

**CONSERVATION COMMISSION
MINUTES of MEETING
Tuesday, March 29, 2022
TOWN HALL ANNEX, 39 CENTRAL STREET
APPROVED: 4/19/2022**

Present: Chair Daniel Shinnick, Jena Haag, Howard Terrien, and Ann Witzig
Absent: Vice Chair Sam Streiff and Howard Vogel
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). The remote meeting was held pursuant to Governor Baker's March 12, 2020 Order, as Extended on June 15, 2021, with the Governor's signing of Senate Bill # 2475, suspending certain provisions of the Open Meeting Law. The public may not physically attend this meeting, but every effort will be made to allow the public to view the meeting in real time.

Administrative: The Commission approved the payroll and vendor bills which had been distributed and reviewed prior to the meeting.

Acceptance of Minutes: After the Commission reviewed the minutes, Terrien moved to accept the Minutes of March 8, 2022. Witzig seconded and the motion passed unanimously by roll call vote.

Acceptance of Minutes: After the Commission reviewed the minutes, Witzig moved to accept the Minutes of March 7, 2006. Terrien seconded and the motion passed unanimously by roll call vote.

Administrative Discussions:

Town Landing Parking Expansion at 81 & 89 Warehouse Lane (Map 26, Parcels 10 & 11) - Harbormaster Bill DiMento and Selectman Bob Snow were in attendance to update the Commission on the status of the proposed parking area expansion. Mr. DiMento advised that the wetlands would be delineated and then engineered plans would be prepared which would show existing conditions and the proposed new parking area. The Commission agreed that these were the first steps. Mr. DiMento asked if the Notice of Intent Application could be filed once the plans had been obtained. Agent Baeslack advised that the NOI should be held until EEA had been consulted to see what would be required to undertake the Article 97 conversion. Mr. DiMento asked about a timeline. Agent Baeslack stated this was something that could not be determined until the EEA consultation. Mr. DiMento stated he hoped the project would move forward expeditiously for the Town's benefit.

Notice of NonCompliance for the issued Determination of Applicability at 248 Newbury Road (Map 1, Parcel/Lot 20) including land off Newbury Road (Map 1, Parcel/Lots 21 and 22; Map 6, Parcel/Lot 16) filed by John Colantoni of Triple Q, Inc. owned by Doria Weymouth and Lucia Herrick Realty Trust – Mr. Bill Manuell of Wetlands and Land Management and Mr. John Colantoni of Triple Q, Inc. were in attendance. Agent Baeslack reviewed the violations including ignoring the restriction specifying that a mini-excavator be used and instead using a full sized excavator and the extraction of whole live trees from the ground causing excessive disturbance instead of minimizing disturbance. Mr. Manuell addressed the Commission regarding the violations. The Commission was in agreement that the work was an egregious violation of the issued Determination. Shinnick asked Agent Baeslack to outline options. Agent Baeslack reviewed the fines which had been outlined in the Wetlands Bylaw. Mr. Colantoni addressed the Conservation Commission and apologized for the violations stating that this would not happen again. He agreed that the first violation was the use of the larger excavator and then the removal of the trees. Mr. Colantoni agreed with the issuance of the Enforcement Order, the levying of fines and would allow the property to be accessed to determine how many trees had been removed. Agent Baeslack requested that his determination be the final and that he be allowed to exclude any dead trees from the field tally which would be the basis for calculating the fines. The Commission agreed to these provisions.

Haag moved to issue and ratify an Enforcement Order as discussed. Witzig seconded and the motion passed unanimously by roll call vote.

Shinnick moved to assess fines as discussed. Terrien seconded and the motion passed unanimously by roll call vote.

Abbreviated Notice of Resource Area Delineation DEP #63-0729 at 248 Newbury Road (Map 1, Parcel/Lot 20) including land off Newbury Road (Map 1, Parcel/Lots 21 and 22; Map 6, Parcel/Lot 16) filed by John Colantoni of Triple Q, Inc. owned by Doria Weymouth and Lucia Herrick Realty Trust: Proposed delineation of regulated wetland resource areas (State & Local). Mr. William Manuell of Wetlands and Land Management and Mr. John Colantoni of Triple Q, Inc. were in attendance. Mr. Manuell reviewed the wetlands delineation plan with the Commission. The Commission reviewed Agent Baeslack's comments dated March 29, 2022. After a brief discussion, Mr. Manuell agreed to the plan revisions as recommended by the Agent.

Haag moved to issue an ORAD for DEP #63-0729 contingent upon receipt and approval of revised plans. Terrien seconded and the motion passed unanimously by roll call vote.

The Commission opened the next two hearings concurrently.

