

# CONSERVATION COMMISSION MINUTES

Date: Thursday, March 23, 2023

Time: 7:00pm

Place: This meeting was held as a virtual meeting via Zoom.

**With a quorum present**, the meeting opened at 7:01 pm with Susan Lunin presiding as Chair.

**Members Present:** Susan Lunin (Vice-Chair), Kathy Cade, Judy Hepburn, Jeff Zabel, Leigh Gilligan,

**Members Absent:** Dan Green (Chair), Ellen Katz, Sonya McKnight (Associate Member)

**Staff present:** Jennifer Steel, Ellen Menounos

**Members of the Public:** not recorded due to remote nature of the meeting

## DECISIONS

### A. WETLANDS DECISIONS

#### 1. (7:00) 50 Grace Rd – NOI (continued) – teardown/rebuild SFH – DEP #239-949

- Owner/Applicant. Armando Petruzzello, Northern Lights Development
- Representatives. Wendell Phillips, builder; Edmond Spruhan, Engineer
- Project Summary.
  - Demolish existing single-family home and driveway
  - Construct new single-family home and driveway in the same location
  - Increase impervious area in RFA by 455 sf (from 2,480 sf to 2,935 sf)
  - Install infiltration chambers under the driveway.
  - Remove 7 trees within Riverfront Area (7", 7", 7", 7", 7", 8", and 11" = 54")
  - Create mitigation planting area.
- Request. Issue OOC.
- Documents in packets. Highlighted civil plan, planting plan
- Additional documents presented at meeting. Site photos.
- Jurisdiction. Riverfront Area
- Presentation (Staff) and Discussion.
  - Staff showed highlighted site plans and site photos and summarized the proposed work.
  - Staff noted that revised plans have been received, showing the requested changes:
    - Sediment controls ~7 feet from the pine trees along the property line
    - 2 areas of work: "major" and "minor", with grading restricted changes to "major" area
    - Construction fence will go along the "major/minor" divide to protect the far corner from grading changes and heavy equipment.
    - A larger bounded mitigation planting area to address the expansion of impervious area, the "new" proposed removal of 7 trees, and the "old" removal of the hemlock hedge.
    - The 2 7" hemlocks shown as to-be-removed shall be retained.
  - Tree and shrub removal undertaken under the "old" OOC were discussed.
  - The open OOC (DEP file #239-772) for a teardown/rebuild will need to be closed.
- Vote to close the hearing and issue an Order of Conditions with the following special conditions, releasing the OOC to the applicant once the following plan changes have been received and approved by Conservation staff. [Motion: Gilligan, Second: Zabel, Roll-call vote: Gilligan (aye), Lunin (aye), Zabel (aye), Cade (aye), Hepburn (aye). Vote: 5:0:0.]
  - Revised Engineering plan to show:
    - Orange snow fence to define major vs minor work areas.
    - Larger mitigation planting area (1600 sf, bounds moved 4 feet to the west).
    - The planting plan will be withdrawn, and staff will wait to receive a new planting plan with recommended native plants.
  - Special Conditions:
    - Work within the "minor" work area will be limited to hand work, with no grading changes or heavy equipment allowed.
    - Entrenched silt fence shall wrap the "major" work area. Compost sock alone should be installed along the street edge of the "minor work area" (to protect tree roots).



**Mayor**  
Ruthanne Fuller

**Director  
Planning &  
Development**  
Barney Heath

**Chief  
Environmental  
Planner**  
Jennifer Steel

**Assistant  
Environmental  
Planner**  
Ellen Menounos

**Conservation  
Commission  
Members**  
Kathy Cade  
Dan Green  
Judy Hepburn  
Ellen Katz  
Susan Lunin  
Jeff Zabel  
Leigh Gilligan

**Associate  
Member**  
Sonya McKnight

**Contact  
Information**  
1000 Comm. Ave.  
Newton, MA 02459

T 617/796-1120  
F 617/796-1142

[www.newtonma.gov](http://www.newtonma.gov)

