

MINUTES

Budget and Finance/Planning and Development/COTW

Date of meeting: February 11th, 2020, 7:15pm

Meeting Post: <https://www.cityofnewburyport.com/city-council/events/292961>

Roll:

B&F Councillors: McCauley, Khan, Zeid

P&D Councillors: Shand, Eigerman, Wallace

COTW: Councillors: Vogel, Lane, Tontar, Devlin

Public Comment:

- **Hayley Knutsen at 7 Columbus Ave.**
 - Written, read by Chair Zeid (attached)
- **Elizabeth Goullaud, 9 Marquand Ln.**
 - Written, read by Chair Zeid (attached)
- **Sarah Finnegan, 11 Fair St.**
 - Written, read by Chair Shand (attached)
- **Tasha Cough, 8 Fair St.**
 - Written, read by Chair Shand (attached)
- **Katie Basson, 5 Tyng St.**
 - Written, read by Chair Shand (attached)
- **Kelly Dziepak, 201 High St.**
 - Written, read by Chair Shand (attached)
- **Craig Douglas, 2 Mosely Ave.**
 - Written, read by Chair Shand (attached)
- **William Simmons, 213 Elm St. Newburyport**
 - Written, ready by Chair Shand (attached)
- **Jared Hubbard, 49 Boardman St.**
- **Ashley Shwom-Sante Fe – 37 Powow St. Amesbury**
- **Patricia Temple, 17b Fair St.**
- **Jane Snow, 9 Coffin St.**

Agenda/Actions: (green = coming out of BOTH B&F/P&D committees)

ORDR229_12_14_2020 Disposition and Funding for Rehabilitation former Brown School COTW

Actions:

P&D Motion to Receive and File – JE, seconded HS – 3-0 (roll call)

B&F Motion to Receive and File – JM, seconded AK – 3-0 (roll call)

ORDR214_10_13_2020 Low Street Purchase w/ P&D & COTW

Actions:

B&F Motion to approve – AK, no second

P&D Motion to approve – HS, no second

P&D Motion to recommend denial – JE, no second

P&D Motion to Send to Council without recommendation, CW, second by HS - 2-1 (roll call, JE)
B&F Motion to Send to Council without recommendation, AK, second by JM - 1-2 (roll call, JM/SZ)

B&F Motion to Reconsider send without recommendation, SZ, second by JM 3-0 (roll call)
B&F Motion to Send to Council without recommendation, AK, second by JM 3-0 (roll call)

COMM281_12_14_2020 Information Request for 57 Low Street COTW

Actions:

P&D Motion to receive and file, CW, seconded HS – 3-0 (roll call)
B&F Motion to receive and file, AK, seconded JM – 3-0 (roll call)

2nd Public Comment:

- None

Adjourned:

Motioned by Chair HS, Second JM
P&D – 3-0 (roll call)
B&F – 3-0 (roll call)

Recording Link:

https://us02web.zoom.us/rec/share/7RcufxKu0a5WBzv7D2lfJJ2blguDLk-yiOIOuc3o4p1XPYqKkbP56PR-_qwDiMHK.3pgtomPQeArVuDpq

Recording Passcode: +94ap^AJ

Written Public Comment

Hi Christine

This is Hayley Knutsen at 7 Columbus Ave. Please would you read the following on my behalf as public comment during tonight's city council meeting:

"Please take Order 229 off the table and vote on Order 214."

Thanks again for your representation and assistance.

Hayley

Good afternoon,

I would like to request that this email be read into the record at the joint committee meeting regarding orders 229 & 214. I am unable to attend the meeting due to work.

I am asking that the councilors vote to move forward with order 214 only and scrap order 229. I have read the arguments on both sides via meeting transcripts, meeting packet information, and in emails replying to me on this issue. Order 229 takes a basic issue and complicates it without any justification.

Sincerely,

Elizabeth Goullaud

9 Marquand Ln, Newburyport, MA 01950

Hi Heather,

I am a citizen of Newburyport and I am requesting this be read at the meeting regarding NYS.

Please take order number 229 off the table and vote on order # 214.

Thank you,

Sarah Finnegan

11 Fair Street

Newburyport MA 01950



Sarah Finnegan

Account Manager

Richards Robinson Sheppard Insurance

T: 617-284-5265

F: 617-654-9044

152 Conant St, Ste 304, Beverly, MA 01915

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sarah.finnegan@optisure.com

City Council,

Please take order 229 off the table and vote on order 214.

Thank you,

Tasha Cough
8 Fair St.

Hello Councilor Shand,

I am writing to you to ask that you remove order #229 from consideration and vote on order #214 to purchase the property at 57 Low street for the future home of Newburyport Youth Services. My address and phone number are below:

Thanks,
Katie

Councilor Shand,

This is a request that you read the following statement at the start of the City Council meeting regarding the subject of my email:

Please take order 229 off the table and vote on order 214.

