

CONSERVATION COMMISSION MINUTES

Date: Thursday, September 7, 2023

Time: 7:02 – 9:13 pm

Place: This meeting will be held as a virtual meeting via Zoom.

With a quorum present, the meeting opened at 7:02 pm with Dan Green presiding as Chair.

Members Present: Dan Green (Chair), Susan Lunin (Vice-Chair), Ellen Katz, Judy Hepburn (note: a power outage caused J. Hepburn to miss the meeting from 8:35-8:55), Jeff Zabel, Sonya McKnight (Associate Member)

Members Absent: Leigh Gilligan, Kathy Cade

Staff present: Jennifer Steel, Ellen Menounos

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

UPDATES

A. CONSERVATION AREA UPDATES

1. Webster Woods -- informational presentation and discussion

- Owner/Applicant. City of Newton (due to be Conservation Commission)
- Representatives. Andrew Lee (Law Department)
- Request. Have the Commission receive a summary of the docket item regarding a Confirmatory Deed that corrects the boundaries and area of land taken by eminent domain.
- Summary. The eminent domain taking protected all the land at the rear of 300 Hammond Pond Parkway, as intended, but the acreage of that land is less than originally thought.
- Documents in packets. Docket item, survey plan
- Additional documents presented at meeting. none
- Presentation and Discussion.
 - Andrew Lee summarized the situation for the Commission.
 - In 2019, the City took the rear portion of 300 Hammond Pond Parkway for conservation purposes. They relied on the metes and bounds and survey commissioned by Boston College (BC) (then the owner) and recorded at the South Middlesex Registry of Deeds.
 - The eminent domain taking protected all the land intended to be protected. The City thought that in so doing it was taking 17.4 acres.
 - The City discovered that the original survey was incorrect. A new survey corrected the metes and bounds and determined that 14.7 acres were actually taken - 2.7 fewer acres than stated in the original survey. Roughly 2.9 acres shown on the original survey is Department of Conservation and Recreation land (i.e., already protected) and roughly 0.2 acres shown on the original survey is land associated with the Cohen Conservation Area (also land already protected).
 - The Mayor has asked City Council (first via a standing committee) to sign the Confirmatory Order of Taking (clarifying the record title) and then have it recorded.



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

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- Lunin (a member of the Community Preservation Committee) asked if there was confidence in the new survey. Lee responded affirmatively.
- Steel asked if this would have any bearing on the pending litigation. Lee noted that he is not involved with the litigation about the value of the land.

DECISIONS

B. WETLANDS DECISIONS

2. Newton Conservation Areas -- OOC Extension – trails OOC -- DEP #239-708

- Owner/Applicant. Newton Conservation Commission and Newton Parks Recreation & Culture Department
- Representatives. Jennifer Steel, Conservation Staff
- Request. Extend the OOC
- Project Summary. This OOC allows for routine trail maintenance and improvement.
- Documents in packets. Special conditions from the OOC.
- Additional documents presented at meeting. None
- Presentation (staff) and Discussion.
 - Staff think it prudent to extend this OOC to facilitate routine maintenance and Eagle Scout projects.
 - Hepburn asked about the requirement to side-cast cut wood and branches in light of the many new invasive insects. The Commission noted their understanding of the concern, but rather than amend the Order of Conditions, opted to ask staff make a note for the file stating that if invasive insects are known to be present, staff will ensure that proper off-site disposal is undertaken.
- Vote to approve a 3-year extension. [Motion: Katz. Second: Zabel. Roll-call vote: Katz (aye), Zabel (aye), Green (aye), Lunin (aye), Hepburn (aye). Vote: 5:0:0.]

