

# CONSERVATION COMMISSION MINUTES

Date: October 3, 2019  
Time: 7:00 pm  
Place: City Hall, Room 204

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

**Members Present:** Judy Hepburn, Ellen Katz, Jeff Zabel, Susan Lunin, Kathy Cade, Leigh Gilligan

**Staff Present:** Jennifer Steel

**Members of the Public:** See sign-in sheet

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*Congratulations to Leigh Gilligan on her appointment to full voting member of the Commission!*

## DECISIONS

### 1. 20 Rogers Street – Conservation Restriction

- **Owner:** City of Newton, Parks and Recreation **Representative:** Andrew Lee, Law Department, Alice Ingerson, CPC
- **Request:** Commission signatures on the Municipal Certification for the 20 Rogers St. Conservation Restriction (CR) stating that the 20 Rogers Street CR is in the interest of the public and that the site will be maintained as conserved land in perpetuity.
- **Documents Presented:** conservation restriction conservation restriction
- **Project Summary:** The City is trying to get CRs placed on all properties that were acquired with CPA funds (as required by the CPA). This ~44,000 s.f. parcel was acquired by the Parks and Rec. Department in 2007 so the CR is overdue. The CR will be held by the Newton Conservators and has been drafted, reviewed, and approved by the Executive Office of Energy and Environmental Affairs (EOEEA).
- **Presentation and Discussion:** Leigh Gilligan recused herself because of her pro bono legal work for the Newton Conservators on CRs. Andrew Lee described the history of acquisition and the legal requirement for ConCom certification of the public benefit of the CR under the CPA.
- **Vote** to sign the Municipal Certification. [Motion: Lunin; Second: Zabel; Vote: 6:0:1]

### 2. Kessler Woods/Sawmill Brook – Conservation Restriction

- **Owner:** City of Newton, ConCom **Representative:** Andrew Lee, Alice Ingerson
- **Request:** Commission signatures on the Municipal Certification for the Kessler Woods/Sawmill Brook CR stating that the Kessler Woods/Sawmill Brook CR is in the interest of the public and that the site will be maintained as conserved land in perpetuity. Since the Commission has care and custody of this land, it also needs to sign-off on the Conservation Restriction itself.
- **Documents Presented:** conservation restriction conservation restriction
- **Project Summary:** The City is trying to get CRs placed on all properties that were acquired with CPA funds (as required by the CPA). Multiple parcels, totaling ~542,000 s.f., were acquired in 2004 so the CR is overdue. The CR has been drafted, reviewed, and approved by EOEEA.
- **Presentation and Discussion:** Leigh Gilligan recused herself because of her pro bono legal work for the Newton Conservators on CRs. Andrew Lee described the history of acquisition and the legal requirement for ConCom certification of the public benefit of the CR under the CPA. Dan Green will have his signature notarized tomorrow and return the signed copies to the Law Department.
- **Vote** to sign the Municipal Certification. [Motion: Lunin; Second: Zabel; Vote: 6:0:1]

## I. WETLANDS DECISIONS

### 3. 191 Dedham St – NOI – creation of accessible pathway -- **DEP File #239-XXX**



**Mayor**

Ruthanne Fuller

**Director  
Planning &  
Development**

Barney Heath

**Chief  
Environmental  
Planner**

Jennifer Steel

**Assistant  
Environmental  
Planner**

Claire Rundelli

**Conservation  
Commission  
Members**

Kathy Cade  
Dan Green  
Judy Hepburn  
Ellen Katz  
Susan Lunin  
Jeff Zabel  
Leigh Gilligan