[jsteel@newtonma.gov](mailto:jsteel@newtonma.gov)

- The mitigation planting area shall be filled with the following native species (sourced from reputable growers), appropriately and evenly placed throughout the bounded area:
  - 2 Flowering dogwood (*Benthamidia florida*) 1" caliper or 5-6 feet tall
  - 2 Eastern redbud (*Cercis*) 1" caliper or 5-6 feet tall
  - 2 Eastern shadbush (*Amelanchier Canadensis*) 3-5 gallon or 3-4 feet tall
  - 3 Mountain laurels (*Kalmia latifolia*) 3 gallon
  - 3 Rosebay rhododendron (*Rhododendron maximum*) 3 gallon
  - 25 Hay-scented ferns
  - Leaf litter mulch 3-4"
- Outside the mitigation planting area, but within the RFA the following shall be established:
  - 2 of any of the following native understory trees (Flowering dogwood, Eastern redbud, Eastern shadbush)
  - 1 native canopy tree (oak or cherry)
- Three bounds shall be placed (5 feet further west than the westerly ones on the current plan): One shall be on the rear lot line, one on the front lot line, and one in the middle of that line to define a protected mitigation area of at least 1600 sf. The bounds shall have informative medallions supplied by the Conservation Office permanently affixed to their tops.
- The applicant must schedule and attend a pre-construction site visit with the applicant, construction supervisor and Conservation agent, to review and provide the following.
  - a. A signed Certificate of Understanding (attached to the Order of Conditions cover letter).
  - b. Contact information (for working and non-working hours) for those responsible for site compliance.
  - c. The anticipated timeline.
  - d. Proof of Recording the Order (Note: the proof of recording must be submitted to the Conservation Office through the City's online permitting system.)
  - e. DEP File number sign (minimum size 2'x2', clearly visible from the street)
  - f. Sedimentation/erosion controls (properly installed in the correct locations)
  - g. Protection of all trees and shrubs within the limit of work, and as necessary outside the limit of work, with orange snow fence installed at the dripline, plywood sheeting over the roots, and boards tied to the trunk.
- Adequate protection must be installed for the pine trees along the western property line. This will include the erosion controls and mulch and plywood placed over the roots.
- To ensure broad understanding of this Order and good lines of communication, the applicant must:
  - a. Review all conditions with all contractors and workers involved in on-site operations prior to the commencement of construction on this project. Any contractors and workers arriving after construction commences must also be apprised of these conditions.
  - b. Include this document in all contracts, subcontracts, and specifications associated with the proposed work. The Applicant shall ensure that all contractors, subcontractors and personnel performing the permitted work are aware of the permit's terms and conditions. Thereafter, the contractor will be held jointly liable for any violation of this Order.
- Continuing condition for the perpetual maintenance of the bounded mitigation planting area.

## **2. (7:30) 249 Winchester St – NOI – installation of a fence in floodplain – DEP #239-950**

- Owner/Applicant. Alexander Murphy, Jr., Melissa Velez (owners)
- Representatives. None
- Proposed Project Summary. Install a 6-foot privacy fence around property.
- Request. Issue an OOC
- Documents in packets. Highlighted site plan, fence design sketch
- Additional documents presented at meeting. Site photos
- Jurisdiction. Flood zone, Buffer Zone
- Presentation (Staff) and Discussion.
  - Staff showed highlighted site plans and site photos and summarized the proposed work.
  - The "side" fence segments traverse from a low point of 106.4' to the 100-year flood elevation of 112' NAVD88.
  - The "side" fence segments run perpendicular to the site contours and so will not tend to obstruct rising flood waters.
  - The "front" fence segment (along Winchester Street) is above the flood elevation
  - No fence will be erected along the rear (wooded) boundary.
  - The fence must be elevated at least 5" to allow for wildlife passage.