3. 149 Pleasant St – OOC Extension Request – Solar canopy over Mason Rice School Parking Lot – DEP File #239-844

- Owner/Applicant. City of Newton, Public Buildings Department
- Representatives. Bill Ferguson
- Request. Issue a 3-yr OOC extension to allow the project to proceed, if possible.
- Project Summary. At Mason Rice Elementary, install two solar canopies supported by columns, install new electrical conduits to connect the canopies to the grid with associated trenching, remove 2 trees, plant 29 trees in the adjacent Newton Center Playground area.
- Documents in packets. Site plan
- Additional documents presented at meeting. Request letter from Bill Ferguson
- Jurisdiction. RFA, BZ
- Presentation (staff) and Discussion.
 - This site (one site of many canopy installations) has been indefinitely postponed due to price increases and contract challenges.
 - The City still hopes to install a solar canopy at this site and is working with a new vendor who may be able to start construction within the coming year.
- Vote to approve a 3-year extension. [Motion: Zabel. Second: Lunin. Roll-call vote: Katz (aye), Zabel (aye), Green (aye), Lunin (aye), Hepburn (aye). Vote: 5:0:0.]

4. 145 Warren St – OOC Extension Request – Renovations to existing SFH and construction of 4 new units -- DEP #239-0882

- Owner/Applicant. David Oliveiri, Civico Development
- Representatives. Michael Pace, Sustainable Comfort

- Request. Issue a 3-yr OOC extension
- Project Summary. Expansion of SFH into 5 attached units
- Documents in packets. Highlighted plans
- Additional documents presented at meeting. None
- Jurisdiction. Buffer Zone
- Presentation (staff) and Discussion.
 - The applicant recently requested an OOC re-sign. At that time, the staff site visit noted some issues of non-compliance. The property has since been brought into compliance and conditions requiring: (1) grubbing of the unpermitted stumps, (2) adding two native canopy saplings to the planting area, and (3) restoring the soils prior to plant installation were added to the re-issued OOC.
 - The permit is due to expire 2/22/2024, construction is still underway, and none of the required mitigation plantings have been installed, so an extension is necessary. Time is required to allow for completion of the construction and survival of the mitigation plantings.
- Vote to issue a 3-yr OOC extension. [Motion: Katz. Second: Lunin. Roll-call vote: Katz (aye), Zabel (aye), Green (aye), Lunin (aye), Hepburn (aye). Vote: 5:0:0.]

5. 56 Greenwood St – landscaping and utilities for a SFH – COC Request -- DEP #239-0768

- Owner/Applicant. Gene Spivak
- Representatives. None
- Request. Issue a COC
- Project Summary. The house was significantly renovated, a new front walkway was installed, the driveway was reconstructed, and utilities were installed.
- Documents in packets. Comparison of approved and as-built plans
- Additional documents presented at meeting. Site photos
- Jurisdiction. BZ
- Presentation (staff) and Discussion.
 - Staff noted the following facts.
 - Only the “front right corner” of the property is within Con Com jurisdiction (Buffer Zone).
 - The OOC is due to expire in January 2024 (the applicant already received one 3-yr extension and the “COVID bump”).
 - The approved plans required more trees to the right of the house, less hardscape, and replacement of the street tree.
 - The surveyor’s as-built plan shows hardscape, but not jurisdictional wetland line or plants.
 - Katz noted that the shrub in the front is ailing (likely an amalanchier with cedar-apple rust).
 - Commissioners felt that the owners should install all required plants and that the plants must survive 2 years. They noted that a permit extension would be necessary.
- Consensus. Do not issue a COC at this time. Staff will contact the owner and note:
 - The expanded hardscape was not approved by the Commission.
 - 6 arbor vitae and 3 hornbeams must be planted as per the approved plans.
 - A native maple must be installed along the street (or in the owner’s front yard) as per the approved plans.
 - The owner must seek an extension of the Order of Conditions to allow the plants to be installed and thrive for 2 years.

