

# CONSERVATION COMMISSION MINUTES

Date: Thursday, February 1, 2024

Time: 7:00pm

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

**With a quorum present**, the meeting opened at 7:00 pm with Susan Lunin, Vice-Chair Dan presiding.

**Members Present:** Dan Green (Chair) joined at 7:06, Leigh Gilligan, Judy Hepburn (left at 7:55), Ellen Katz.

**Members Absent:** Jeff Zabel

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

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

## DECISIONS

### A. WETLANDS DECISIONS

#### 1. (7:05) 229 California St – Request for Determination of Applicability – landscaping at Forte Park

- **Owner/Applicant.** City of Newton/Residences on the Charles
- **Representatives.** Ahron Lerman and Luis Perez Demorizi, Newton Parks, Recreation & Culture; Jacqui Trainer, Allen and Major for Residences on the Charles; Melissa Mintz, Mintz Development Group; Ian Ramey, Copley Wolff
- **Request.** Issue OOC.
- **Project Summary (within Conservation Commission jurisdiction).** The new 40B development, Residences on the Charles, is contributing to improvements at the City's Forte Park. One aspect of said improvements is planting native trees along the shared boundary, some of which is within Commission jurisdiction (Riverfront Area).
  - Pruning existing trees of diseased and dead wood.
  - Removing invasive knotweed using Roundup Custom Non-Selective Liquid Herbicide for Aquatic & Terrestrial Uses with the active ingredient Glyphosate in the form of isopropyl amine salt. The product will be repeatedly painted on the stem of the plant to be carried to the root system until the plant is dead. This is done to protect the native plant life and not saturate the soil.
  - Removing the existing chain link fence and replacing it with a new 3' chain link fence.
  - Constructing an accessible path between the Project and the easterly edge of Forte Park.
  - Planting 6-7 new shade, flowering, and evergreen trees along the park edge and maintaining said trees for a period of two years after planting.
- **Documents in packets.** Highlighted plans and site photos and draft conditions
- **Additional documents presented at meeting.** Site visit photos, highlighted plans
- **Jurisdiction.** Riverfront Area
- **Presentation (staff and Melissa Mintz) and Discussion.**
  - Staff summarized the project proposal.
  - The proposed work was already contemplated by and reflected in the plans approved by the Commission during the Commission's permitting of the Residences on the Charles, but was not officially permitted for the City's Forte Park parcel. This *ex post facto* RDA filing is for the work on that City parcel.
  - All mature trees due to remain are present and intact.
  - 7 new shade, flowering, and evergreen trees have been installed per the plans. Irrigation has been installed. The trees are warrantied and shall be maintained for a period of two years.
  - Some cutting of invasive vines has occurred; removal of the remainder close to the DCR shared-use path will be undertaken by the applicants.
- **Vote** to issue a negative 2 and negative 6 Determination of Applicability. "The work described in the Request is within an area subject to jurisdiction under the Act, but will not remove, fill, dredge, or alter that area. Therefore, said work does not require the filing of a Notice of Intent"



**Mayor**  
Ruthanne Fuller

**Director of  
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  
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and “The area and/or work described in the Request is not subject to additional review and approval” under Newton’s Floodplain Ordinance, with the following conditions. [Motion: Lunin. Second: Green. Roll-call vote: Lunin (aye), Gilligan (aye), Green (aye), Hepburn (aye), Katz (aye), Cade (aye). Vote: 6:0:0.]

- All plantings must be installed as approved.
- All installations must be appropriately prepared, appropriately deep, and appropriately cared for.