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- Owner: City of Newton    Applicant: Tiffany Leung, Newton CD Planner    Representative: Luis Perez Demorizi, Newton Parks, Recreation, and Culture Open Space Coordinator
- Request: Issue an OOC.
- Documents Presented: colored plans    colored plans, photos, draft OOC
- Jurisdiction: Riverfront Area, BLSF (~112.4 NAVD88), City Flood Plain
- Project Summary:
  - Creation of an accessible 240'x5' path from the Countryside parking lot to an existing play area.
- Presentation (Tiffany Leung and Luis Perez) and Discussion
  - A DEP file number has not been received, so the hearing cannot be closed.
  - The project is required by ADA.
  - The new path will be constructed at existing grade for the entirety of its length (i.e., there will be no net fill) and be created within existing lawn.
  - For safety and accessibility reasons, the path will be asphalt.
  - The entire path is within the 100-year FEMA flood plain and a small portion is within the outer riparian zone.
  - Total volume of existing fill to be brought in (sub-base and asphalt) is 14.8 cubic yards (240' x 5' x 1/3' = 400 cubic feet /27 = 14.8 cubic yards); therefore, the amount of soil to be removed is 14.8 cubic yards. All soil will be removed from the site.
  - The Big Belly trash and recycling cans will need to be moved to accommodate the path
  - The project is due to be undertaken in the spring or summer of 2020 (as the CDBG funds need to be expended by June 30, 2020).
  - Comments from neighbors (Richard Brown, Alan Rao, and Kaitlin Spiegel) focused on the problem of trash/litter originating from the school accumulating on their properties. Luiz Perez committed to looking into moving the Big Bellis to a more convenient location. Alan Rao noted that the school was due to be reconstructed at some point so perhaps this project was premature, noted his frustration at having to pay flood insurance, and noted a need for a comprehensive study of the South Meadow Brook watershed.
- Vote to accept the applicant's request to continue the hearing to November 14 to allow time for the DEP file number to be received and to allow time for changes, if any, to be made to the plans. [Motion: Lunin; Second: Hepburn; Vote: 7:0:0]

#### 4. 75 Kingswood Rd – RDA – vista pruning

- Owner/Applicant: Donald Swire    Representatives: self
- Request: Issue Determination of Applicability.
- Documents Presented: annotated photos, quote for work    photos, quote for work, draft DOA
- Jurisdiction: Riverfront Area
- Project Summary: Selective vista pruning to the existing Japanese Maple, two White Pines, Sassafras, Red Maple. The proposed work also includes the removal invasive thorn plants and bittersweet vines around the existing Sassafras and of an existing Arborvitae.
- Presentation (Don Swire) and Discussion
  - The proposed pruning has been proposed by a certified arborist and will not have a negative impact on the functions and values of the wetland resource area. Branches are currently impinging on the deck and have removed the view.
  - No trees will be removed. Work will be done by hand and by climbing.
  - The proposed invasive removal is designed to improve the habitat in the riparian area.
- Vote to issue a Negative 3 Determination with the following special conditions. [Motion: Lunin; Second: Gilligan; Vote: 7:0:0]
  - Only the work identified in the referenced plans may be undertaken.
  - All trees shall be left in a healthy state.
  - Only non-native invasive plants may be removed.
  - All cut materials shall be removed from the site.
  - Applicant must plant one (1) native shrub to replace the arborvitae to be removed.