6. 288 Mill St – OOC Extension Request – additions, walls, plantings – DEP #239-0888

- Owner/Applicant. Erik (Ned) Nedeau and Lisa Sampson

- Representatives. Self
- Request. Extend OOC to allow for installation and survival of the required mitigation plantings
- Project Summary. The addition at the rear of the house was completed by the prior owners, but the mandatory 770 sf of mitigation planting and corrective grading at the rear fence line were outstanding.
- Documents in packets. None
- Additional documents presented at meeting. Original approved plans, staff-created proposed planting plan, site photos
- Jurisdiction. RFA, BZ
- Presentation (staff) and Discussion.
 - At the 7/27/23 meeting the Commission reviewed recent site visit photos. Staff issued a status letter before the property was sold indicating the need for an extension and compliance.
 - The new owner stated that he had pulled back much of the recent fill from the fence and in so doing had created a rock-line-defined area in which he wanted to install the mitigation plants. He also noted that he had loamed portions of the back yard. He submitted a series of preliminary mitigation planting plans that staff reviewed and revised.
 - Green summarized the Riverfront Area mitigation regulations, the intention of those regulations, and the Commission's Mitigation Planting Policy.
 - Staff presented a sketch of a more-or-less rectangular mitigation planting area at the rear of the site that would comply with the Commission's Mitigation Planting Area Guidelines. The owner was not apparently enthusiastic about it. He opted to consider the Commissioners' comments and provide a revised planting plan in advance of the coming meeting.
 - Staff noted that the owner's proposed selection of shrubs and groundcovers was mostly fine (though some species would like more moisture than the site will provide) and that he could purchase the stock now with the anticipation of planting this fall, weather permitting, and a planting plan was approved.
- Consensus. Await a revised planting plan from the owner.
- Vote to issue a 3-year OOC extension. [Motion: Lunin. Second: Katz. Roll-call vote: Katz (aye), Zabel (aye), Green (aye), Lunin (aye), Hepburn (aye). Vote: 5:0:0.]

7. 148 Pine Street – COC Request – demolition of existing duplex and construction of 3 single-family homes – DEP File #239-856

- Owner/Applicant. Vincent Mastroianni
- Representatives. None
- Request. Issue COC
- Project Summary. Demolish existing duplex and construct 3 single-family homes
- Documents in packets. Approved plan
- Additional documents presented at meeting. None
- Jurisdiction. Buffer Zone and City Flood Zone
- Presentation (staff) and Discussion.
 - All required paper work was submitted and a staff site visit confirmed complete compliance.
- Vote to issue a COC. [Motion: Zabel. Second: Katz. Roll-call vote: Katz (aye), Zabel (aye), Green (aye), Lunin (aye), Hepburn (aye). Vote: 5:0:0.]

8. 16 Grace – COC Request – tear down rebuild SFH – DEP File #239-837

- Applicant. Craig Halajian, developer and Peter Nolan, engineer
- Representatives. None
- Request. Issue COC

- Project Summary. Tear-down/rebuild SFH
- Documents in packets. Approved site/planting plan
- Additional documents presented at meeting. As-built plan and site photos
- Jurisdiction. Riverfront Area
- Presentation (staff) and Discussion.
 - Only the “front right corner” of the lot (the driveway and some of the front yard) are in ConCom jurisdiction
 - This project was not constructed according to the approved plans, but the engineer and City officials failed to catch the deviations earlier in the process.
 - The developer chose to expand the driveway with a large area of pavers and a paver walkway, but never received permission from the Conservation Office.
 - Newton Engineering approved the modified plans (i.e., plans showing an expanded driveway/paver area)
 - ISD issued a temporary Certificate of Occupancy.
 - A site engineer issued an as-built plan (stamped by Peter Nolan) that did not comport with the approved plan.
 - A site engineer issued a letter (stamped by Edmond Spruhan) stating substantial compliance with the OOC had been achieved.
 - Based in part on the engineer’s letter of substantial compliance, Conservation staff issued a status letter stating that “The site appears to be in substantial compliance with that permit, the approved plans, and all special conditions.” And “The only outstanding condition at this time is the two-year survival requirement for the required plantings”.
 - The site was due to have had 127 sf of net new hardscape in RFA. It now has 1209 sf of net new hardscape in RFA.
 - The site was due to have had 1 Japanese maple, 1 arbor vitae, 3 hollies, 13 inkberries, and 130 sf of perennials in RFA. The site now has 1 ornamental deciduous tree, 8 spruce, 2 hydrangea, 2 inkberries, and 0 sf perennials. The front yard is now turf.
- Consensus.
 - Commissioners felt that since the developer built more than was approved and the site engineer misrepresented “substantial compliance”, the developer and site engineer should be asked to propose a solution that will ensure that the site complies with the wetland regulations. That proposal could then be presented to the homeowner. Because of the City’s administrative errors, the Commission said that it would consider a plan other than the approved plan (e.g., one that might locate some of the required native plants just outside the Riverfront Area), but that the Riverfront Area requirements must be upheld.

