

**CONSERVATION COMMISSION
MINUTES of MEETING
Tuesday, October 6, 2020
TOWN HALL ANNEX, 39 CENTRAL STREET
APPROVED: 10/27/2020**

Present: Chair Daniel Shinnick, Vice Chair Sam Streiff, Robert Garner, Jena Haag,
Howard Terrien, Howard Vogel and Ann Witzig
Absent: N/A
Attending: Brent Baeslack, Conservation Agent

Opening Statement: Authorized by Wetlands Protection Act, Town of Rowley Wetlands Protection Bylaw, and the Stormwater Management and Erosion Control Bylaw. Meeting convened at 7:30 PM (all Legal ads were read to open new agenda items at time noticed).

Consistent with the Governor's orders suspending certain provisions of the Open Meeting Law and banning gatherings of more than 10 people due to the COVID-19 pandemic, this meeting was conducted by remote participation to the greatest extent possible. The Commission and the public did not physically attend this meeting, but every effort was made to allow the public to view the meeting in real time. Persons who wished to do so were invited to watch the meeting on Rowley Community Media TV or to join the meeting from a computer, tablet or smartphone by using a link for GoToMeeting, or by dialing in by phone.

Administrative: The Commission approved the payroll which had been presented for review prior to the meeting.

Chairman Shinnick advised that he would be unavailable for the next meeting. Vice Chair Streiff will be moderating the meeting.

Acceptance of Minutes:

After the Commission reviewed the minutes, Streiff moved to accept the Minutes of September 15, 2020. Haag seconded and the motion passed unanimously by roll call vote.

After the Commission reviewed the minutes, Terrien moved to accept the Minutes of May 14, 2008. Garner seconded and the motion passed unanimously by roll call vote.

Discussion:

Possible Land Donation, 28 Glen Street (Map 21, Parcel 5, Lot 1) - The Commission discussed a possible land donation of approximately 2.84 acres by Philip E. McGowan. Agent Baeslack explained that the parcel was protected by a Conservation Restriction (CR) held by Essex County Greenbelt and had been vetted for its natural resource and open space values at the time of proposing the CR. At their previous evening meeting, the Open Space Committee had discussed the donation and questioned the property tax value of the land. Agent Baeslack advised that he did not have the tax value answer and explained that because Essex County Greenbelt held the CR they could not also own the property. Vogel explained that the Open Space Committee had discussed public access to the property, which was not currently facilitated. The

parcel is currently not contiguous to other Town owned open space properties. Agent Baeslack stated there were no parking provisions at this site and the roadway was in need of repairs. He advised it was the Commission's policy to seek the Board of Selectmen's recommendation prior to accepting land donations. Vogel stated the Open Space Committee had voted to recommend accepting the donation unless there were significant tax consequences. Agent Baeslack advised he would be seeking the Assessor's information relating to the tax ramifications. Shinnick asked for a motion to seek a recommendation from the Board of Selectmen.

Streiff moved to seek a recommendation for acceptance of the land donation from the Board of Selectmen. Vogel seconded and the motion passed unanimously by roll call vote.

New Request for Determination of Applicability at 921 Haverhill Street (Map 4, Parcel/Lot 33) Michael Sturk - Proposed construction of a replacement subsurface sewage disposal system possibly within the 100' Buffer Zone to Bordering Vegetated Wetlands and the 200' Riverfront Area of Muddy Brook. Mr. Doug Smith of Soilsmith Designs was in attendance to present the project to the Commission. Agent Baeslack briefly reviewed his memo with recommendations for conditions. Baeslack noted that recommended revisions had already been applied to the plan.

Vogel moved to issue a Negative Determination options #3 with recommended conditions and #5 exemption for Title V systems and Positive Determination #2a for BVW delineation. Garner seconded and the motion passed unanimously by roll call vote.

New Notice of Intent application at 0 Hog Island (Map 38, Parcel/Lot 7) Brenden Doyle, The Great Marsh Shellfish Co - Proposed aquaculture project for a "Grow out farm" for shellfish and seaweed possibly within the Great Marsh ACEC, the Rowley River (coastal), Bank, 200' Riverfront Area, Land Under Waterways, Land Under Ocean, Salt Marsh, Coastal bank, and Land Containing Shellfish. Shinnick asked if the hearing could be opened since there were some Application items missing. Agent Baeslack advised the hearing could be opened because the Applicant had supplied most of the items. If all abutters had not been notified, the hearing would have to be reopened. Agent Baeslack stated a DEP number had not been issued pending fee receipt but the Applicant had advised the fee check had cleared his bank. Shinnick proceeded to open the meeting. Mr. Brenden Doyle of The Great Marsh Shellfish Co. was in attendance to present the project to the Commission. A comment letter from the Division of Marine Fisheries (DMF) was presented, and Mr. Doyle advised that an additional inspection by DMF was needed for the overwintering area but was delayed due to the need for a diver and boat. He described the moorings that would be used and explained that helical moorings would be the least intrusive. No moorings would be installed at the overwintering site. The Commission reviewed various project aspects. Agent Baeslack recommended that the hearing be continued pending the final inspection by DMF and receipt of a comment letter from Natural Heritage.