## **2. (7:20) 1650 Washington St – Request for Determination of Applicability – parking lot improvements**

- Owner/Applicant. Larry Seamans, FamilyAid
- Representatives. Bill Grogan, President of the Planning Office for Urban Affairs, Archdiocese of Boston
- Request. Issue OOC.
- Project Summary.
  - Mill, repave and install Cape Cod berms in an existing parking lot.
  - Remove a patio to create more landscaped area.
  - Install a privacy fence and screening plantings.
- Documents in packets. Highlighted plans and draft conditions
- Additional documents presented at meeting. Site visit photos
- Jurisdiction. Buffer Zone
- Presentation (Staff and Larry Seamans) and Discussion.
  - Staff summarized the project proposal.
  - This project is in buffer zone only.
    - The stream is presumed to be intermittent at this point, since although the area that drains to this point is 0.71 square miles (i.e., over 0.5 square miles), the area underlain by stratified drift is just below the 75% threshold (i.e., 0.53 square miles), and the 99 Percent Duration is “undefined” ft<sup>3</sup>/s – per the StreamStats Report.
    - The exact location of the wetland line (and therefore the exact extent of Buffer Zone) has not been determined because access has not been provided by the abutting property owners where the intermittent stream and Bordering Vegetated Wetlands are situated.
    - The greatest likely extent of wetlands and associated buffer zone is shown in the application materials.
  - The majority of the work within Commission jurisdiction (Buffer Zone) will take place within an existing parking lot and patio on an elevated “plateau” ~22 feet above the estimated edge of Bordering Vegetated Wetland.
    - Milling of the parking lot by 1”, repaving with 1”
    - Installation of a 6” berm to direct stormwater
    - Rehabilitation of the catch basin in the parking lot (there is currently a sink hole around the grate and rim)
    - Installation of a perforated pipe in a stone trench around the periphery of the building to collect roof runoff and infiltrate it (significantly reducing flow to the catch-basin in the parking lot and the associated outfall pipe).
    - Installation of an 8’ tall privacy fence and some screening plantings near the proposed pervious playground area
  - The only work that will take place within Commission jurisdiction on the embankment below the parking lot is:
    - Hand removal of a decrepit retaining wall
    - Hand installation of a new flared end and stabilizing rip-rap apron at the stormwater outfall
    - Hand removal of trash and debris
  - Work outside the Commission’s jurisdiction that will improve conditions within jurisdiction includes:
    - Removal of 3 areas of asphalt and installation of loam and seed
    - Installation of stone infiltration trench to take stormwater from the catch-basin prior to it overflowing to the outfall
  - Commissioners discussed snow storage (since none was identified on the plans) out of concern about trash being plowed to the edge of the parking lot and then migrating down slope. It was determined that the applicant would be asked to plow snow away from the wetland and toward the buffer zone boundary.
  - Commissioners discussed their desire to ensure that there would be a sump in the stormwater system.
- Vote to issue a negative 3 and negative 6 Determination (“The work described in the Request is within the Buffer Zone, as defined in the regulations, but will not alter an Area subject to jurisdiction under the Act. Therefore, said work does not require the filing of a Notice of Intent, subject to the following conditions (if any)” and “The area and/or work described in the Request is not subject to additional review and approval” under Newton’s Floodplain Ordinance), with the following conditions. [Motion: Lunin. Second: Gilligan. Roll-call vote: Lunin (aye), Gilligan (aye), Green (aye), Hepburn (aye), Katz (aye), Cade (aye). Vote: 6:0:0.]
  - All stormwater improvements must be undertaken and installed as shown on the approved plans.
  - All work on the embankment must be carried out by hand. No heavy equipment may cross beyond the edge of the parking lot and go down the eastern slope.

**3. (7:45) 164 Quinobequin Rd – Notice of Intent – bulkhead and grading -- DEP File # 239-968**

- Owner/Applicant. Jeff and Catharine Tumpowsky
- Representatives. self
- Request. Issue OOC.
- Project Summary. Installation of a bulkhead and associated grading to alleviate flooding
- Documents in packets. Highlighted plans and draft special conditions
- Additional documents presented at meeting. Site visit photos
- Jurisdiction. Riverfront Area
- Presentation (Staff) and Discussion.
  - Staff summarized the project proposal.
  - This project will be affecting outer Riverfront Area and existing lawn only.
  - The area is currently lawn and will be returned to lawn when the grading is complete. No trees or shrubs will be disturbed.
  - Installation of a bulkhead could be considered “minor exempt” (accessory to a residential structure), but the Commission has always required permits for grade changes and determined a permit to be necessary in this case, too.
  - No mature vegetation will be harmed.
- Vote to close the hearing and issue an OOC with special conditions. [Motion: Lunin. Second: Gilligan. Roll-call vote: Lunin (aye), Gilligan (aye), Green (aye), Katz (aye), Cade (aye). Vote: 5:0:0.]
  - Sedimentation/erosion controls for stockpiling on site, if necessary, must be properly installed in the correct locations.
  - Fill may **not** be placed:
    - a. Beyond the area shown on the approved plans (and certainly not beyond the property line);
    - b. In such a manner as to direct storm water onto an adjacent property or the City street; or
    - c. In such a manner as to adversely impact existing trees and/or shrubs.
  - A copy of the approved plans and Order of Conditions shall be always on-site and available. All contractors must adhere to the approved plan and conditions.
  - If any trees intended to be protected within the project area die within 2 years of the start of construction as a result of the construction or have been demonstrably harmed by construction activities, they shall be replaced at a ratio of 2:1 with native canopy saplings (of roughly 2 caliper inches).