9. 5 Wyoming St – Work Never Initiated COC Request – Addition to existing SFH – DEP File #239-853

- Owner/Applicant. Bill Farnsworth
- Representatives. None
- Request. Issue COC
- Project Summary. Addition to existing SFH
- Documents in packets. None
- Additional documents presented at meeting. None
- Jurisdiction. RFA
- Staff Notes. A staff site visit confirmed that no work had occurred on the site
 - Staff has not yet conducted a final site visit.

- Vote to issue a COC. [Motion: Lunin. Second: Zabel. Roll-call vote: Katz (aye), Zabel (aye), Green (aye), Lunin (aye). Vote: 4:0:0.]

C. CONSERVATION AREA DECISIONS – none at this time

D. ADMINISTRATIVE DECISIONS

10. Minutes to be approved

- Documents in packets. Draft 8/17/2023 minutes
- Vote to approve the 8/17/2023 minutes [Motion: Zabel. Second: Katz. Roll-call vote: Katz (aye), Zabel (aye), Green (aye), Lunin (aye), Hepburn (aye). Vote: 5:0:0.]
- Katz volunteered to review the 9/7/2023 minutes.

E. ISSUES AROUND TOWN DECISIONS – none at this time

UPDATES / DISCUSSION

F. WETLANDS

G. CONSERVATION AREAS

- Mark Lewis, beekeeper at Old Deer Park. Mark had a good year with his bees. He will need to renew his license to operate. He received the results of the honey and pollen tests, identifying the species of flowers that his bees are feeding on; staff will share the report with the Commission.
- Vandalism at Norumbega Conservation Area. Staff apprised the Commission of the recent fire, beer can litter, and tree uprooting event that occurred at the top of the recently restored slope of Norumbega. Police have been undertaking some patrols, have used drones, and will approach neighbors. Kathy Cade has sent a message to the local FaceBook group seeking information. Staff will look into security cameras that are well-camouflaged.
- Conservation Area Trailhead Signs
 - Issue. New 16”x 24” signs are nearing completion and will be sent for fabrication soon.
 - Documents in packets. Pdf of example sign.

H. ADMINISTRATIVE MATTERS

- The Commission as a resource (rather than a purely regulatory body). Staff introduced the notion that the Commission tends to focus on reacting to wetland permits; it could strive to become more of a voice of environmental protection and undertake more diverse proactive efforts. Staff asked that Commissioners consider what efforts they might like to take on, such as the following.
 - Public outreach, public education materials, and policies, e.g.:
 - Meaningful environmental restoration, e.g., Lasell Pond
 - Norway maples
 - Sprinklers with sensors
 - Rodenticides
 - Flooding
 - Providing project-inspired advocacy-oriented information, e.g.,
 - Artificial turf
 - Dam removal
 - Conservation Area management
 - Environmental restoration
 - Public education (kiosks at Dolan, Norumbega, Houghton)
 - Addressing off-leash dogs and mountain bikes

- Coordinating with Scouts
- Committee Liaison Updates
 - Newton Commonwealth Golf Course Foundation – New buildings are being planned.
 - Community Preservation Committee – The bid for reconstructing Gath Pool came in higher than hoped, so portions of the Albemarle fields project may be scaled down or postponed.
 - Farm Commission – No updates at this time.

ISSUES AROUND TOWN – none at this time

OTHER TOPICS NOT REASONABLY ANTICIPATED BY THE CHAIR 48 HOURS BEFORE THE MEETING

ADJOURN Vote to adjourn at 9:13 [Motion: Hepburn. Second: Zabel. Roll-call vote: Katz (aye), Zabel (aye), Green (aye), Lunin (aye), Hepburn (aye). Vote: 5:0:0.]