- The intended design of the fence is not clear, but the fence must be “open” enough to “not restrict flows”. The Commission could find that alternating (front and back) 4” wide slats on 4”X4” posts or chain link or open lattice could satisfy that requirement.
- During the pre-hearing site visit, staff noted that since the negative Determination of Applicability was granted in 2018 for the reconstruction of the second floor and sunroom and deck, there has been unpermitted clearing of vegetation to create lawn. The conditions of the 2018 negative Determination were:
  1. No mature trees may be cut.
  2. The owners have not sought permission to redevelop the lawn or driveway, but without further permitting:
    - a. The existing lawn (the entire landscaped area within the limit of work) may be regraded and re-seeded.
    - b. The existing driveway may be resurfaced but may not be expanded (as per 310 CMR 10.02)
    - c. If new loam must be brought in to re-establish lawn, the applicant must seek permission from the Conservation Office and must document the removal of an equal or greater amount of fill. (N.B. No net fill may be added because of floodplain regulations).
- Staff noted that they had failed to provide the applicants with details about the need for compensatory flood storage for the volume of the fence in flood zone, but felt that it could be provided in concert with mitigation plantings for the unpermitted clearing.
- Discussion ensued.
  - Mr. Murphy noted that a trespasser had been seen in their yard and had vandalized the abutting house.
  - Mr. Murphy noted that the unpermitted clearing occurred prior to his purchase of the property.
  - Mr. Murphy noted that he had removed a lot of trash and debris from the area that is now lawn.
  - Mr. Murphy noted his concern about the cost of plantings and the fact that he had not done the clearing.
  - One commissioner noted that since the clearing was a violation of a negative determination (not a recorded Order of Conditions), there was no way for Mr. Murphy to have known that it was a violation so the Commission should not require too much mitigation.
  - Staff will share a plant list and help the owners develop a mitigation planting plan.
- Vote to continue the hearing to April 11<sup>th</sup> to allow the owners to present a fence design, compensatory flood storage plan, and a mitigation planting plan. [Motion: Gilligan, Second: Hepburn, Roll-call vote: Gilligan (aye), Lunin (aye), Zabel (aye), Cade (aye), Hepburn (aye). Vote: 5:0:0.]

### 3. (8:00) 191 Dedham St – ANRAD at Countryside School – DEP #239-951

- Owner/Applicant. City of Newton / Josh Morse, Dept of Public Buildings
- Representatives. Amy Ball, Horsley Witten; Vivian Low, DiNisco
- Project Summary. Confirmation of wetland resource areas (in advance of constructing a new elementary school).
- Request. Issue an Order of Resource Area Delineation (ORAD) confirming the wetland resource areas on the approved plans.
- Documents in packets. Highlighted wetland resource area plans (2 pages)
- Additional documents presented at meeting. Site photos
- Jurisdiction.
  - **Riverfront Area**
  - **BVW**
  - **Buffer Zone**
  - **Bordering Land Subject to Flooding: 10.57**
  - **City Floodplain. Sec. 22-22. Floodplain/Watershed Protection Provisions.**
- Presentation (Staff) and Discussion.
  - Staff showed highlighted site plans and a PowerPoint presentation prepared by the applicant team and site photos. She noted that the issue before the Commission was just approval of the wetland resource area delineations.
  - Staff stated that she had confirmed the Bank, Riverfront Area, and Bordering Vegetated Wetland flags (and Buffer Zone) in September 2022.
  - Staff confirmed with state officials that the 100-year flood elevation. Amy Ball clarified that the flood elevation is 112.4’ NAVD88.
  - Josh Morse (Commissioner of Public Buildings) noted how excited he was about the innovations that were anticipated for this site (raisin the building out of the water table and above the 500 year floodplain, and employing bio-swales and other green infrastructure) and about the opportunities for programming and education.
  - Alan Rao (180 Dedham St.) asked that the project involve a more in depth study of the capacity of South Meadow Brook to carry floodwaters and more mitigation for area flooding.
  - Kaitlyn Spiegel asked that the project include the removal of trash and attempt to stop the generation of trash.

