

## **Newburyport Conservation Commission**

August 5, 2014

City Council Chambers

Minutes

### **1. Call to Order**

Chair Joe Teixeira called a meeting of the Newburyport Conservation Commission to order at 6:45 p.m.

### **2. Roll Call**

In attendance were members Joe Teixeira, Paul Healy, Doug Muir and Jim O'Brien.

### **3. Minutes**

The approval of the minutes of the July 15, 2014 meeting was tabled.

### **4. General Business**

#### **6 Perkins Way**

Patrick Seekamp and Lisa Mead appeared for the property owner, who wishes to develop a vacant lot in the industrial park. An ONRAD was issued in 2008 and would be in effect until January 2015. Small areas on the site were designed as non-jurisdictional isolated wetlands. A drainage swale that runs across the front of the site has not been maintained and has wetland characteristics. Mr. Seekamp requested that the Commission members visit the site in order to better understand the functioning of the wetlands. A site visit will be scheduled.

#### **21 Shore Street**

Paige Baumann said erosion is occurring along a seawall due to with wind, water and use. She submitted photographs of the progression of the erosion. She would like to extend the seawall 45 feet, as it currently does not run the full length of the property. Julia Godtfredsen said there is extreme erosion at the end of the seawall. She and the applicant explored bioengineering solutions but decided the extension of the seawall would be the best course of action. The Commission members will schedule a site visit.

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

#### **Virginia Barnes**

12 L Street

Request for Minor Modification

Julia Godtfredsen said the project was permitted in 2009 and amended in 2013. The applicant wishes to remove invasive species at the rear of the property and install beach grass, beach plum and beach heather. A planting plan had not previously been submitted for this portion of the property. The planting plan that had been approved with the Order of Conditions would not otherwise be changed. Paul Healy moved to approve the minor modification. Doug Muir seconded the motion. The motion was unanimously approved.

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**Amanda Thorpe and Christos Giras**

23 Everett Drive

Request for Determination of Applicability

Verne Fisher appeared for the applicant, who wishes to remove invasive vegetation within the 100-foot buffer zone of the BVW. The work would be done by hand. None of the trees or native vegetation would be removed. Paul Healy moved to issue a Negative 2 Determination. Doug Muir seconded the motion. The motion was unanimously approved.

**Dawn K. McCandless, Trustee, T&C Realty Trust**

1 Shandel Drive

Request for Determination of Applicability

Tom Hughes appeared for the applicant, who is proposing to control the invasive species on the property through a program of cutting and stem injection. Julia Godtfredsen requested that more detail on the monitoring plan be provided. The removal of the invasive species would be followed at a later date by a restoration plan. Mr. Hughes said the previous restoration attempt failed because it was designed for a freshwater wetland, when the area is a salt or brackish marsh. He plans to test the soil for salinity to determine if any shrubs or trees would be able to survive. Paul Healy moved to issue a Negative 3 Determination with the conditions that a clarification on the procedures be submitted to the Conservation Agent before the Determination is issued and that annual monitoring data and photographs be submitted to the Commission for review with the understanding the Commission might revoke the approval of the program if it is deemed to unsuccessful. Jim O'Brien seconded the motion. The motion was unanimously approved.

**Andrew T. Crowley and Lauren M. Crowley c/o Dalton and Finegold, LLP**

9 Pheasant Run Drive

Request for Certificate of Compliance

DEP File #051-0048

The parcel is located in a subdivision for which an Order of Conditions was issued in 1883. A dense wetland exists at the rear of the property. A drainage easement was shown for this area on the original subdivision plans. The area has not been encroached upon. Doug Muir moved to issue a Certificate of Compliance. Paul Healy seconded the motion. The motion was unanimously approved.

**6. Public Hearings**

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

**Leonidas Theodorou**

190 State Street

Notice of Intent

DEP File #051-0911

Chris Theodorou appeared for the applicant with wetland scientist Mark West. A delineation in 2008 showed three isolated wetlands on the site, two of which would be jurisdictional, as they were larger than 1,000 square feet. Mr. West's 2013 delineation does not show these wetlands, as

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he does not believe they still exist. He said that while hydric soils can be found on the site, he has not observed any dominant wetland vegetation or standing water on the site. He concluded that there are no isolated vegetated wetlands on the site and no wetland functions are being performed. The site is a disturbed one, with various types of fill being added over the years. Peer reviewer Marc Jacobs believes the features in the soil developed in place, while Mr. West believes they were imported onto the site. Mr. Jacobs has not yet submitted his report to the Commission. He had expressed interest in having more test pits dug. The applicant is anxious to begin work but the Commission members did not wish to make a decision without having received their representative's final report. Mr. Jacobs did not include attendance at a public hearing in his proposal, but it was expected his report would have been received by this time. Julia Godtfredsen said the Commission would be doing due diligence by waiting to receive the report from Marc Jacobs. The members are concerned that the previously delineated wetlands have not been included in the 2013 delineation. Both the applicant and the Commission have the authority to discontinue the peer review process. Mr. Jacobs will be given until the August 19 meeting to deliver his report.

