

Newburyport Conservation Commission
October 6, 2020
Online Meeting
Minutes

1. Call to Order

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

2. Roll Call

In attendance were members Steve Moore, Paul Healy, Jane Sender, David Vine, Joe Teixeira, Ron DiCola and Dan Warchol. Conservation Administrator Julia Godtfredsen was also in attendance.

3. Minutes

Steve Moore moved to approve the minutes of the September 15, 2020, meeting as amended. Paul Healy seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Ron DiCola, yes; Dan Warchol, yes).

4. Old and New Business

Plum Island Updates

Piping near Plum Island Point associated with an underground storage tank has been exposed by erosion. Oily water has been leaking from the pipes. An old foundation was also exposed. The site is former Coast Guard property and is now owned by DCR. DCR is coordinating with DEP to empty the tanks and remove them, along with any contaminated soil and pavement. The Newburyport Fire Department will be on site during the work, which will be done under an Emergency Certification. The work must be completed within 60 days and a Notice of Intent must be filed.

Paul Healy moved to issue an Emergency Certification. Steve Moore seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Ron DiCola, yes; Dan Warchol, yes).

Reservation Terrace Erosion Update

Mayor Holaday said DPS has filled approximately 200 super sacks to date. They will be placed along the dune near Reservation Terrace. She said sand has been building up against the cement blocks that were illegally installed and asked if they could remain in place through the winter storm season. City Councilor Sharif Zeid said keeping the blocks in place could provide a greater public benefit than their removal. He would favor retaining them at least until spring or perhaps until the river is dredged. He said the blocks might improve the performance of the super sacks. Joe Teixeira said he would not support this, as they were installed without a permit and allowing them to remain could set a precedent. He said the involved party did not install the blocks on his own property but rather on State property without permission. He said Senator

Tarr is firmly against self-help and he would not want to jeopardize his support. He added he would be in favor of extending the row of super sacks towards 77th Street. Dan Warchol said the sand that would build up around the blocks over the course of the winter would be disrupted when it comes time to remove them. It would be preferable for the sand to build up around the super sacks, which would stay in place until they eventually degrade. DEP also wants the blocks to be removed and supports the use of the super sacks. Paul Healy and David Vine said they would not oppose leaving the blocks in place for a set period of time. Steve Moore said he is concerned there would not be a willingness to remove the blocks once sand has built up around them.

Steve Moore moved to issue an Emergency Certification with the condition that the concrete blocks shall be removed at the time the super sacks are installed. Jane Sender seconded the motion. The motion was approved by 4-3 vote (Steve Moore, yes; Jane Sender, yes; Paul Healy, no; David Vine, no; Joe Teixeira, yes; Ron DiCola, no; Dan Warchol, yes). Mayor Holaday said she would honor the vote to remove the blocks.

Marlene Schroeder Trail Bog Bridge Project

Mitchell Gorski presented the quotes he received for materials to install a bog bridge to protect the wetlands from foot traffic. At the previous meeting, the Commission members said they would be interested in contributing to the cost of both the new bridge and the existing bridge in order for them both to be two boards wide instead of one. This would require the replacement of the sleepers for the existing bridge as well. The cost of the planks would be \$1,506.09 and the sleepers would be an extra \$360. The single row of existing planks is in good condition and it would not be necessary to replace them. The Home Depot was asked to donate lumber, but could not agree to do so because of the shortage that has been caused by the pandemic.

Paul Healy moved to contribute up to \$2,000 to the cost of constructing bog bridges through the wet areas along the Marlene Schroeder Trail. David Vine seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Ron DiCola, yes; Dan Warchol, yes).

13 Basin Street

Tom Hughes and Rachel Harris presented two alternatives for an addition to an existing house in the V zone. The occupant of the house is confined to a wheelchair. The existing door opens directly into the house and the addition would provide a heated space that would act as an airlock. It would not be possible to locate an accessible addition two feet above grade and above flood level. The building code provides for an exemption for an addition needed for accessibility, provided it is of the minimal size possible. The room must be large enough to allow two doors to swing open and the wheelchair to be maneuvered. The Commission members preferred the alternative in which the addition would be in the shadow of the house, on the opposite side of the source of the flooding. The Notice of Intent must include any proposed changes to the landscaping. The variance request would indicate that allowing a resident to remain in his home would be a public benefit.