- Vote to close the hearing and issue an ORAD approving the wetland resource areas as shown on the referenced plans. [Motion: Cade, Second: Hepburn, Roll-call vote: Gilligan (aye), Lunin (aye), Zabel (aye), Cade (aye), Hepburn (aye). Vote: 5:0:0.]

#### 4. (8:20) 19 Staniford St – RDA – construction of a single-family home on a new rear lot

- Owner/Applicant. Michael Quinn
- Representatives. Robert Bibbo, Bibbo Bros. Engineering (not present)
- Proposed Project Summary.
  - Single-family home was Administratively Approved for demolition and rebuild since it was outside the 100-foot Buffer.
  - The current request is to build another in a rear-lot subdivision.
- Request. Issue a Determination of Applicability
- Documents in packets. Locus map, highlighted civil engineering plan
- Additional documents presented at meeting. Site photos
- Jurisdiction. 100-foot Buffer Zone, flood zone at rear of site (no work proposed in or near the flood zone)
- Presentation (Staff) and Discussion.
  - Staff showed highlighted site plans and site photos.
  - She noted many short-comings of the plans presented and site problems
    - That limit of work granted in 2021 for the demolition of the old house has been exceeded with the installation of erosion controls and construction fence right to the top of the slope.
      - Michael Quinn stated that that was the contractor’s error.
    - The lot has not been subdivided. (The plan shows “proposed lot 14A” and “proposed lot 14B”). The Commission can’t issue an Order Of Conditions without a lot to record it against and a known owner.
    - The wetland has not been flagged. There were no flags in the field and the plan indicates only an “approximate wetland line” and “approximate” buffer. If there is BVW beyond the standing water, the line of pine trees may be within the 100-foot buffer zone.
    - Only “approximate” contours are indicated and contours at rear of the lot are shown in 5-foot increments. One-foot contours must be provided.
    - There were no details given for the treatment of the slope, yet there are dilapidated fences and debris that should be removed at the very least.
    - The plans must make clear what is existing and what is proposed (particularly with regard to trees and topography).
  - Lisa Luo, abutter, noted her (and 111 petition signers’) concern about any house that close to the wetland having an adverse effect on the health of the wetland and the Flowed Meadows Conservation Area. Commissioners assured her that they would uphold the performance standards of the Wetlands Protection Act.
  - She suggested that the Request be withdrawn or that the Commission issue a positive determination.
  - The applicant opted to withdraw the Request.

#### 5. (8:50) 81 Albemarle – NOV/EO resolution

- Owner/Applicant. Chirag Bhatt and Heena Pandya
- Representatives. none
- Project Summary. Remove excess asphalt and replace with grass
- Request. Undertake work without an Order of Conditions
- Documents in packets. Highlighted plans of present conditions and proposed work
- Additional documents presented at meeting. None
- Jurisdiction. **Riverfront Area**
- Presentation (Staff) and Discussion.
  - The applicants’ driveway was constructed larger than allowed (under a now expired OOC).
  - The owners wish to remove the excess asphalt (rather than filing a new NOI to keep it in place).
  - One commissioner asked about the City sidewalk that will need to be replaced. The applicant will ensure that her contractor meet with the Engineering Division to determine the appropriate materials and construction specifications.
  - The owner was instructed to install compost sock along the street frontage and to leave it in place until grass has been fully established.
- Staff Recommendation. Vote
- Vote to allow the remedial work without a new NOI. [Motion: Cade, Second: Zabel, Roll-call vote: Gilligan (aye), Lunin (aye), Zabel (aye), Cade (aye), Hepburn (aye). Vote: 5:0:0.]

