

## **Newburyport Conservation Commission**

May 5, 2015

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, Doug Muir, Dan Warchol, Jim O'Brien, Steve Moore, David Vine and Paul Healy.

### **3. Minutes**

Paul Healy moved to approve the minutes of the April 21, 2015 meeting as submitted. Steve Moore seconded the motion. The motion was unanimously approved.

### **4. Old and New Business**

TropicStar Development is to donate land on Storey Avenue to the City. The Essex County Greenbelt Association will hold a conservation restriction on the property. Andy Port has requested that the Commission hold the land and the conservation restriction while the language of the document is being finalized. However, the order signed by the City Council did not specify the Commission was to have a roll with regards to the property. In addition, there would be no restriction to be held until the document has been finalized. The Commission would be willing to be responsible for the policing of the property. Doug Muir moved to authorize the Chair to sign any and all documents necessary to accept the land to be under the custody and control of the Conservation Commission. Steve Moore seconded the motion. The motion was unanimously approved.

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

#### **Timberline Enterprises**

23 Low Street

Request for Certificate of Compliance

DEP File #051-0881

Julia Godtfredsen said she visited the site and it is not in good condition. The applicant requested a continuance to the May 19 meeting in order to remove trash from the wetlands and reseed the areas in the buffer zone where the grass has died. Doug Muir moved to grant the request for a continuance. Steve Moore seconded the motion. The motion was unanimously approved.

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**Ralph and Roslin Esposito**

3 55<sup>th</sup> Street

**Request for Determination of Applicability**

The applicant wishes to remove an existing shed and replace it with a slightly larger one. The new footprint would not impact any native vegetation. The shed would be elevated on cinderblocks 16 inches above grade. The regulations require that sheds be two feet above grade unless otherwise permitted by the Commission, but this is not a practical requirement. This section of the regulations will be placed on the agenda for discussion at the next meeting. A note will be added to the drawings to indicate the Commission approved the proposed elevation of the shed. Paul Healy moved to issue a Negative 2 Determination. Doug Muir seconded the motion. The motion was unanimously approved.

**6. Public Hearings**

Paul Healy moved to open the public hearings. Steve Moore seconded the motion. The motion was unanimously approved.

**Jim Straubb, Mass. DCR**

Maudslay State Park Flowering Pond

Notice of Intent (051-0931)

A site visit with the Army Corp. is scheduled to take place on May 6 at 2:00 p.m. Doug Muir moved to continue the public hearing to May 19. Steve Moore seconded the motion. The motion was unanimously approved.

**Anthony Barbaris**

6 Perkins Way

Notice of Intent

At the previous meeting the Commission asked the applicant to address the presumption of significance for the 25-foot no-disturb zone to the BVW and to provide a revised a Form 3, revised mitigation plan and revised landscaping plan. Paul Haverly represented the applicant and said the consultants have complied with these requests. He said the applicant has been able to overcome the presumption of significance by demonstrating the buffer zone does not play a roll in the protection of the interests of the WPA.

The ordinance does not allow for any wetland impact or impact to the 25-foot no-disturb zone. The project would impact 222 square feet of BVW. The applicant is arguing the presumption of significance has been overcome for the BVW as well as the IVW and is not requesting a variance for the BVW.

Patrick Seekamp said the applicant has provided a mitigation area for the impacts to the two isolated vegetated wetlands. Shrubs with food value have been included to enhance the buffer. He said in addition to overcoming the presumption of significance, the plan would improve upon the existing conditions by providing additional flood storage. The applicant contends that a feasible development could not take place without an impact to the buffer zone and would not be willing to reduce the size of the building.

Joe Teixeira said he would not be comfortable with determining whether or not the wetlands are viable. He would like a professional to evaluate this and whether or not the applicant has overcome the presumption of significance. In addition the ORAD expired in

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January and the Commission would have the right to require a new delineation. A peer reviewer might be asked to determine whether or not a new delineation would be necessary. Patrick Seekamp replied that whether the wetlands were determined to be larger or smaller, they would be impacted by the development and the applicant would contend they are not significant, functioning wetlands of any value. Joe Teixeira responded the site is less than 100 feet from an area that significantly floods and the Commission must do due diligence.

Julia Godtfredsen will provide Mr. Seekamp with the names of three consultants she might contact to review the wetland areas on the site with regard to the applicant's argument of overcoming the presumption of significance. The Commission members would discuss the report of the peer reviewer at the June 2 meeting. They might request a site visit before the meeting if they deem it necessary after receiving the report of the peer reviewer.

Dan Warchol said he wishes to receive from the applicant an analysis of a green roof and an explanation as why one is not being included in the project.

Steve Moore moved to request a peer review of the applicant's wetland impacts and arguments on overcoming the presumption of significance. Doug Muir seconded the motion. The motion was unanimously approved.

Dan Warchol moved to continue the public hearing to the June 2 meeting. Doug Muir seconded the motion. The motion was unanimously approved.

**Tom Smolski, DPS Water Division**

7 Spring Lane  
Notice of Intent  
Bartlet Pond

On March 30 an accidental overfeed of chlorine took place at the pumping station. In the effort to remove the chlorine, water was flushed through the hydrant at the rear of the pumping station, resulting in the flow of approximately 90 cubic yards of rocks and soil into Bartlet Pond. The City is proposing to use a long-reach excavator to remove the material. The excavated material will be stockpiled on the grass area adjacent to the gravel access road and will be surrounded by a silt fence and staked haybales. The silt curtain and floating boom that were installed in the pond will remain in place during the work. The edge of the pond will be loamed and seeded. The work to restore and reseed the slope will be done under an existing Order of Conditions.

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

**7. Orders of Conditions**

**Tom Smolski, DPS Water Division**

7 Spring Lane

Paul Healy moved to issue an Order of Conditions with the special conditions that: 1) the excavation shall not exceed the original bottom contours or the cobble base of the pond, 2) the area of stockpiled sediment shall be completely surrounded by staked haybales and a silt fence, 3) there shall be a preconstruction site visit to determine and finalize the location of the stockpiled material and the erosion and sedimentation controls and 4) the location for the disposal of the dewatered material shall be provided to the Commission prior to the start of work. Steve Moore seconded the motion. The motion was unanimously approved.

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**8. Other Business**

Joe Teixeira asked for an update on the erosion into the old clearwell on Water Department land that took place during the winter.

Julia Godtfredsen and Steve Moore visited 23 Everett Drive at the request of the owner, who had filed an RDA in 2013 to remove invasive species and dead trees on her property. They found the work done was not that which had been proposed and at least 18 trees were removed. The owner does not have a plan to replace the vegetation, which will allow the undesirable species to return to the site. The property owner was instructed to hire a wetland scientist to delineate the wetlands. She will be sent a letter to summarize the comments made at the site visit. The letter will also state that no further work shall be done without Commission approval. She will be asked to provide an update for the June 2 meeting.

A site visit to 21 Shore Street will take place with CZM and DEP on May 13 at 2:00 p.m.

**9. Adjournment**

Steve Moore moved to adjourn the meeting at 8:45 p.m. Doug Muir seconded the motion. The motion was unanimously approved. The next meeting of the Conservation Commission will be held on May 19, 2015.