Thank you!

Kelly Dziepak (pronounced zpak)

201 High Street

Dear Councillor Shand,

It is important to clarify a few items related to environmental restrictions as they pertain to 57 Low Street. Article 97 is not a vehicle to initiate environmental restrictions – it is an Article of MA Law to mandate protection of vehicles of conservation. It is Intended to be a legislative ‘check’ to ensure that lands acquired for conservation purposes are not converted to other inconsistent uses.

One of these vehicles is a Conservation Restriction (CR) Acquisition. In the MA Conservation Restriction Handbook it is defined as follows: a conservation restriction...is a means...to limit the use of land in order to protect...the natural, scenic or open condition of the land. It is not intended to be initiated to protect wetlands. It is a permanent restriction. It is initiated by the City Council.

The restriction to protect wetlands is call a “Wetlands Restriction” (WR) and is defined as follows: “The restriction orders provide added protection for selected wetlands by prohibiting certain activities in advance of any work being proposed.” It is also a permanent restriction. It is initiated by the Conservation Commission (Con Com). It is rarely used because Con Com is already legally obligated under The Wetlands Protection Act to oversee work with 100 feet of any wetlands. Work within these areas require permitting through Con Com and review at both the state and local level.

As the many people who have developed properties containing wetlands over the years can attest, Con Com’s permitting process is rigorous and robust. It often takes months to complete permitting and years to achieve final certification. Most importantly, Con Com’s permitting process is very technical and not in any way controversial. It is also exceedingly common in MA.

I ask that the Councillors leave the process of wetland conservation and protection to the experts at the Conservation Commission and instead listen and let their opinion inform the City Council’s work at hand – Should City Council appropriate \$220k for the purchase of 57 Low Street?

Regards,
Craig Douglas



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213 ELM STREET
SALISBURY, MA 01952

February 10, 2021
Ref.# 210201

Heather Shand, Chair
Planning and Development Committee
Newburyport City Council
60 Pleasant Street
Newburyport, MA 01950

Re: MassDEP Release Tracking Numbers 3-12659 and 3-14479
57 Low Street
Newburyport, MA

Dear Chairperson Shand;

Per your request I have reviewed a Phase I Environmental Site Assessment report concerning the above referenced property. That report was prepared by CREDERE Associates, Inc. on behalf of the Merrimack Valley Regional Planning Commission and the City of Newburyport's Office of Planning and Development for conveyance purposes. That report was dated May 5, 2020. In reviewing this report, my understanding of the City Council's concern is whether further remedial response actions and attendant cost as well as potential liability might be encountered were the city to purchase this property from the Massachusetts National Guard (the "Guard") through the Commonwealth's Division of Capital Asset Management and Maintenance. It is my further understanding that the City's interest in this property would be redeveloping it for its Youth Services program.

Based upon my review of publicly available documents including submittals to the Massachusetts Department of Environmental Protection (MassDEP), there are two former hazardous waste disposal sites associated with this property. The first is identified as Release Tracking Number (RTN) 3-12659 that was issued by MassDEP in 1995 for releases of oil (diesel fuel) at the location of a former 5000 gallon underground storage tank (UST). The original release from the UST at this location occurred in 1986 when a 5000 gallon, bare-metal, UST was removed. Enpro Services, Inc.(Enpro) removed the UST and excavated a small quantity of petroleum contaminated soil (approximately 13 tons) at that time. Subsequent to removing that UST, it was replaced in 1987 with a double wall UST in the same location. The replacement tank was equipped with cathodic protection to prevent corrosion.

In 1995, the Guard engaged Mason Environmental to remove this replacement 5000 gallon double wall tank that had been installed only eight years prior. The purpose of its removal was to

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minimize environmental risk at underutilized properties as determined by the Guard. During its removal, field screening of soils for petroleum vapors required notice to be given to MassDEP and additional remediation measures to be undertaken as an Immediate Response Action (IRA) consistent with MassDEP's regulations known as the Massachusetts Contingency Plan or MCP. Those regulations are codified at 310 CMR 40.0000 et seq. The source of the contamination that was discovered in 1995 was attributed to residual contamination in soil and groundwater that had not been remediated during the removal of the original UST in 1986.

MassDEP approved excavation and off-site recycling of up to 100 yd.³ (150 tons) of petroleum contaminated soil as part of that IRA. Petroleum contaminated soil up to that approved volume was stockpiled on site immediately following removal of the UST. Further excavation was halted when Mason Environmental estimated that a greater volume of petroleum contaminated soil would have to be removed to meet cleanup goals. In November 1995, the previous stockpiled soil (153 tons) was transported off-site to a thermal treatment facility in Loudon, NH.