#### 6. (9:00) 180-210 (aka 190) Needham Street – Enforcement Order Response

- Owner/Applicant. CrossPoint (Kerry McCormack)
- Representatives. John Rockwood, EcoTec
- Project Summary. To bring site into compliance with the expired Order of Conditions under the existing Enforcement Order:
  - Address invasives
  - Plant woody vegetation
  - Restore rain garden.
- Request. Approve plan to bring site into compliance.
- Documents in packets. Highlighted letter, rain garden plan sheet
- Additional documents presented at meeting. TBD
- Jurisdiction. Riverfront Area, Flood Zone, and Buffer Zone.
- Presentation (Staff) and Discussion.
  - The plans for restoration of the rain garden, treatment of invasives, and installation of natives appear to be well-considered and appropriate.
  - John Rockwood provided a detailed narrative for the restoration of the rain garden (e.g., larger riprap, larger shrubs, and a beehive grate) and the previously approved plans showing areas for invasives control and native plantings.
- Vote to approve the proposed plan to satisfy the Enforcement Order. [Motion: Gilligan, Second: Hepburn, Roll-call vote: Gilligan (aye), Lunin (aye), Zabel (aye), Cade (aye), Hepburn (aye). Vote: 5:0:0.]

#### **7. (9:10) Crystal Lake – OOC Extension – Algae Treatment – DEP File # 239-861**

- Owner/Applicant. City of Newton (Nicole Banks, PRC – not present)
- Representatives. Stephanie Kaiser, P.E. Woodard & Curran, Project Manager
- Project Summary. Algae treatment
- Request. 3-year extension
- Documents in packets. None
- Additional documents presented at meeting. None
- Jurisdiction. LUWW
- Presentation (Staff) and Discussion.
  - 3-year in-lake nutrient management of Crystal Lake was permitted in 2020 to address summertime toxic algal blooms in Crystal Lake. The first in-lake treatment (phosphorus inactivation by the application of alum) was performed in May 2020, and a second treatment was performed in May of 2022. Seasonal monitoring of Crystal Lake was performed from 2020 through the fall of 2022.
  - The intended surficial sediment phosphorus inactivation has been completed as of 2022 and internal loading should be curtailed for an extended period. However, since watershed inputs continue, it is possible that heavy rains could cause a spike in phosphorus and so warrant a future reduced dose aluminum treatment.
  - Therefore, the applicant is requesting an extension to allow for a future maintenance dose, if needed. Woodard & Curran will continue to coordinate with the City regarding monitoring, reporting, and treatment considerations.
  - A commissioner asked if the sediments would be toxic and so be problematic if dredged. S. Kaiser assured her that the alum bound to the sediments did not create a toxic material.
- Vote to issue a 3-year extension of the Order of Conditions with continued annual reporting requirements (by November 15<sup>th</sup> of each year). [Motion: Cade, Second: Gilligan, Roll-call vote: Gilligan (aye), Lunin (aye), Zabel (aye), Cade (aye), Hepburn (aye). Vote: 5:0:0.]

#### **8. (9:15) City Hall Ponds -- OOC Extension – Dredging – DEP File # 239-878**

- Owner/Applicant. City of Newton (Tom Fitzgerald, Utilities – not present)
- Representatives. Jennifer R.M. Burke, P.E. (GZA) – not present
- Project Summary. Dredging for flood storage
- Request. 3-year extension
- Documents in packets. None
- Additional documents presented at meeting. None
- Jurisdiction. LUWW
- Presentation (Staff) and Discussion.
  - The maintenance dredging project was originally scheduled to occur in the fall of 2021, but the United States Army Corps of Engineers (USACE) individual Section 404 permit was issued in June 2022 (a full year later than hoped). The City finalized the bid documents and bid the project in the fall of 2022, anticipating construction in the fall/winter 2022/2023, with restoration in spring/summer 2023 but bids came in very high due to limited off-site sediment reuse

opportunities in Massachusetts so the bid was cancelled. The City is in the process of determining options for alternate disposal/reuse sites and is hoping to re-bid the project in the summer of 2023, for construction in fall/winter 2023/2024. However, with limited options for reuse/disposal there is significant uncertainty, so work is anticipated to occur past the original November 20, 2023 expiration date.