The applicant and Commission members discussed the possibility of accepting the previous delineation and including mitigation measures in the Notice of Intent. In either case the project should provide for the improvement of the conditions on a disturbed site that was once wet. Any mitigation that could be done to improve the site, such as the provision of additional flood storage or the planting of trees, would be deemed beneficial. The functioning wetlands and buffer zone should be enhanced. Paul Healy moved to continue the public hearing to August 19. Doug Muir seconded the motion. The motion was unanimously approved.

**Gary Swerling**

Packaging Realty Trust

3 Opportunity Way

Abbreviated Notice of Resource Area Delineation

Lisa Mead and Mark West appeared for the applicant, who wishes to expand an existing structure. Mr. West said a natural forested wetland exists at the rear of the property. He said the swales on the site are related to stormwater management and would not be considered isolated vegetative wetlands under the local ordinance. Joe Teixeira said in many cases stormwater transfer areas have been deemed to be wetlands. DEP has determined the swales along Mulliken Way to be wetlands. Conversely, DEP has allowed the cleaning of other swales down to the original design elevation. Joe Teixeira said he is concerned about the swale along Opportunity Way, which is a large area with cattails. He said many wetlands have been lost, resulting in a great deal of flooding, especially in this section of the industrial park. Julia Godtfredsen asked that the wetland flags be reinstalled. A site visit will be scheduled for August 13 at 7:00 a.m. The site visit for 6 Perkins Street and 21 Shore Street will take place afterwards. Paul Healy moved to continue the public hearing to August 19. Doug Muir seconded the motion. The motion was unanimously approved.

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**Erin and Paul LaRosa**

8 Wildwood Drive

**Notice of Intent**

Tom Hughes appeared for the applicants, who wish to install a swimming pool within the buffer zone. The installation will necessitate that the play area be relocated. It will be moved within the lawn area and will not be situated any closer to the wetland than it is currently. The Conservation Agent will be notified of the new location of the plan area. Some movement of equipment and over-digging for the pool would result in a disturbance with the 25-foot no disturb zone. The area is currently lawn and would be returned to lawn. Runoff from the pool deck will be directed into a planting bed at the edge of the pool's apron. Paul Healy moved to close the public hearing. Jim O'Brien 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. Enforcement**

**Anthony Raven and Willard Hadley**

390 R Merrimac Street and 1 Jefferson Street

**Notices of Violation**

Kevin McGee said he is the current owner of the property at 390R Merrimac Street. He said a landscaper had delivered crushed stone that was to be placed on an existing gravel driveway. After receiving the Notice of Violation, he ceased work, removed the material from the resource area and reseeded the lawn where the stone had been dumped. He said dug out a section of the property by 1 Jefferson Street to remove trash and removed trash from the swale. He also supplemented the rocks in an existing stone wall. He will not be required to make any additional changes but was advised to contact the Commission if he intends to undertake work in the resource area. An Enforcement Order was not issued. The property at 1 Jefferson Street was not involved.

**8. Orders of Conditions**

**Erin and Paul LaRosa**

8 Wildwood Drive

Paul Healy moved to issue an Order of Conditions with the special conditions that:

- 1) all exposed finished grade surfaces shall be immediately stabilized or seeded.
  - 2) erosion control devices shall be inspected after each storm event and repaired as necessary.
  - 3) no cement truck shall be washed out into drainage device, resource area or buffer zone.
  - 4) a dewatering filter or tank shall be used for any dewatering activity prior to discharge into resource area.
  - 5) the applicant shall provide an updated plan of the fence around the pool and the location of the play area for review and approval by the Conservation Agent.
- Jim O'Brien seconded the motion. The motion was unanimously approved.

**9. Informal Discussion**

**230 Northern Boulevard**

Tom Hughes appeared for the owners of 230 Northern Boulevard. The Order of Conditions for the property require the mitigation area to be planted at a 2:1 ratio and include no less than 300 square feet of vegetation native to Plum Island. The Conservation Agent was given the authority to approve the planting plan provided these conditions are met. Mr. Hughes said that along with the 300 square feet of vegetation native to Plum Island, the applicant wishes to install additional plant materials native to the area, but not specifically Plum Island. The Order of Conditions state that only beach grade sand may be used if soils are to be added to the planting area. Mr. Hughes intends to submit a request for minor modification for the installation of a fence.

**10. Adjournment**

Doug Muir moved to adjourn the meeting at 9:35 p.m. Paul Healy seconded the motion. The motion was unanimously approved. The next meeting of the Conservation Commission will be held on August 19, 2014.