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5. **194 Dedham St – NOI – ex post facto vegetation removal and mitigation plantings – DEP File #239-XXX**
- Owner/Applicant: Ritchie and Denitsa Brown     Representative: self
  - Request: Issue an OOC.
  - Documents Presented: colored plans   colored plans, photos, draft OOC
  - Jurisdiction: BLSF (~113.6 NAVD88), City Flood Plain
  - Project Summary:
    - As new owners, the applicants cut mature vegetation (from within the 100-year FEMA flood plain) to create a larger lawn. Conservation staff were informed of the cutting by a neighbor. The applicants cut on their own parcel and on the adjacent 176 Dedham St. parcel.
    - The applicant removed 5 large trees, 9 smaller trees or large multi-stem shrubs, and a number of smaller multi- or single stem shrubs. The caliper inches that are relevant for replacement calculations is roughly ~90”.
    - The applicant is proposing to install 9 saplings at 1-2” installation size, 1 sapling 3-5”, and 10 shrubs. Applicant is also proposing to install a drywell and remove some existing soil to be replaced with fresh loam for a lawn.
    - The applicant is proposing some plantings on the 176 Dedham St. The owner of 176 Dedham St. has signed off on the NOI application and has requested re-planting occur on her lot.
    - The applicant revised the planting schedule to have all native species.
    - The proposed drywell is being reviewed by Engineering, but as it is a voluntary system, no other permit will be required for it aside from a sidewalk crossing permit for the equipment.
  - Presentation (Denitsa Brown) and Discussion
    - The DEP file number has not been received, so the Commission cannot close the hearing.
    - The shown “existing mature trees” on the plan provided in the packets is not entirely accurate; the locations of removed trees are mostly accurate.
    - Green ash suffer disease and should be substituted with another species. Additional evergreen shrubs and clethra should be considered for the revised plan. (Jennifer Steel will remove ash from our list of recommended species.)
    - The proposed tree-for-tree mitigation seems appropriate for the site, but the trees are proposed to be too densely concentrated along the rear property line. A 15’ wide (on average) restoration area along the rear property line should be shown on revised plans to replicate the lost canopy area.
    - The applicant will show the actual proposed location of the dry well, locating it at least 10’ from the property lines, per City drainage requirements.
  - Vote to continue the hearing to October 24, 2019. [Motion: Cade; Second: Gilligan; Vote: 7:0:0]
6. **188-192 & 210 Needham St – cont’d NOI – 36-stall expansion of parking and restoration of RFA -- DEP File #239-841**
- Owner/Applicant: Kerry McCormack, Crosspoint Associates     Representative: Brandon Li, Kelly Engineering; Brad Buitenhuys, Crosspoint Associates
  - Request: Issue an OOC.
  - Documents Presented: none
  - Jurisdiction: Riverfront Area, BLSF (~113’ NAVD88)
  - Staff Notes: The applicant sought a continuation.
  - Discussion: The Commission is willing to grant this request to continue but will not continue beyond Nov. 14 without updated project materials addressing the issues raised during previous ConCom meetings.
  - Vote to continue the hearing to November 14, 2019. [Motion: Gilligan; Second: Zabel; Vote: 7:0:0]
7. **1114 Beacon St – cont’d NOI – construction of 25-unit residential condominiums -- DEP File #239-827**
- Owner: Ronald Simons, 1114 Beacon Street LLC     Applicant/Representative: Kelly Cardoza, Avalon; Fred King, DGT Associates
  - Request: Issue an OOC.
  - Documents Presented: old overview plan   old overview plan
  - Jurisdiction: ILSF
  - Staff Notes: Since the applicant submitted a request to withdraw, and that was publicized, abutters were re-notified and a legal ad was put in the TAB.
  - Presentation (Kelly Cardoza):

- The proposal to tear-down the existing building and remove existing parking lot, construct residential buildings, landscaping, and improvements to the wetland at the rear of the property were advanced. Then the owner considered developing a marijuana facility but failed to get City support. So, the owner is considering the residential plans again, likely pulling all activities out of wetland jurisdiction. A new team of consultants is working on revising the plans and the owner is committed to submitting plans that fully comply with any relevant wetland performance standards.
  - Information on nearby basement elevations and floodplain elevations has been gathered.
  - The wetland has not been studied for vernal pool qualities.
  - The applicant would like to continue the hearing to 12/5/19 to allow time for the new team to develop all necessary plans and documents.
- Vote to continue the hearing to 12/15/19. [Motion: Lunin; Second: Katz; Vote: 7:0:0]

**8. 212 Kenrick St – COC Request – mechanical and chemical management of ponds – DEP File #239-317**

- Owner: City of Newton “Owner’s Rep.”: Steven Meyer, Newton Commonwealth Foundation Applicant: David Stowe, Newton Comm. Golf Course Representative: none
- Request: Issue COC to close out Order of Conditions 239-317.
- Documents Presented: draft COC
- Jurisdiction: Bank, Land Under Waterbodies and Waterways (LUWW), City Floodplain
- Project Summary: OOC 239-317 (1997) permitted the dredging of on-site ponds, removal on invasive and nuisance species and replacement plantings, IPM program for the golf course, a composting program for dredging materials and landscaping debris, the treatment of the artificial irrigation pond with Sonar once.
- Staff Notes: A site visit on 8/16/19 confirmed that the site is in substantial compliance with the approved plans and OOC. There is no as-built plan or engineer’s letter for this project.
- Vote to issue a Certificate of Compliance. [Motion: Cade; Second: Hepburn; Vote: 7:0:0]