**4. (8:00) 191 Dedham St – Notice of Intent – invasive control, native plantings, fence along South Meadow Brook -- DEP File # 239-967**

- Owner/Applicant. City of Newton Public Schools
- Representatives. Alex Valcarce, Deputy Director of Public Buildings; Vivian Low, DiNisco Design
- Request. Issue OOC.
- Project Summary. The Countryside Elementary School at 191 Dedham Street in Newton is due to be reconstructed in 2025. The new school will be a demonstration of sustainable practices. It will be fully electric, heated and cooled with geothermal wells, and feature rain gardens, student gardens, and pollinator gardens. The adjacent stream channel could be an associated gem of ecological health, and an asset to future outdoor learning, but is currently overrun with invasive plant species. The City proposes to undertake invasive control and native planting in advance of the construction project to ensure that such improvements to native wildlife habitat will be well-established when the new school opens.
- Documents in packets. Highlighted plans and draft special conditions
- Additional documents presented at meeting. none
- Jurisdiction. Bordering Land Subject to Flooding (BLSF) and Buffer Zone
- Presentation (Staff).
  - Abutters were not properly notified (the wrong date was put on the notification form), so this hearing cannot be opened. New abutter notification will be sent for a 2/29/2024 hearing.

**5. (8:30) 80-82 Louise Rd – Notice of Intent – demo and construction of a two-family home with site features -- DEP File # 239-969**

- Owner/Applicant. Luis Diazgranados, LLC
- Representatives. John Rockwood, Eco-Tec
- Request. Issue an Order of Conditions.
- Project Summary. Demolish and construct a two-family home with site features.
  - The proposed project will require work within both municipalities of Newton and Brookline; a separate Notice of Intent (NOI) has been filed simultaneously in each municipality.
  - The Bordering Vegetated Wetland is located off-site to the southeast in Brookline.
  - What would be Newton’s 25’ Naturally Vegetated Buffer Zone is entirely within Brookline.