Garner moved with the Applicant's permission to continue the public hearing to the meeting of October 27, 2020. Haag seconded and the motion passed by roll call vote.

Continued Request for Determination of Applicability application at 862 & 866

Haverhill Street (Map 4, Parcel/Lots 1 and 2) Karl Boesen - Proposed construction of a replacement subsurface sewage disposal system with tree clearing possibly within the 100' Buffer Zone of Bordering Vegetated Wetlands and DEP Approved Groundwater Protection Area Zone II. Mr. Vaclav Talacko of Hancock Associates was in attendance on behalf of the Applicant to present the project and answer questions from the Commission. Mr. Talacko gave a brief overview of the September 21, 2020, site visit. He explained the issue of which trees should be cleared had been discussed, and he believed an agreement had been reached. The trees to be removed and the limit of work had been marked. He advised that the 50' No Cut/No Disturbance Area would be surveyed and marked and once that was done, the Applicant and Agent Baeslack would meet to determine where the posts should be placed (numbering approx. five each). Agent Baeslack advised that the 50' No Cut/No Disturbance Area was marked on the plan for 866 Haverhill Street and would be extended to 862. Since no Certificate of Compliance would be issued for this project, he questioned if the Determination should include a condition that it be recorded with the Registry of Deeds so that the 50' No Cut/No Disturbance Area was on record for future property owners. The Commission agreed to this condition.

Vogel moved to issue a Negative Determination Option #3 with the conditions as discussed. Terrien seconded and the motion passed unanimously by roll call vote.

Continued Notice of Intent application at 245 Wethersfield Street (Map 23, Parcel 84,

Lot 1) Andrew Brewin - Proposed construction of an approximately 40' x 32' addition to a single family home possibly within the 100' Buffer Zone to Bordering Vegetated Wetlands and an Intermittent Stream. Ms. Kristen Farr of Hancock Associates was in attendance on behalf of the Applicant to answer questions from the Commission. Ms. Farr advised that the on-site debris had been removed and most of the plan revisions had been completed. Agent Baeslack gave a brief oral report on the site inspection and presented recommendations for conditions which included invasive plant species suppression and control.

Haag moved to issue an Order of Conditions for DEP File #63-700 with the conditions as discussed. Streiff seconded and the motion passed unanimously by roll call vote.

Extension Request:

New Request for Extension DEP #63-0625 at land off Daniels Road (Map 9, Parcel/Lot 23) The Tompkins Desjardins Trust

The Tompkins Desjardins Trust – Proposed construction of six duplex buildings with associated roadway, driveways, utilities, stormwater facilities, and grading, called Marion Way. Mr. James Decoulos of Decoulos Engineering was in attendance to represent the Applicant. The Commission reviewed a second project Extension request. Agent Baeslack stated there had been no significant regulatory changes since the Order of Conditions was issued and did see any reason not to issue the Extension. The request was being made to allow the Applicant more time to research other development designs that may have reduced impacts. Mr. Decoulos advised that the project had been amended to twelve (12) detached units instead of the six (6) duplex units as indicated in the narrative.

Streiff moved to issue a two (2) year Extension for DEP #63-0625. Terrien seconded and the motion passed unanimously by roll call vote.

Certificate of Compliance Request(s):

New Request for Certificate of Compliance DEP #63-647 428 Newburyport Turnpike and 340 & 344 Wethersfield St (Map 18, Parcel/Lots 3-1, 5-21-1A and 5-22-4) Four Twenty Newburyport Turnpike LLC

- Proposed construction and relocation of a stormwater basin, construction of a gravel parking area and revegetation of an abandoned paved driveway. Agent Baeslack gave a brief project overview and advised that the site was in compliance. He reviewed the ongoing conditions and recommended issuance of a Complete Certificate of Compliance incorporating these ongoing conditions.

Vogel moved to issue a Complete Certificate of Compliance DEP #63-647 with ongoing conditions. Haag seconded and the motion passed unanimously by roll call vote.

New Request for Certificate of Completion SMP #15-2015 428 Newburyport Turnpike (Map 18, Parcel 3, Lot 1) Four Twenty Newburyport Turnpike LLC

- Proposed demolition of a wood frame structure and in ground pool, removal of scattered debris, removal of impervious driveway, grading, and construction of a gravel storage area, and construction of a stormwater basin at 344 Wethersfield Street (Map 18, Parcel 5, Lots 21-1A) and 428 Newburyport Turnpike (Map 18, Parcel 3, Lot 1). Agent Baeslack gave a brief project overview and advised that the site was in compliance. He reviewed the ongoing conditions and recommended issuance of a Complete Certificate of Completion incorporating these ongoing conditions.

Haag moved to issue a Complete Certificate of Completion SMP #15-2015 with ongoing conditions. Garner seconded and the motion passed unanimously by roll call vote.