**9. 212 Kenrick St – COC Request – addition to existing clubhouse structure – DEP File #239-340**

- Owner: City of Newton “Owner’s Rep.”: Steven Meyer, Newton Commonwealth Foundation Applicant: David Stowe, Newton Comm. Golf Course Representative: none
- Request: Issue COC to close out Order of Conditions 239-340.
- Documents Presented: photos, draft COC
- Jurisdiction: City Flood Plain
- Project Summary: OOC 239-340 (1998) permitted a 1200 s.f. addition to the existing clubhouse and required compensatory storage.
- Staff Notes: An as-built was required for this project but has not been provided. A site visit will be conducted to confirm that the site is in substantial compliance with the approved plans and OOC.
- Vote to issue a Certificate of Compliance. [Motion: Gilligan; Second: Zabel; Vote: 7:0:0]

**10. 212 Kenrick St – COC Request – mechanical and chemical management of ponds – DEP File #239-495**

- Owner: City of Newton “Owner’s Rep.”: Steven Meyer, Newton Commonwealth Foundation Applicant: David Stowe, Newton Comm. Golf Course Representative: none
- Request: Issue COC to close out Order of Conditions 239-495.
- Documents Presented: draft COC
- Jurisdiction: Bank, Land Under Waterbodies and Waterways (LUWW), City Floodplain
- Project Summary: OOC 239-495 (2005) permitted a variety of mechanical and chemical pond management tasks for 3 years. It should be noted that the Order specifies that no other treatments will be permitted without a comprehensive watershed management plan.
- Staff Notes: A site visit on 8/16/19 confirmed that the site is in substantial compliance with the approved plans and OOC.
- Vote to issue a Certificate of Compliance. [Motion: Zabel; Second: Cade; Vote: 7:0:0]

**11. 195 Islington Rd – COC Request – replacement of failing retaining wall – DEP File #239-828**

- Owner/Applicant: Kathryn Cade Representative: self

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- Request: Issue complete COC to close out Order of Conditions 239-828.
- Project Summary: OOC 239-828 permitted the replacement (in kind) of an existing dry-stone retaining wall in the riparian zone.
- Documents Presented: photos, draft COC
- Jurisdiction: Buffer Zone, Riverfront Area, FEMA 100-yr and City Flood Plain
- Discussion:
  - Kathy Cade recused herself since she is the project proponent.
  - The project was completed as planned with no disturbance to the bank. The mason signed a letter certifying compliance. A staff site visit on 8/22/19 confirmed that the site is in compliance with the OOC and the approved plans.
- Vote to issue a Certificate of Compliance. [Motion: Lunin; Second: Gilligan; Vote: 6:0:1]

**12. Stormwater Outfall at Nonantum Road and Maple St – E-Cert Ratification – oil spill resulting in outfall contamination**

- Responsible Party: MassDOT Representative: Green Environmental
- Request: Ratify the Emergency Certification issued 9/25/19 by Conservation staff.
- Project Summary:
  - When conducting repair work on the joints of a large diameter storm drainpipe near the Crowne Plaza Hotel on 9/24/19, the pipe was breached allowing oil (estimated 20 gals) from an abandoned oil storage tank into the storm drain system.
  - The oil contamination travelled down the storm drain system, exiting at the Charles River outfall near the intersection of Nonantum Road and Maple Street.
- Documents Presented: photos, Emergency Certification
- Jurisdiction: Bank
- Discussion:
  - Absorbent pads have been installed at the spill site and contaminated soil removal is occurring under the supervision of MassDEP, a Licensed Soil Professional, and Green Environmental.
  - Booms, inner and outer, have been placed at the outfall site, with more to be placed.
  - It appears that the majority of the disturbance of the bank (vegetation flattening and some areas of bare soil) is a result of access and the removal of the saturated pads.
  - The Emergency Certification issued by staff included a special condition regarding a follow-up site visit (with a calendar tickler) to determine if restoration activities are needed after the clean-up is finished.
  - Members asked Jennifer Steel to seek confirmation that the tank will be/has been removed.
- Vote to ratify and sign the Emergency Certification. [Motion: Cade; Second: Hepburn; Vote: 7:0:0]