- The slope immediately behind the house and “patio” consists of poorly consolidated rubble and organic debris and is primarily vegetated with invasive plants.
- The proposal is to remove the impervious surfaces and the invasives in a 1200 sf strip behind the house (in Brookline) and renaturalize the area with native canopy and understory saplings and native shrubs (and mulch). This 1,200 sf renaturalization area represents 50.3% of the site in Brookline, 0% of the site in Newton, and 10.8% of the site as a whole.
- After the erosion control is established, the pavement will be removed, the area will be cleared of vegetation, and a minimum of 1’ of topsoil/subsoil will be removed and be disposed of off-site to aid in the elimination of invasive species propagules. The area will then be returned to grade with clean subsoil and a minimum of 8” of high quality loamy topsoil. The six proposed stone bounds will be installed at the northwestern edge of the area per the Site Plan.
- Documents in packets. Highlighted plans and draft special conditions
- Additional documents presented at meeting. Site visit photos
- Jurisdiction. Buffer Zone to Bordering Vegetated Wetland
- Presentation (Staff) and Discussion.
  - Staff summarized the project proposal.
  - Overall, the project will result in an increase of 303 sf of impervious area.
  - The “back left” corner of the site is a very steep gully. The erosion control and enhancement planting as shown on the plan are impractical.
  - There is a significant proposed increase in impervious area in Newton (~1117 sf), but no mitigation in Newton. All mitigation will be in Brookline (where the Newton ConCom will have no enforcement authority). Staff feel that the Newton portion of the parcel should be provided with mitigation plantings, such as 2-4 large native canopy trees.
  - Staff felt strongly that the total driveway area should be minimized by narrowing the entrances and eliminating the turn-arounds (it is a quiet street, so backing out is not inherently dangerous). The applicant said that the plans were as he desired, but he agreed to install four 1.5-inch native canopy saplings.
  - Staff felt strongly that even though there are no fences, rear stairs, patios, decks, covered entryways, or walkways connecting the driveways to the front doors illustrated, such amenities will likely be desired and should be shown on the plans. The applicant said that the plans were as he desired.
  - The house is due to be built on slab (or perhaps over a small crawl space), so roughly 4 feet of excavation are anticipated. The need for a detailed dewatering plan was noted.
  - The concrete washout detail showed only 3-sides of hay bales, but will be modified to 4 sides.
  - Staff was concerned about protecting the street trees, but the representative pointed out the applicant will be required by the Engineering Division to install new curb and sidewalk, dramatically endangering the existing street trees.
  - Staff noted that the project will have to comply with Newton’s Stormwater Ordinance and Regulations.
  - Staff suggested that applicant team determine whether Newton’s Stormwater Ordinance and Regulations will allow the swale on the “left” side of the house to continue to direct water off site.
- Vote to close the hearing and issue an OOC with the following special conditions. [Motion: Cade. Second: Lunin. Roll-call vote: Lunin (aye), Gilligan (aye), Green (aye), Katz (no), Cade (aye). Vote: 4:1:0.]
  - Modified plans addressing erosion control in the “back left corner” must be presented to the Conservation Commission for review and approval.
  - A dewatering plan designed to limit and control any adverse impact on the wetlands resource area(s) must be presented to the Conservation Commission for review and approval.
  - A fully protective concrete washout plan designed to limit and control any adverse on the wetlands resource area(s) must be presented to the Conservation Commission for review and approval.
  - A planting plan of four 1.5-inch native canopy trees that shows species and locations, must be presented to the Conservation Commission for review and approval.
  - Finished grades may not deviate from the approved plans, even if high groundwater is encountered.
  - Any desired plan changes must be brought back to the Conservation Commission for consideration.
  - To protect the water quality of area wetlands, fertilizers shall be of low-nitrogen content and be used in moderation.
  - To protect the full suite of benefits of area wetlands, wildlife, and native insects and pollinators, no pesticides shall be used.
  - To protect wetland wildlife, exterior lighting shall:
    - a. be “dark sky” compliant -- i.e., shielded to prevent any “up-lighting” and “backlighting”, focused, and directed so as not to illuminate any part of the wetland.
    - b. have limited blue content to decrease skyglow and disruption of diurnal animals
    - c. be switched off when not in active use

**6. (9:00) 5 Harwich Rd – Order of Conditions Extension Request – Addition with bounded planting area -- DEP File # 239-907**

- Owner/Applicant. Nicholas Acquavella

- Representatives. John Rockwood, Eco-Tec
- Request. Issue 2-year extension to allow time for plant establishment.
- Project Summary. Addition with bounded planting area
- Documents in packets. Highlighted plans
- Additional documents presented at meeting. None
- Jurisdiction. Buffer zone to Bordering Vegetated Wetland
- Relevant Performance Standards. N.A.
- Presentation (Staff) and Discussion. Per John Rockwood, as of October 18, 2023, the required shrubs and small shrubs have been installed and mulched as required by the planting narrative. Due to nursery supply issues, the eastern red cedar, black chokeberry, and American witch-hazel were somewhat undersized. Limited invasive species (e.g., multiflora rose and glossy buckthorn) in the planting areas were removed on September 17, 2023; invasive species in the mitigation planting areas will be addressed during the annual inspections in 2024 and 2025. The locations for the stone bounds have been staked by survey but are yet to be installed.
- Vote to issue a 2-year extension. [Motion: Katz. Second: Gilligan. Roll-call vote: Lunin (aye), Gilligan (aye), Green (aye), Katz (aye), Cade (aye). Vote: 5:0:0.]

