

## **Newburyport Conservation Commission**

June 7, 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, Doug Muir, Dan Warchol, and Mary Casey and Planning Director Andy Port.

### **3. Minutes**

Paul Healy moved to approve the minutes of the May 17, 2011 meeting. Steve Moore seconded the motion. The motion was unanimously approved.

### **4. General Business**

#### **Minutes**

Dan Warchol moved to approve a payment of \$198.83 to Mary Reilly for mileage. Doug Muir seconded the motion. The motion was unanimously approved.

#### **Discussion of Mayor's FY2012 Budget**

Andy Port said the City Council Budget and Finance Subcommittee is scheduled to meet for a final time on June 8. Mary Casey reported that at the last meeting of the subcommittee a comment was made that the city could be crushed by development if its boards are not adequately prepared for the permitting process.

#### **Appointment as Agent**

Paul Healy moved to appoint Andy Port as the agent to the Conservation Commission. Mary Casey seconded the motion. The motion was unanimously approved. The appointment will allow him to act as a representative of the Commission.

#### **New Ordinance and Regulations Status**

A meeting to review Andy Port's comments of the draft ordinance and regulations will take place on Wednesday, June 22 at 6:30 p.m.

#### **DEP Site Visit**

The Citizens' Chapter 91 Committee has appealed the Order of Conditions for the removal of the underground tanks at 1 Tournament Wharf. DEP will be visiting the site on Friday, June 10 at 10:30 a.m.

#### **Plum Island Beach Management Plan**

Andy Port said the beach management committee received CPA funds in 2010 for walkovers at Plum Island. Committee members will soon meet to discuss how the work should proceed. One option for the rights-of-way, which are located between 53<sup>rd</sup> and 67<sup>th</sup> Streets, is a structural

walkway that extends over the dunes. A second option is a type of mattress formed by thin coir bags. Andy Port expressed concern about the durability of the mattresses.

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

**William Edwards and Michele Brown**

8 Nancy Street

Request for Extension of Order of Conditions

DEP File #051-0799

The applicant is the new owner of a property for which an Order of Conditions for a shed was issued. He is requesting an extension in order that he might have time to consider whether or not he wishes to proceed with the work. Andy Port said the Permit Extension Act applies to the Order and the extension is a formality. Doug Muir moved to confirm that the Permit Extension Act applies to the application and to issue a two-year extension of the Order of Conditions. Steve Moore seconded. The motion was unanimously approved.

**Leslie Doherty**

12 56<sup>th</sup> Street

Request for Certificate of Compliance

DEP File #051-0621

A second floor was added to an existing structure. The work did not require that any changes be made to the foundation. Mary Reilly visited the site on May 23 and reported the work appears to have been done according to the plans. Paul Healy moved to issue a Certificate of Compliance. Steve Moore seconded the motion. The motion was unanimously approved.

**Thomas Litle**

6 Bayne Lane

Request for Certificate of Compliance

DEP File #051-0854

An Order of Conditions was issued for the addition of a sunroom, breezeway and storage shed. An as-built plan was required but not received. The applicant reported Mary Reilly said this requirement could be waived because no changes were made to the existing footprint. The Order of Conditions was for the addition only and not the tree work that was authorized under a Negative 2 Determination. Paul Healy moved to issue a Certificate of Compliance. Mary Casey seconded the motion. The motion was unanimously approved.

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

**6. Public Hearings**

**Thomas Litle**

6 Bayne Lane

Notice of Intent

DEP File #051-0868

Continued from May 17

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Verne Fisher appeared for the applicant, who is proposing to install an in-ground pool with a stone patio and seat wall in the buffer zone to the BVW. The patio is within 200 feet of the riverfront. A site visit took place on May 25. The applicant wishes to change the orientation of the pool so that it would be perpendicular to the house. Steve Moore commented that he prefers the pool to be parallel to the house in order that it is located at a greater distance from the oak tree. Mr. Fisher said the tree would not be impacted by the revised orientation and most of the pool is above grade due the topography of the site. The applicant must provide a revised plan showing the desired orientation of the pool. Dan Warchol moved to continue the public hearing to June 21. Steve Moore seconded the motion. The motion was unanimously approved.

**Bud Jerrett**

17 Graf Road

Notice of Intent

DEP File #051-0864

Continued from May 17

The applicant did not appear and has not requested an extension. Andy Port said revised plans have recently submitted to the Planning Board. Steve Moore moved to continue the public hearing to June 21. Paul Healy seconded the motion. The motion was unanimously approved.

