controlled according to the plan and the meadow be mowed two times per year except for the area where there are phragmites. Steve Moore seconded the motion. The motion was unanimously approved.

Marc Emmons

9 Doe Run Drive

Notice of Intent

Doug Muir moved to issue an Order of Conditions with the condition that the boardwalk providing access to the wetlands at the rear of the property be removed. Mary Casey seconded the motion. The motion was unanimously approved.

Robert and Karla Moore

16 Basin Street

Dan Warchol moved to issue an Order of Conditions with the conditions that a plan showing the mitigation area must be submitted before work may begin and a temporary snow fence may be installed to protect the beach grass for two growing seasons. Mary Casey seconded the motion. The motion was unanimously approved.

Bud Jerrett

17 Graf Road

Notice of Intent

Paul Healy moved to issue an Order of Conditions with the conditions that the wet meadow be mowed once annually. Steve Moore seconded the motion. The motion was unanimously approved.

9. Other Business

Dan Warchol suggested that the Beach Management Committee include a representative of the Commission. Jim O'Brien said he would be willing to join the committee. Andy Port will make the recommendation to the Mayor.

Andy Port will send copies of the Notice of Intent and Order of Conditions for the Beach Management Plan to Commission members.

Newburyport Conservation Commission
July 19, 2011

Andy Port said he sent an email to Sadru Hemani about the removal of the plywood on his property but has not yet received a response.

10. Adjournment

Paul Healy moved to adjourn the meeting at 9:35 p.m. Mary Casey seconded the motion. The motion was unanimously approved.