- Staff noted that the ponds are part of a flood control system, and so providing flood storage volume is critical.
- Vote to issue a 3-year extension of the Order of Conditions. [Motion: Gilligan, Second: Hepburn, Roll-call vote: Gilligan (aye), Lunin (aye), Zabel (aye), Cade (aye), Hepburn (aye). Vote: 5:0:0.]

## **B. (9:20) CONSERVATION AREA DECISIONS**

## **C. (9:20) ADMINISTRATIVE DECISIONS**

### **9. (9:20) Watertown Dam project**

- Presentation (Staff) and Discussion.
  - In response to the request to hear from concerned parties, Robert Kearns wrote to the Commission offering:
    - Taking a site visit to Watertown Dam with CRWA staff and/or peer ConCom members from Watertown or Waltham;
    - Holding a short conversation peer ConCom members from Watertown or Waltham during an upcoming meeting;
    - Holding a short conversation with representatives of Mass Audubon during an upcoming meeting;
    - Submitting further questions to CRWA; or
    - Tabling the discussion until the project has progressed further.
- Staff recommend that the Commission arrange to take a site visit with ConCom members from adjacent town(s).
- Vincent Piccirilli, Waltham City Councilor, spoke about:
  - The history of the dam, its current ownership by DCR, its current state of disrepair, and its lack of current utility,
  - The potential for the to breach and spew the toxic sediments downstream and allow the widespread establishment of invasive species,
  - The adverse impacts of the dam on fish and birds and wildlife upstream, and
  - The anticipated effects of removal (i.e., bare banks for a very short period of time, then bordering vegetation).
- Vincent Piccirilli, Waltham City Councilor, also noted:
  - There would be a full-blown feasibility study prior to any removal activities,
  - Removal and restoration would be carefully planned and controlled, and
  - The sound of babbling water would be retained by leaving stones in the river channel.
- Alex Hackman, Director of Ecological Restoration for Mass. Audubon, noted his experience with over 30 dam removals and the positive outcomes of those efforts. He offered his services as a technical expert.
- Robert Kerns suggested a weekday site visit in May.
  - Commissioners agreed that that would be valuable.
  - Staff will share commissioner emails with R. Kearns so that he can send out a Doodle poll.

### **10. (9:30) Vote re reappointing Jeff Zabel to the Farm Commission**

- Staff Notes.
  - Jeff is on the Farm Commission, Susan is on CPC, Dan is on the Newton Commonwealth Golf Foundation. Commissioners agreed that periodic reports from each representative would be beneficial. Staff will put periodic updates on future agendas.
  - No one else wanted to be the ConCom member on the Farm Commission
  - Staff noted that Commissioners should submit suggestions for a new Associate Member (to create pool of experienced members).
- Vote to reappoint Jeff Zabel to the Farm Commission. [Motion: Cade, Second: Gilligan, Roll-call vote: Gilligan (aye), Lunin (aye), Zabel (aye), Cade (aye), Hepburn (aye). Vote: 5:0:0.]

### **11. (9:40) Minutes to be approved**

- Documents in packets. Draft 3/2/2023 minutes.
- Vote to approve the 3/2/2023 minutes. [Motion: Hepburn, Second: Cade, Roll-call vote: Gilligan (aye), Lunin (aye), Zabel (aye), Cade (aye), Hepburn (aye). Vote: 5:0:0.]

## **D. (9:45) ISSUES AROUND TOWN DECISIONS**

**UPDATES** – none discussed

**ADJOURN at 10:02.** Vote. [Motion: Zabel, Second: Cade, Roll-call vote: Gilligan (aye), Lunin (aye), Zabel (aye), Cade (aye), Hepburn (aye). Vote: 5:0:0.]