**Tim Tracy**

28 53rd Street and Multiple Lots

Notice of Intent

DEP File #051-0860

Continued from May 3

The applicant requested a continuance to July 19 in order that comments from Natural Heritage might be received. The materials were submitted to Natural Heritage today. The beach grass was to have been planted by June 1. The work was permitted under an Enforcement Order, which required that a Notice of Intent be filed. The Notice of Intent is needed in order for maintenance to take place. Paul Healy moved to grant a continuance to July 19 with the condition that a written report on the status of the permitting is submitted by June 14. The report must include information of the progress that has been made, the work that is yet to be completed, the status of the plantings and the status of all applications to other agencies. Failure to comply with the request or to submit the completed Notice of Intent by July 19 and to appear at the July 19 meeting will result in the issuance of fines of \$300 per day to all of the applicants. Steve Moore 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

Continued from May 17

Tom Hughes appeared for the applicant. He said he would like to review the comments that were made at the site visit and request a continuance in order that the appropriate changes to the plans might be made. He said it was observed at the site visit that invasive species are growing in the upland area and a pipe is blocked, causing runoff from the parking lot to flow into the

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wetland, contributing to flooding in the neighborhood. DEP has determined that because more than 5,000 square feet of wetlands are being altered the applicant must file with MEPA and obtain a 401 Water Quality Certificate. Mr. Hughes and Steve Sawyer discussed their disagreement with DEP's comments. They will contact Pam Merrell at DEP to clarify the issues. Mr. Hughes said he believes the wetland line is off as much as 30 to 40 feet. He would like the Commission to authorize Andy Port to arrange for a peer review at the applicant's expense. The wetland restoration will be removed from the plan unless DEP alters its comments. For the next meeting the plans will be revised. An invasive species management plan will be developed and flood storage in the upland area will be added that is separated from the resource area by a berm. Andy Port asked that a written response to the DEP comments be submitted for the next meeting.

Joe Teixeira opened the hearing to public comment. Cynthia Welch-Philippino, 14 Coltin Drive, asked about the peer review process. Joe Teixeira explained the Commission selects the reviewer and only the wetland line would be reviewed. She said she believes the staff and patients could be relocated during construction, allowing the structure to be rebuilt on the existing site, keeping it away from the wetlands. Curt Young commented that his client, Marc Emmons, 9 Doe Run Drive, is experiencing severe flooding because the culverts are blocked, causing water to flow over Hale Street. Anthony Philippino, 17 Coltin Drive, asked how spills at the loading dock would be controlled. Steve Sawyer explained the system. Steve Moore moved to authorize Andy Port to obtain the services of peer reviewer, to require the applicant to place funds in an escrow account and to continue the public hearing to June 21. 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. Curt Young of Wetland Preservation, Inc. appeared for the applicant. He submitted a receipt from a contractor indicating that 100 yards of fill were added to the property without a permit in an attempt to control flooding. The applicant intends to remove the fill and re-grade the backyard to mimic the original topography as closely as possible. A restoration area will be located near the BVW. A wall and a 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. The applicant is also proposing to install an 8' x 42' deck at rear of house and expand the driveway. Mr. Young reported that neighbors mow the resource area on the south end of the site. Brian Stuart, 11 Doe Run Drive, said the fill was graded towards his house, causing flooding. A site visit will take place on Thursday, June 16 at 6:00 p.m. The applicant will stake the location of the wall and replication area for the site visit. Steve Moore moved to continue the public hearing to June 21. Mary Casey seconded the motion. The motion was unanimously approved.

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

**7. Enforcement**

**John and Cynthia Palladino**

23 Philips Drive

Tom Hughes said there was a delay in entering into a contract for a survey. He would like to present a conceptual plan to the Commission on June 21 before filing a Notice of Intent for the July 19 meeting. He said the best time for the restoration work to be done would be the early fall.

**8. Orders of Conditions**

None

**9. Other Business**

**Jane Green**

3 N Street

Informal discussion

The applicant wishes to amend plans for which an Order of Conditions has been issued. The footprint of the building will remain the same, but the top story will not be constructed. Andy Port said because no change is being made to the plans for the ground level, he does not think the matter would of be a concern to the Commission. The applicant said Mary Reilly indicated a request for a minor modification would not be needed and a letter to the board would be sufficient. The letter was submitted on May 24.

**Plover Nesting and Monitoring on Plum Island**

Andy Port said the nesting area by the parking lot is not well marked. There is currently one nest located there. He suggested the DPS or Harbormaster be asked to install a better fence. A major problem is off-leash dogs. The dogs should not be on the beach at all at this time of the year but the law is not enforced. He would like to have the area better monitored.

**Crow Lane Landfill**

Joe Teixeira recused himself from the discussion. Andy Port said the after the City and New Ventures agreed on the languages of licenses, the City Council did not approve the licenses. The Mayor, however, gave her approval. The work on the replication is scheduled to be completed by June 30. New Ventures must file a plan with the Commission.

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**Woodman Property**

Joe Teixeira said he and Steve Moore plan to visit the Woodman property off of Storey Avenue and Low Street where the construction of a CVS is being planned. The developer is offering to give the City a portion of the land and to provide parking spaces for access to the site.

**10. Adjournment**

Steve Moore moved to adjourn the meeting at 10:15 p.m. Doug Muir seconded the motion. The motion was unanimously approved.