**II. CONSERVATION AREA DECISIONS – none at this time**

**III. ADMINISTRATIVE DECISIONS**

**13. Conservation Commission as a Respected Resource**

- Documents Presented: meme memo
- Staff Notes
  - Jennifer Steel would like to encourage Conservation Commission members and the Commission as a whole to address large issues of conservation and advocacy in addition to the routine wetland regulation.
  - Susan Lunin suggested guest speakers (~30 minutes) at special meetings ~3x/yr.
  - Kathy Cade suggested trying to limit the cutting of trees (because of shade and carbon offsets) through revisions to the City Tree Ordinance

**14. Minutes of 9/12/19 to be approved**

- Documents Presented: draft minutes draft minutes
- Vote to approve the 9/12/19 minutes. [Motion: Lunin; Second: Gilligan; Vote: 7:0:0]

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

**UPDATES**

**V. WETLANDS UPDATES – none at this time**

**VI. CONSERVATION AREA UPDATES**

- Houghton Pond Dredging: Staff will solicit estimates for dredging to determine whether it is financially feasible before exploring how to have a hydroperiod study conducted.
- Norumbega Slope Restoration: SumCo will be starting October 7th. There was discussion about the challenges of keeping vandals off the slope. Kathy will post something on the neighborhood Facebook page. Members suggested stronger fencing, real cameras, or fake cameras, but noted that they were all susceptible to vandalism. Susan Lunin suggested contacting Gail Spector of the Boston Globe to get positive press, note the significant investment, and try to get out ahead of vandalism. Jennifer Steel noted that temporary and permanent signs would be installed.

#### **VII. ISSUES AROUND TOWN UPDATES**

- New, Large Developments in the pipeline: Northland and Riverside are still going through the Special Permitting process; Washington Place and Austin Street are being constructed; the City just received 40B applications for two new developments, Dunstan East and Riverdale.
- Aqueducts: Jennifer Steel gave a public presentation on 9/26/19 regarding the potential City acquisition of portion of Sudbury aqueduct from MWRA through an 8m license.
- Ticketing: Staff met with the Law Dept. to discuss ticketing under 21D for off-leash dogs. The Law Dept. and Conservation Staff will continue working towards the goal of being able to issue tickets against off-leash dog offenders.
- Open Space and Recreation Plan: We will be contracting with the Conway School of Landscape Design to create our update.
- Climate Action Plan: The current draft of the Climate Action Plan went to ZAP on 10/2/19.

#### **VIII. ADMINISTRATIVE MATTER UPDATES**

- MACC Fall Conference: Final registration deadline for the MACC Fall Conference is 10/4/19, if you wish to have the City pay for your registration.

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

- Are there volunteers to update the Commission's invasives removal policy with appropriate disposal information? Commissioners recommended asking Katherine Howard. Jennifer Steel will ask Katherine.
  - Webster Woods CPC application cover letter. The Conservation Commission will be the custodian of the land that the Mayor just announced she would be taking by eminent domain, so she asked that the ConCom be a co-applicant on the CPC application. Discussion: The CPC will likely recommend funding through bonding, so this purchase will not use all of its dedicated open space funds; that way, funds will be available should, for example, a golf course become available for acquisition/protection. It was noted that the cost is high and that BC had legally purchased the property but that preservation of the open space was of great importance for the City as a whole. Vote to have Chairman Dan Green co-sign the application cover letter on behalf of the Commission. [Motion: Lunin; Second: Hepburn; Vote: 6:1:0]
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**ADJOURN** Vote to adjourn at 9:47. [Motion: Katz; Second: Zabel; Vote: 7:0:0]

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