Notice of Intent DEP #63-0731 at land off Stackyard Rd Tower #1 (Map 36, Parcel/Lot 1) filed by Marine Biological Laboratory owned by MA Division of Fisheries & Wildlife: Proposed placement of an eddy flux tower and monitoring equipment on wooden platforms with temporary walkways (existing) possibly within Salt Marsh, Great Marsh ACEC, Land Subject to Coastal Storm Flowage, Riverfront Area and Priority or Estimated

Habitats of rare species (NHESP). The Commission reviewed Agent Baeslack's comments dated March 29, 2022 and comments submitted by Mass Division of Marine Fisheries. Ms. Anne Giblin of The Marine Biological Laboratory was in attendance with her representative, Ms. Evin Guvendiren of DeRosa Environmental Consulting. Ms. Guvendiren provided the Commission with a project history and brief current proposal overview. Tower 1 would be installed year-round. As of March 29, 2022, this application had not received a letter from NHESP. Ms. Guvendiren asked that the Commission issue a five (5) year permit for both towers.

Haag moved to continue the public hearing as agreed by applicant to the meeting of April 19, 2022. Terrien seconded and the motion passed unanimously by roll call vote.

Notice of Intent at land off Low Country Tower #2 (Map 37, Parcel/Lot 25) filed by Marine Biological Laboratory owned by U. S. Fish & Wildlife Service: Proposed placement of an eddy flux tower and monitoring equipment on wooden platforms with temporary walkways (existing) possibly within Salt Marsh, Great Marsh ACEC, Land Subject to Coastal Storm Flowage, Riverfront Area and Priority or Estimated Habitats of rare species (NHESP). Tower 2 would be a seasonal tower and removed in the fall to prevent ice damage to the installation. The tower address was revised to reflect the Assessor's current listing. As of March 29, 2022, this Application had not received a DEP file number nor a letter from NHESP. The Commission reviewed Agent Baeslack's comments dated March 29, 2022. Agent Baeslack advised that the applicant had agreed that a continuation to receive the DEP file number and the letter from NHESP with their analysis of if a negative impact from the proposal would be anticipated. Ms. Guvendiren asked that the Commission issue a five (5) year permit for both towers.

Terrien moved to continue the public hearing as agreed by applicant to the meeting of April 19, 2022. Witzig seconded and the motion passed unanimously by roll call vote.

The Commission opened the next two hearings concurrently.

Notice of Intent DEP #63-0732 at 85 Newburyport Turnpike (Map 14, Parcel 22, Lot 3) filed by Elmer Palencia: Proposed construction of commercial landscaping offices 20' x 40', phased vehicle storage and service area buildings, bulk material storage, paved parking area and access drive possibly within the 100' Buffer Zone to Bordering Vegetated Wetlands and DEP Approved Groundwater Protection Area Zone II. Mr. Nicholas Betts of Meridian Associates was in attendance on the applicant's behalf and provided an overview of the proposed work. He explained that the project would be done in multiple phases. Agent Baeslack stated that one reason for the phasing was to allow for the site cleanup, which was a typical Commission condition, prior to the start of any site work. Agent Baeslack gave a verbal report of his initial review. He recommended that a shut off be included for the catch basins since vehicles would be parked outside until the garage buildings were constructed. This would avoid contaminants from entering the stormwater facilities and being conducted to the basin within the Zone II. Mr. Betts explained that the vehicles would be parked in a designated, paved area and the catch basin for that area would have a shut-off installed. The

Commission requested that both the hearing for the NOI and the SMP be continued to allow for final review by the Agent and for DEP comments. Mr. Betts agreed to the continuance.

Witzig moved to continue the public hearing as agreed by applicant to the meeting of April 19, 2022. Haag seconded and the motion passed unanimously by roll call vote.

Stormwater Management Permit Application SMP #53-2022 at 85 Newburyport Turnpike (Map 14, Parcel 22, Lot 3) filed by Elmer Palencia: Proposed construction of commercial landscaping offices 20' x 40', phased vehicle storage and service area buildings, bulk material storage, paved parking area and access drive. Total site disturbance is approximately 165,530 square feet (3.8 acres) with 29,220 square feet at a slope greater than 15%. See narrative above.

Haag moved to continue the public hearing as agreed by applicant to the meeting of April 19, 2022. Terrien seconded and the motion passed unanimously by roll call vote.

Continued Notice of Intent DEP #63-0730 at 24 Cooper Pond Road (Map 5, Parcel 48, Lot 20-A) filed by Alex Anninos: Proposed construction of a 23' x 39' inground swimming pool, patio, fence, grading, and "after-the-fact" installation of a patio, retaining wall and a fence possibly within an NHESP area of Estimated and Priority Habitat and the 100' Buffer Zone to Bordering Vegetated Wetlands. Mr. Greg Hochmuth of Williams & Sparages was present on behalf of the applicant and advised that a NHESP response had been received and the DEP file number issued. Revised plans had been submitted based on Agent Baeslack's memo dated March 8, 2022. The Commission reviewed Agent Baeslack's comments dated March 29, 2022.

Witzig moved to issue an Order of Condition for DEP #63-0730 with conditions stated in Agent Baeslack's memo dated March 8, 2022. Haag seconded and the motion passed unanimously by roll call vote.

Howard Terrien **recused** himself from the next agenda item.

Continued Request to Amend Order of Conditions DEP #63-0625 at land off Daniels Road (Map 9, Parcel/Lot): Proposed project change for new construction of an OSRD with nine (9) residential dwellings, shared sewage disposal system, roadway, stormwater facilities, grading and utilities along with 14 acres of protected Open Space within the 100' Buffer Zone of Bordering Vegetated Wetlands. Mr. James Decoulos, applicant's Representative, requested that the hearing be continued to the meeting of April 19, 2022.