George Haseltine
149 State Street

LSP Tim Toomey represented the applicant, who was issued an Order of Conditions for an addition to a loading bay on a commercial building at the May 5, 2020, meeting. Chlorinated solvents had previously been released into the ground and residual contamination exists throughout the property. A Special Condition required that prior to the start of work, an LSP must present a report that outlines the plan for the management of the contaminated soils. Mr. Toomey said that when the footing for the addition is dug, the soil would be managed on site and would not be removed from the property. It would be placed on a poly sheet and covered to prevent it from traveling with rain water. A silt sock would be installed on the downward edge of the pile. Once the foundation is poured, the soils would be replaced. A vent to the roof would be installed to prevent any vapors from being trapped under the floor of the loading bay.

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

Clary Coutu, Keolis Commuter Services Railroad ROW

The applicant is requesting approval for a five-year vegetation management plan that would include a determination of the wetland boundaries. The entire right-of-way in Newburyport is in proximately to the wetland. Matt Donovan said the purpose of the plan is to control the vegetation along the railroad tracks for safety reasons and to protect sensitive areas. A yearly operational plan would be submitted for each of the five years of the management plan. Mechanical, physical and chemical means would be used to manage the vegetation. Chemicals must be sprayed on the track structure itself. The remainder of the right-of-way has been designated as a limited spray area. It would be sprayed on an as-needed basis, but not more than once per year. The Department of Agricultural Resources has published a list of chemicals that have been approved for sensitive areas. The applicant would prefer to use mechanical or physical means whenever possible.

The existing five-year plan is set to expire in December. In 2016, a Negative 6 Determination was issued indicating the management plan was not subject to review and approval because the work was outside of the buffer zone. A new map indicates that the work is jurisdictional. Julia Godtfredsen pointed out an RDA would not be used for determining wetland boundaries. An ANRAD should be filed for that purpose. Ms. Coutu responded that a negative determination simultaneously approves the boundaries and the work. She said a positive determination would require a Notice of Intent to be filed and she would appeal it. Joe Teixeira said the boundaries of the wetland have not been shown on plan and the track appears to be within the 25-foot no-disturb zone. Mr. Donovan explained that a wetland boundary does not appear on the map because the entire area is within the buffer zone. For the purpose of the management plan, the only distinction that is made is between a wetland and a buffer zone. All areas within the buffer zone are considered to be limited-spray areas.

Steve Moore moved to issue a Negative 3 Determination. Paul Healy seconded the motion. The motion was approved by a 6-0 vote with one abstention (Steve Moore, yes; Jane Sender, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, abstain; Ron DiCola, yes; Dan Warchol, yes).

Joseph Baravo
177 State Street

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Request for Determination of Applicability

TJ Melvin of Millennium Engineering represented the applicant, who is proposing to construct a 1,500 square-foot mixed-use building in Newbury. The work planned for the Newburyport portion of the site would take place in an area that is already disturbed and involves the installation of four parking spaces, curbing and a sewer forcemain. The new pavement would be entirely within the area of existing pavement. The stormwater would be directed towards Newbury.

Paul Healy moved to issue a Negative 2 Determination. Steve Moore seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Ron DiCola, yes; Dan Warchol, yes).

6. Public Hearings

Paul Healy moved to open the public hearings. Steve Moore seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Ron DiCola, yes; Dan Warchol, yes).

Christopher Horan, Seacoast Homes, LLC

192 Northern Boulevard

Notice of Intent

DEP File #051-1037

Tom Hughes represented the applicant. He said the vegetation on the site has changed over time due to a variety of impacts. The existing conditions plan was prepared before construction began on the adjacent lots. Joe Teixeira said the plan was done in 2019 and should have been updated when the NOI was submitted. Mr. Hughes responded that he based his calculations on the previous conditions in order to avoid overstating the amount of non-vegetated area. He said he did not want to benefit from the impacts of the contractors. The site was more heavily vegetated in 2019 and the conditions at that time were less favorable for the applicant. He said the plan would improve dune function by protecting the vegetated part of site with a split rail fence. The fence would extend around the property and connect with the house on both sides. A pedestrian path would be made inaccessible and all parking would now be confined to the driveway. The beach plum area would be expanded and the bittersweet would be controlled. A clamshell patio was added to provide an outdoor space. The applicant agreed to add a fence in front of the adjacent five-unit building. DEP has not made any additional comments. Julia Godtfredsen commented that the proposed plan would minimize encroachments by the property owner and would keep the development on the part of the site that is already disturbed. Steve Moore said while he would prefer for no house to be built, the proposal is the best that could be done to protect the site. Joe Teixeira said the plan is confusing and a legend should be added.