#### **7. (9:05) 188-210 Needham St. – Order of Conditions Extension Request – Additional parking -- DEP File # 239-841**

- Owner/Applicant. Kerry McCormack, CrossPoint Associates, Inc.
- Representatives. self
- Request. Issue 3-year extension to allow time for plant establishment.
- Project Summary. Additional parking in grassy area
- Documents in packets. Highlighted plans
- Additional documents presented at meeting. None
- Jurisdiction. Riverfront Area (10.58(4)) and Buffer zone to Bordering Vegetated Wetland
- Presentation (Staff and Kerry McCormack) and Discussion.
  - The applicant stated: “Due to issues related to Covid, work on the project has not been initiated. Such an extension is required to allow work to be completed and the required mitigation to be installed and monitored.” This permit #239-841 was issued December 6, 2019. It was due to have expired in 2022, but due to COVID, was automatically extended 462 days. It has not been acted on during that time.
  - The prior Order of Conditions (#239-730) for work on this lot (expanded paved parking near 180 Needham St.) required:
    - Installation of a stormwater/infiltration system
    - Installation of a rain garden
    - Removal of invasives faithfully and completely for 6 years
    - Planting of natives
  - Order of Conditions #239-730 has not been executed appropriately and an Enforcement Order (EO) was issued in February 2023 for lack of compliance with invasive controls, plantings, and as-built plans. To date, the terms of the EO have not been met. All requirements under this Order of Conditions can and should be undertaken promptly.
  - McCormack described the work that his company has undertaken on adjacent parcels. He noted that to be able to market the 180-210 property to potential tenants, he needs to provide more parking.
  - Commissioners were sympathetic to the request, but noted that a 3-year extension was not appropriate and that the terms of the Enforcement Order needed to begin to be executed before an extension would be granted.
- Consensus. At their next meeting (29 February 2024), the Commission will consider a report of the applicant’s progress on the Enforcement Order’s requirements and a plan outlining a pathway and a timeline for full compliance with the Enforcement Order. At the 29 February 2024 the Commission will consider the applicant’s report and the possibility of the extension of DEP File # 239-841.

#### **B. CONSERVATION AREA DECISIONS – none at this time**

#### **C. ADMINISTRATIVE DECISIONS**

##### **8. (9:15) Minutes to be approved**

- Documents in packets. Draft 1/11/2024 minutes
- Vote to approve the 1/11/2024 minutes. [Motion: Lunin. Second: Gilligan. Roll-call vote: Lunin (aye), Gilligan (aye), Green (aye), Katz (aye), Cade (aye). Vote: 5:0:0.]
- Volunteer. Susan Lunin will review the 2/1/2024 minutes.

##### **9. (9:20) DRAFT Riverfront Area Redevelopment Guidance**

- Documents in packets. Draft Riverfront Area Redevelopment Guidance and summary sheet
- Presentation (Staff) and Discussion.
  - Staff developed a draft RFA Redevelopment Guidance intended to provide a clear, consistent, and defensible interpretation of the state’s performance standards in 310 CMR 10.58(5) so that staff and applicants can anticipate how the Commission will interpret the 10.58(5) performance standards. The draft materials included:
    - Draft guidance language
    - A summary chart of interpretations of the performance standards
    - The full text of the performance standards.
    - Illustrations of the interpretations for discussion purposes
  - Commissioners appreciated the intent and the discussion, but felt that the draft language was too prescriptive and that the illustrations were confusing. Commissioners want to retain flexibility in their assessment of each individual site.
  - Commissioners generally agreed that if a proposed project “violated or exceeded” two aspects of the regulations, compensation should be required for both, but that site conditions and project details should be taken into account for every individual project.
  - Staff will try to craft a much simpler document for Commission consideration.

**D. ISSUES AROUND TOWN DECISIONS** – none at this time

**UPDATES / DISCUSSION** – none at this time

**E. WETLANDS** – none at this time

- Staff will share the Alicia Geilen’s Wetlands Protection Act “Boot Camp” slide deck with the Commissioners.

**F. CONSERVATION AREAS** – none at this time

**G. ADMINISTRATIVE MATTERS**

- Commissioners were encouraged to send their requested MACC Annual Environmental Conference registration to staff as soon as possible.

**H. ISSUES AROUND TOWN**

- The Annual Charles River Clean Up will be held on April 20. Commissioners were encouraged to participate.

**PUBLIC COMMENT on matters not on this agenda** - none

**OTHER TOPICS NOT REASONABLY ANTICIPATED BY THE CHAIR 48 HOURS BEFORE THE MEETING** – none at this time

**ADJOURN**