Haag moved to continue the public hearing as requested by the applicant to the meeting of April 19, 2022. Witzig seconded and the motion passed by a roll call vote of three (3) yeas.

Howard Terrien **returned** to the meeting.

Continued Notice of Intent DEP #63-0726 at 944 Haverhill Street (Map 4, Parcel 15, Lot 2) filed by Lawrence Cassenti of Chrislar Horse Farm and Equestrian Center: Proposed construction of a horse paddock 64' x 154' x 106' x 129' (11,501 sq. ft.) requiring filling of 4,532 sq. ft. of Bordering Vegetated Wetlands and 6,969 sq. ft. of 100' Buffer Zone to Bordering Vegetated Wetlands and a portion of the DEP Approved Groundwater Protection Area Zone II with proposed replication of 6,740 sq. ft. of Bordering Vegetated Wetlands. Mr. Curt Young of Lucas Environmental was in attendance on behalf of the applicant and reviewed the revised plans which had been submitted based on comments from the March 8, 2022 meeting. Also in attendance was Mr. James Decoulos of Decoulos and Company as project engineer and Mr. Larry Cassenti of Chrislar Farm. Mr. Young presented the applicant's request for a refund of a portion of the filing fees due to the change in the disturbance. Agent Baeslack advised that the Bylaw specifically prohibited the refund of any filing fees. The Commission reviewed Agent Baeslack's comments dated March 29, 2022.

Haag moved to issue an Order of Conditions for DEP #63-0726 contingent upon receipt and approval of a revised plan. Terrien seconded and the motion passed unanimously by roll call vote.

Certificate of Compliance Requests(s):

Request for Certificate of Compliance DEP #63-0624 at land off Stackyard Rd. (Map 36, Parcel/Lot 1) owned by US Fish & Wildlife issued to Marine Biological Labs - relocate an instrument tower to salt marsh known as Low Country (Map 37, Parcel/Lot 25) owned by Mass. Dept. of Fish & Game. Agent Baeslack recommended issuance of a complete Certificate of Compliance with no ongoing conditions due to the two new applications being reviewed which would have new Orders issued with conditions.

Witzig moved to issue a complete Certificate of Compliance for DEP #63-0624. Haag seconded and the motion passed unanimously by roll call vote.

Continued Request for Certificate of Completion for SMP #25-2017 at 34 Dodge Road (Map 5, Parcel 104, Lot 3) Giuseppe Giugliano: Proposed construction of a residential dwelling, subsurface sewage disposal system, and access driveway, grading, well and other utilities. Mr. Thomas Mannelta of Thomas Mannelta, Inc. and Mr. Nicholas Silvestri of Keller Williams Realty, were present on behalf of the applicant. They advised that the work had not yet been completed and requested that the matter be continued to a date to be determined once the work had been finalized.

Haag moved to continue this item to a date to be determined. Terrien seconded and the motion passed unanimously by roll call vote.

Status Reports: Permits & Enforcements

Enforcement Order 45 Stackyard Road (Map 33, Parcel/Lot 16) David S. Hayes: Altering by clearing the 100' Buffer Zone to Bordering Vegetated Wetlands and Salt Marsh, possible land disturbance. Siting a mobile home trailer and upgrading an existing seasonal camp building

without appropriate permitting review within Land Subject to Coastal Storm Flowage and the Great Marsh ACEC per state Wetlands Protection Act and the Town's Wetlands Protection Bylaw. Agent Baeslack requested that this matter be tabled to the meeting of April 19, 2022 as Mr. Hayes had been unable to attend due to foreign travel and illness.

Haag moved to continue this item to the meeting of April 19, 2022. Terrien seconded and the motion passed unanimously by roll call vote.

Enforcement Order 20 Central Street (Map 25, Parcel/Lot 7) TRS Ox Brook Real Estate TRS Gerald N. Fandetti, Trustee: Alteration (cutting vegetation) of bank and 100' Buffer Zone to stream 310 CMR 10.02, placement of fill in Bordering Land Subject to Flooding 310 CMR 10.57, altering 200' Riverfront Area of Ox Pasture Brook 310 CMR 10.58. Agent Baeslack asked that the matter be continued to April 19, 2022 to allow the property owner more time to respond.

Haag moved to continue this item to the meeting of April 19, 2022. Terrien seconded and the motion passed unanimously by roll call vote.

Discussion:

Conservation Agent Position Workload - The Commission discussed the workload management of the Conservation Agent position. Agent Baeslack advised that the Commission had the ability to engage third party reviewers to assist with particular projects. Other options were also discussed. The Commission expressed their support of Agent Baeslack and asked that he coordinate with Chairman Shinnick and Vice Chairman Streiff regarding his workload.

Adjournment:

Accomplished at 10:10 PM by a motion made by Witzig. Haag seconded and the motion passed unanimously.

Submitted by Brent Baeslack, Conservation Agent