

Newburyport Conservation Commission

July 21, 2015

City Council Chambers

Minutes

1. Call to Order

Chair Joe Teixeira called a meeting of the Newburyport Conservation Commission to order at 6:52 p.m.

2. Roll Call

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

3. Minutes

Steve Moore moved to approve the minutes of the July 7, 2015 meeting as submitted. David Vine seconded the motion. The motion was unanimously approved.

4. Old and New Business

223 High Street Conservation Restriction

As a part of the special permit process with the Planning Board, the developer is to donate a portion of the rear of the property to the City and a conservation easement is to be placed on the wooded slope between the development and the playing fields at the Nock Middle School. The Planning Department has asked the Conservation Commission to hold the restriction. Andy Port will be asked to attend the next meeting to clarify the roll of the Commission in the monitoring and enforcement of the restriction.

Lisë Reid received a request to hold a model aviation event on the Cooper North Pasture. More information would be needed on the event before approval.

23 Everette Drive Update

Tom Hughes made an informal presentation on the landscape plan for 23 Everette Drive in order that he might receive comments from the Commission members before finalizing the document. The plan includes the planting of winterberry holly, hemlock, shadblow serviceberry and tupelo and the installation of a woodchip path and seating area with a fire pit. Mr. Hughes said he would provide a detailed narrative, assurances that no additional trees would be cut and a plan for the ongoing management of invasive species. The Commission members said any non-invasive species that emerge must be allowed to repopulate the wetland. They asked that a barrier be installed at the boundary of the woodchip area to prevent encroachment onto the wetland. They would also like red maples and white pines to be planted along with the proposed species and a three-year monitoring period for the plant materials.

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

Lake Realty Trust

6 Opportunity Way

Request for Certificate of Compliance

DEP File #051-0885

The Commission issued a partial Certificate of Compliance in 2014. The applicant replanted the two red maples and two white pines as required and the plant materials have survived for one year. Paul Healy moved to issue a Certificate of Compliance. Steve Moore seconded the motion. The motion was unanimously approved.

John Van Loan

4 F Street

DEP File #051-0936

Minor Modification

DEP appealed Order of Conditions that was issued at the June 16, 2015 meeting because the decorative horizontal boards on the structure were not at least two feet above base flood elevation. The applicant did not submit a revised plan but agreed to remove the boards. Based on this minor modification, DEP has withdrawn its appeal of the project. He will be asked to initial the change on the original set of plans. The Order of Conditions has been revised to state that all horizontal materials including the wood slats below elevation 16 are to be eliminated. Paul Healy moved to accept the minor modification to the Order of Conditions. Steve More seconded the motion. The motion was unanimously approved.

6. Public Hearings

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

Anthony Barbaris

6 Perkins Way □

Notice of Intent

DEP File #051-0933

At the July 7, 2015 meeting Ellie Baker of the Horsley Whitten Group presented the findings of the peer review. The presumptions of significance were not overcome and the variance criteria were not satisfied. Ms. Baker said she has subsequently found precedent for identifying the swale at the front of the site as a stormwater swale. As such the swale would not be a protected resource. In 2012 the DPS filed a Notice of Intent for the maintenance of the drainage swales in the industrial park. The swales at that time were identified not as a resource area but rather as a part of the stormwater management system that requires maintenance and repair to allow them to fulfill their stormwater function of moving water safely across the properties. While an Order of Conditions was issued for a portion of the industrial park that did not include the area around Perkins Ways, Perkins Way was included on a map that identified the swales as drainage swales. Ms. Baker found two other instances that would provide precedent for identifying the swales as drainage swales: in the filing for 3 Opportunity Way, the drainage swales were not delineated as BVW, and Perkins Way was listed in a 1998 memo from the Conservation Commission to NAID.

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that directed the swales to be maintained as drainage swales. Ms. Baker has revised the scope of work for the peer review to include a review of additional files to determine if there is a basis for treating the swales as drainage swales rather than a resource area.