Paul Healy moved to close the public hearing. Steve Moore seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Ron DiCola, yes; Dan Warchol, yes).

Steve Moore moved to modify the Order of Conditions for 5 63rd Street to allow the installation of a split rail fence along the street to control parking and for the fence to be shown on the as-built plan. Dan Warchol seconded the motion. The motion was approved by a 7-0 vote (Steve

Moore, yes; Jane Sender, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Ron DiCola, yes; Dan Warchol, yes).

Katie and Justin Ponting

11 Barker Street
Notice of Intent

Mary Rimmer and Ken Savoie represented the applicant, who is proposing to construct a 525 square-foot addition over an existing garage and an enclosed, elevated breezeway that would connect the garage to the second floor of the existing house. The house has a solid foundation and the garage is on a slab that would be insufficient to support a second story. The applicant had previously proposed to install six sonotubes within the footprint of the garage and was informed at the September 15 meeting that the use of sonotubes is prohibited on Plum Island. The plans were amended and the roof of the garage would now be removed and six steel piles would be driven within its footprint. The regulations require that an existing building must be placed on pilings if the proposed renovations would increase its value by more than 50%. The applicant had previously stated the work would not exceed this threshold. The calculations provided appeared to be incorrect because the cost estimates did not include any interior work, such as plumbing, electricity or sheetrock. The applicant provided a revised substantial improvement analysis that indicates the renovations would not exceed the 50% rule. Julia Godtfredsen explained that the increased value of the structure may be determined by one of two methods. The applicant first compared the estimated construction costs to the assessed value of the house from the Assessor's Office. It is possible for the assessed value to be low. The applicant then used the second method and provided a valuation of the house and the proposed improvements from a licensed appraiser. The revised calculations show that the value of the improvements would be \$2,500 less than the threshold.

Paul Healy moved to close the public hearing. Steve Moore seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Ron DiCola, yes; Dan Warchol, yes).

Paul Healy moved to close the public hearings. Steve Moore seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Ron DiCola, yes; Dan Warchol, yes).

7. Order of Conditions

Christopher Horan, Seacoast Homes, LLC

192 Northern Boulevard
DEP File #051-1037

Paul Healy moved to issue an Order of Conditions for 192 Northern Boulevard with the special conditions that 1) the applicant shall provide a revised site plan that shows the continuation of the split rail fence along the eastern property line to 63rd Street and the addition of one section of split rail fence that would extend towards the driveway; 2) a fence such as shown on the approved plans shall remain in place in perpetuity and the area within it, with the exception of the house and the developed portion of the site, shall be maintained in perpetuity as undisturbed native, non-invasive vegetation and 3) a legend shall be added

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to the site plans. Steve Moore seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Ron DiCola, yes; Dan Warchol, yes).

Katie and Justin Ponting

11 Barker Street

David Vine moved to issue an Order of Conditions for 11 Barker Street. Steve Moore seconded the motion. The motion was approved by a 7-0 vote (Steve Moore, yes; Jane Sender, yes; Paul Healy, yes; David Vine, yes; Joe Teixeira, yes; Ron DiCola, yes; Dan Warchol, yes).

8. Enforcement

11 76th Street

Tom Hughes said all of the fences have been removed. He will provide photographs to document this. The Notice of Intent has not yet been submitted. The deadline had been September 15 and was extended to October 6.

8 Nancy Street

Julia Godtfredsen said she has not yet received the photographs taken by the neighbor that show the previous conditions. She wishes to view them before issuing the Notice of Violation.

9. Adjournment

Steve Moore moved to adjourn the meeting at 10:25 p.m. Joe Teixeira seconded the motion. The motion was unanimously approved.