No further action took place until 1997 when the Guard retained StoneHill Environmental to complete further assessment required to comply with a pending MassDEP filing deadline. That firm completed additional subsurface investigation and concluded that soil and groundwater conditions met MassDEP's risk based cleanup standards, but recommended further response actions including dewatering and additional soil excavation to reduce petroleum contaminant levels from a condition of No Significant Risk to background i.e. concentrations below the laboratory analytical method's limits of detection as if the disposal site had never existed. The Guard took no action concerning that recommendation.

In 1998, Simmons Environmental Services Inc. (Simmons) was engaged by the Guard to complete further response actions and to reach closure of this Release Tracking Number via submittal of a Response Action Outcome Statement to MassDEP. After further assessment, Simmons personnel excavated an additional 93 tons of petroleum contaminated soil and recycled this remedial waste off-site. An IRA Completion Statement and Class A-2 Response Action Outcome Statement were prepared and submitted to MassDEP in April 1999.

The Class A-2 Response Action Outcome designation meant that contaminant levels had been reduced to concentrations below risk based cleanup standards that posed a condition of No Significant Risk including future unrestricted future use. However, background conditions were not achieved or approached. A Feasibility Evaluation concluded that the potential benefits of achieving or approaching background conditions, although technically feasible, were not warranted based upon the incremental benefits in risk reduction to be realized. The estimated cost for dewatering and excavating until no petroleum hydrocarbons remained above the laboratory method's limits of detection exceeded more than 20% of the cost of assessment and remediation expended to date. That cost benefit analysis was a standard practice until July 2004



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when MassDEP published further guidance concerning feasibility evaluations under the MCP in Policy # WSC-04-160.

The current guidance for remediating beyond a condition of No Significant Risk to achieve or approach background establishes conditions of categorical feasibility and infeasibility based upon accessibility of soil and the persistence of the contaminants of concern within the environment. Petroleum contaminants in soil are considered to be non-persistent and therefore categorically infeasible to reduce to background in quantities greater than 20 yd.³ (30 tons).

Based upon the analysis presented above, residual petroleum contaminants in soil at this disposal site do not constitute a Recognized Environmental Condition (REC) because response actions reached a condition of No Significant Risk i.e. met risk based cleanup standards that are protective of unrestricted future use. The concurrent Feasibility Evaluation showed that achieving or approaching background was not warranted based on a cost benefit analysis.

With regard to RTN 3-14479, ballast from the MBTA was brought to the site with intention of using this material to improve stability in low-lying areas and to possibly provide for additional parking. However, this material contains several contaminants known as polycyclic aromatic hydrocarbons or PAHs that are normally found in urban environments and that would not be expected to be found in rural settings. The Guard engaged New England Environmental Technologies Corporation to test these stockpiles and develop a Release Abatement Measure Plan for off-site transport and disposal. Post excavation soil samples below the former stockpiles of the ballast showed trace concentrations of PAHs. Evaluation of the post excavation data set confirmed conditions that were consistent with background conditions and a Class A-1 Response Action Outcome statement was filed for that disposal site concurrent with RTN 3-12659 as discussed above.

My professional opinion is that should the City proceed with redevelopment of the site, residual petroleum contaminated soils may be encountered in the area to the east of the existing building where the USTs were previously located. Although these conditions do not require further response actions, as a practical matter I recommend that the City engage a Licensed Site Professional to review development plans and, where appropriate, develop a soils management strategy for instances where dermal contact or ingestion of soil could occur at surface grade such as a soccer field or playground. It may be possible to avoid offsite management of soils with residual contamination by capping with clean fill or paving these areas for future use as a basketball/tennis courts or for employee or general public parking. These measures would add an extra level of protection by eliminating the potential for contact. These actions would be voluntary to provide an extra measure of conservatism as opposed to any regulatory requirement.



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Also, there have been significant developments in the management of hazardous waste sites over the past 23 years since these Response Action Outcome Statements were filed. Some of these include evaluation of the potential for vapor intrusion at disposal sites involving contaminants that have significant vapor pressure such as petroleum and solvents. Partitioning of these contaminants from soil and groundwater can occur and result in vapor intrusion into occupied buildings. Again, these conditions can best be managed at the design stage with use of protective vapor barriers and/or passive or active venting systems to eliminate a potential vapor exposure pathway.

Please review my comments that are contained within this correspondence and contact me should you have any further questions at LSPESQ1@WASIMMONSLAW.com

Very truly yours,

A handwritten signature in black ink that reads 'William A. Simmons'. The signature is written in a cursive, flowing style.

William A. Simmons Licensed Site Professional/Attorney at Law