New Request for Certificate of Compliance DEP #63-434 and #63-564 53 Emily Ln (Map 9, Parcel 23, Lot 23) Pavel Bukhovko

– DEP #63-0434 proposed construction of a single family dwelling, including a driveway across a wetland and a septic system. Compensation for wetlands impacts is in the form of an increased No Cut/No Disturbance Zone to the west of the driveway above and beyond the Bylaw required 25 sq. feet. DEP #63-0564 addresses the mitigation of tree cutting that was conducted in 200 sq. feet Riverfront Area without review and approval. The RCC has directed restoration, replanting, erection of protective barriers, signage, and a deed restriction to protect and restore the 7000 sq. feet of Riverfront altered over and above the 4980 sq. feet the RCC had permitted under DEP #63-0434 which expired as of March 2, 2007 without Extension. Mr. Pavel Bukhovko was in attendance. Agent Baeslack gave a verbal report on the site inspection conducted earlier in the day. He recommended the issuance of a Complete Certificate of Compliance with ongoing conditions for both DEP numbers and Return to Compliance Letter(s), if necessary, for any outstanding Enforcement Orders(s). He requested that the ongoing conditions be modified to allow for invasive species suppression and control with approval of the methods used by the Conservation Dept. staff.

Haag moved to issue a Complete Certificate of Compliance with ongoing conditions as discussed for DEP #63-434. Streiff seconded and the motion passed unanimously by roll call vote.

Haag moved to issue a Complete Certificate of Compliance with ongoing conditions for DEP #63-564 and close Enforcement Order(s) with Return to Compliance Letter(s), if necessary. Streiff seconded and the motion passed unanimously by roll call vote.

Status Reports: Permits & Enforcement

Enforcement Order at 11 Rivers Edge Drive (Map 10, Parcel 3, Lot 5-3) John E. & Lauryn M. Deluise: Alteration (clearing and removal of the understory) of 1000 sq. ft. plus of 100' Buffer Zone to BVW, 200' Riverfront Area and Covenant restricted area without obtaining a wetlands permit (WPA and local Bylaw). Agent Baeslack gave a verbal update on this matter. Work has been suspended pending investigation of complaints of further tree cutting. Agent Baeslack updated the Commission on the alleged tree cutting and explained that a consensus could not be reached regarding the extent of the possible occurrence. The Commission reviewed the proposed planting plan submitted by Rimmer Environmental Consulting, which included the planting of approximately six (6) red maples to mitigate for the clearing. Agent Baeslack advised this was a reasonable plan to address the Commission's concerns. Ms. Melissa Roy of 15 Rivers Edge Drive expressed concerns about the planting plan and advised it did not have any trees to replace those cleared behind her home. Shinnick advised there was no definitive evidence of the cleared trees that would give the Commission authority to request further plantings. Ms. Roy stated trees had been cleared on their property and this was not addressed in the planting plan. Agent Baeslack advised that the Commission had no legal authority to allow work by the property owners of 11 Rivers Edge Drive on a neighboring property. The area that is not being planted may be developed in the future. Ms. Roy stated that the proposed development has not been permitted at this time and the project might not be allowed. This would leave the area unplanted. Ms. Roy argued that neighbors on both sides of the site in question stated that there had been significant clearing. The Commission discussed possible replanting if the proposed project never came to fruition. Ms. Roy asked if there was prohibition to build in the 100' Buffer Zone to the River. Agent Baeslack advised work could be permitted after review although the Riverfront Area had more restrictions. Ms. Roy expressed her wish for plantings up to the 100' Buffer line. Shinnick advised that at this time the planting plan would be sufficient pending receipt of the Notice of Intent for the proposed construction. Agent Baeslack stated that another review could be included into the Enforcement Directive if the project does not go forward.

Haag moved to issue an Enforcement Directive for implementation of the planting plan with the contingency that the planting would be reviewed if the construction project did not move forward. Terrien seconded and the motion passed by six (6) votes with Garner absent.

Notice of Violation 29 Wilkes Road (Map 6, Parcel 14, Lot 3) Filho Osvaldo Luiz & Ana Paula Tameirao – Cutting and disturbance (altering) the restricted No Cut/ No Disturbance Zone within the 100' Buffer Zone to Bordering Vegetated Wetlands. Agent Baeslack gave a verbal update and presented a proposed restoration plan submitted by Mr. Thomas Hughes of Hughes Environmental on behalf of the property owners. He presented his recommendations

for planting modifications based on the replanting done when the home was originally built in 2005/2006. Mr. Hughes agreed that these recommendations were reasonable and could be implemented.

Vogel moved to issue an Enforcement Directive with conditions for the replanting and restoration activities as discussed. Garner seconded and the motion passed unanimously by roll call vote.

Adjournment:

Accomplished at 10:21 PM by a motion made by Haag. Terrien seconded and the motion passed unanimously by roll call vote.

Submitted by Brent Baeslack, Conservation Agent