Joe Teixeira pointed out DEP stopped work to clean the swales in the front of the Strem Chemical property. He said through succession unmaintained drainage swales might convert to wetlands. Julia Godtfredsen said she believes DEP has changed its philosophy on the treatment of drainage swales. In 2012 DEP allowed a series of man-made swales to be cleaned to the bottom of the culvert. DEP indicated at that time that it does not wish to regulate stormwater swales. As a part of the filing the entire area was mapped but not all of the swales were included in the Notice of Intent.

If precedent were found for the treatment of the swales as drainage swales, the applicant would rewrite the findings and resubmit the Notice of Intent. The ordinance allows for exemptions for stormwater management systems, which would eliminate the BVW for the swale. While some Commission members said they would support the labeling of the swales as drainage swales, mitigation would still be required. As the mitigation area is located in Newbury, the applicant must file a Notice of Intent in that town and the Newburyport Conservation Commission must be satisfied with the Order of Conditions issued.

Two IVW have been identified on the site, which under the local ordinance would prevent the work as proposed. Patrick Seekamp said these areas do not have wetland functions and values. He said they appear to be less wet than when they were flagged in 2007 and he has now found vegetation there that does not appear in wetlands. The applicant will be asked if he would approve the inclusion of a delineation in the peer review. If the two areas in question were determined not to be wetlands, the flags would be removed. If they were determined to be wetlands the applicant has already argued the presumption of significance. A memo on whether or not the functions and values of the wetland have been overcome has been completed as a part of the peer review. If the Commission does not agree with the finding, a variance would be required, for which an alternatives analysis and evidence of an overriding public benefit must be submitted.

Paul Healy moved to continue the public hearing to the August 18 meeting. Steve Moore seconded the motion. The motion was unanimously approved.

7 Harbor Street Development, LLC

7 Harbor Street

Notice of Intent

The applicant is proposing to use a soft engineering solution to rebuild a coastal dune on the basin side of Plum Island that has eroded. Coir envelopes would be placed in three terraces across the front of the property. The coir envelopes would be covered with sand and planted with beach grass. The terraces would extend four to six feet above the existing grade to be consistent with the height of the neighboring properties. All of the work would take place above the high tide line. The Commission members were concerned with the abrupt way the envelopes would terminate at the property line. It is likely this would cause scouring on the adjacent properties. They would prefer the envelopes to follow a more natural curve and tie in to the top of the existing dune. The applicant would be responsible for the nourishment of the sand at the ends of the envelopes as well as over them through the Order of Conditions. A DEP file number

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has not yet been issued and the applicant has not signed the Notice of Intent. The Commission members wish to receive an engineering plan with surveyed elevations and a cross section.

Paul Healy moved to continue the public hearing to the August 18 meeting. Steve Moore seconded the motion. The motion was unanimously approved.

Doug Muir moved to close the public hearings. Paul Healy seconded the motion. The motion was unanimously approved.

7. Orders of Conditions

Elise Colcord

10 55th Street

The Commission members voted to approve the special conditions for the project at the July 7 meeting but did not issue an Order of Conditions because a DEP file number had not yet been received. Doug Muir moved to confirm the vote taken for 10 55th Street. Steve Moore seconded the motion. The motion was unanimously approved.

8. Enforcement

A gabion was installed at 11 Harbor Street. Julia Godtfredsen will issue a Notice of Violation for the installation of a structure on a coastal dune and will ask the property owner to attend the next meeting.

Julia Godtfredsen will create guidelines for the maintenance of drainage swales in the industrial park.

Julia Godtfredsen and David Vine attended a meeting of the Merrimack River Beach Alliance at which erosion at the mouth of the river was discussed.

9. Adjournment

Steve Moore moved to adjourn the meeting at 9:30 p.m. Paul Healy seconded the motion. The motion was unanimously approved. The next meeting of the Conservation Commission is scheduled for August 4, 2015.